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ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

September 24, 2004

Ms. Debra K. Davenport, CPA
Auditor General
2810 North 44th Street, Suite 410
Phoenix, AZ 85018

Re: Sunset Review and Sunset Factors Report

Dear Ms. Davenport:

The Arizona Department of Environmental Quality appreciates the opportunity to respond to the Sunset Factors report prepared by the Office of the Auditor General. The Sunset Factors report addresses the Department's Sunset review and includes discussion of the Auditor General's three performance audits of the Water Quality, Waste Programs, and Air Quality Divisions of the Department. We greatly appreciate the conclusion in this report that the Sunset Factors analysis "indicates the continued need for the Department." There is no doubt that the efforts and achievements of this Department improve the environment and quality of life for the citizens of Arizona.

As the Sunset Factors report reflects, the Department successfully achieves its mission "to protect and enhance public health and the environment in Arizona." The Department achieves this mission through the performance of several central functions—policy development, outreach, monitoring and assessment, compliance management, clean ups, and pollution control. The Department's primary goal is to improve the quality of Arizona's air, land and water through the prevention and reduction of unhealthful levels of air pollution, reducing pollution to and the risk associated with contaminated land and water, and ensuring safe drinking water. The Department also engages in numerous initiatives and outreach efforts to further its mission, including the Children's Environmental Health Project, under the leadership of Governor Napolitano. This letter outlines some of the Department's environmental quality efforts to effectively reach out to stakeholders, control pollution, and enforce the environmental laws.

Initiatives and Outreach

The Department takes pride in its efforts to improve public health and the environment. For example, the Department recently has made significant achievements in air quality. In 2003, the Department received the annual Clean Air Award from the American Lung Association of Arizona in recognition of the Department's successes in improving air quality in Arizona. Additionally, throughout 2003, the Department worked constructively with stakeholders and the

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U.S. Environmental Protection Agency (EPA) to designate the boundaries for the Phoenix area eight hour ground-level ozone nonattainment area within the northeastern portion of Maricopa County and a very small portion of northern Pinal County. The Department's effective effort avoided imposition of EPA's presumptive boundary, which would have placed the entirety of both Maricopa County and Pinal County in the new non-attainment area.

Moreover, just recently EPA has proposed to redesignate the Phoenix Metropolitan area as being in attainment for the federal carbon monoxide standard. This is an important achievement that recognizes the significant improvements that have been made in the Valley's air quality.

In addition, much has been written about the new, more stringent, federal standard for arsenic in drinking water and the difficulties Arizona water supplies may have meeting that standard. Arsenic occurs naturally in many parts of our state, and some of the most affected communities are those least able to afford the costs of treatment. Knowing this, the Department constructed Arizona's Arsenic Master Plan—a guide for small water systems for identifying the most effective and least costly method to ensure compliance with the new drinking water standard. The Arsenic Master Plan assists the Arizona Corporation Commission in its efforts to approve appropriate rates for private water systems; it enables community leaders to understand the decision process that must occur before a treatment technology is selected; and it helps small water systems find the right sources of funding and technical expertise. Even more, ADEQ's Arsenic Master Plan has served as a model for similar efforts in other states.

Over the last three years, the Department's Water Quality Improvement Grant Program has provided more than \$6.9 million to both public and private entities throughout Arizona to help reduce the impact of non-point sources of water pollution in the state's watersheds. These grant recipients, who provide their own matching funds, implement projects that have addressed erosion control, aquatic wildlife restoration and wetlands mitigation. Non-point source pollution is considered the most significant threat to water quality, and ADEQ will continue its efforts to protect the quality Arizona's water resources.

Also, the Department has placed a high priority on initiating early response actions, through the WQARF (State Superfund) Program, at contaminated sites where human health is threatened or where sources of contamination can cause significant environmental impact if not contained. In January 2003, ADEQ initiated an early response action to control contaminated groundwater at the intersection of Central Avenue and Camelback Road in Phoenix when contamination was found in a parking garage. In March 2003, the Department initiated an early response action to address contaminated groundwater at a site in Quartzite when water supply wells were found to be contaminated. ADEQ provided residents with bottled water until they could be connected to the public drinking water system, and designed a treatment system to control the spread of contamination. In May 2003, ADEQ initiated operation of a groundwater containment system in Tucson to prevent contamination from spreading toward active municipal drinking water wells. During 2004, ADEQ added three new sites to the state's WQARF registry, bringing the total number of sites on the list to thirty-six.

The Department continually examines ways to improve the administration of its programs. For example, as the report recognizes, the Department took the initiative to make substantial improvements to the administration of the State Assurance Fund (SAF). When the Napolitano Administration took office in January 2003, the Department faced a backlog of over 1,100 unpaid SAF applications. In early 2003, an internal working group was established by the Director to determine the reasons for this enormous backlog. In May 2003, the Department made key administrative changes to the SAF, and, as the audit recognizes, since that time, the Department has eliminated this backlog. SAF applicants no longer must wait years for payment. The SAF is operating on a cash basis and, as applications are processed and approved, they are paid. The Department thanks the Auditor General for noting this dramatic improvement to SAF claims processing in the audit.

Additionally, in January 2004, ADEQ launched its redesigned, user-friendly web site to better serve the citizens of Arizona and the regulated community. The improved web site is loaded with information about the Department and its programs, includes calendaring and LISTSERV functions, and ultimately will allow access to integrated Geographic Information System (GIS) information. Also, the Department used a federal grant, one of only three innovation grants awarded nationally by the EPA, to develop its "Smart NOI," web-based water quality permit processing tool. This online function allows the Department to receive an application, sort the information into the proper databases, and apply a decision-making matrix to the application to rapidly distinguish those applications for immediate approval from those that require more detailed attention. Under the Smart NOI program, ADEQ timely processes thousands of these permits a year. The improved web site will enable us to provide more "e government" functions to the regulated community.

To further increase the efficiency of services provided by the Department to rural communities in the state, since 2001, ADEQ has employed community liaisons in each of the state's "four corners." These environmental program specialists are based in Kingman, St. Johns, Yuma and Sierra Vista. They provide local communities, businesses and other stakeholders with a wide range of permitting, compliance and outreach assistance, including the resolution of complaints against the Department.

Children's Environmental Health

In addition to these and other pollution control and customer service initiatives, the Department is proud of its work on the Children's Environmental Health Project (Project), which focuses on reducing environmental risks to children's health in Arizona, including particularly the effect of air quality on childhood asthma and other respiratory illnesses. In the summer of 2003, nearly a year in advance of the federal imposition of the new, eight-hour ozone standard, the Department began forecasting and widely reporting the ground-level ozone standard, which is more protective of children's health. Children are at risk from exposure to harmful ozone because they are active outside, playing and exercising, and the Department's ozone forecasts allow parents and caregivers to adjust outdoor activities accordingly. The Department, in cooperation with Maricopa County, provides daily forecasts of ozone, particulate matter, and carbon monoxide levels, and announces appropriate health advisories on our web site.

Further, as part of the Project, in August of this year, the Department, in cooperation with several school districts in Arizona, launched an innovative pilot program to reduce children's exposure to harmful diesel emissions from buses idling near schools. Key elements of the pilot program include having drivers turn off buses upon arrival at a school and not restart the engine until the bus is ready to depart. Diesel emissions can aggravate respiratory illnesses, such as asthma, and have been linked to lung and heart disease. One of the components of diesel emissions, carbon monoxide, also can reduce alertness and learning capacity in children.

Also, ADEQ's pollution prevention program, within the Waste Programs Division, recently received a grant from the EPA to educate and encourage school districts to construct or retrofit schools to be more environmentally friendly. This "Green Schools" initiative will develop design, construction and operational practices that will reduce children's exposure to potentially harmful chemicals typically found in school settings. Additionally, the Department has surveyed Arizona schools on the use of chromated copper arsenic wood-coated playground equipment to assess children's potential exposure to this substance. Finally, when TCE-contaminated water was being used for irrigation in a northern Arizona elementary school, the Department quickly stepped in and conducted sampling of the water supply to ensure that children were being protected. The Department is conducting further investigation of the cause of contamination in the irrigation water and options for correcting the problem.

Permitting and Enforcement

The Department achieves its primary goal to improve the quality of Arizona's air, water and land, in part, through the issuance of permits and appropriate enforcement actions. For example, as noted in the audit report, the Water Quality Division has made significant progress toward meeting the requirement to issue aquifer protection permits, or APPs, on the schedule mandated by the Legislature. Further, the Auditor General recognized the achievements of the Air Quality Division in meeting federal air quality standards and taking appropriate, timely and effective enforcement actions against major sources of air pollution. As suggested in the report, because this Department has won program delegation from EPA over the last 18 years, if the Department were terminated, EPA would assume responsibility to implement and enforce environmental laws in Arizona. The regulated community would answer to EPA's Region 9 office in San Francisco, which divides its time among a number of states and tribes. The federal government would not be held to licensing time frames and would not be accountable to the Governor, the Legislature, or Arizona's citizens.

Compliance with and enforcement of Arizona's environmental laws is a high priority for the Department, and these efforts are recognized as important by the Office of the Auditor General. The Department takes enforcement actions in a variety of forms. The Department may take an informal action, such as issuing a notice of opportunity to correct, or NOC, if the violation is minor, or a notice of violation, or NOV, if the violation otherwise does not merit formal action. Formal enforcement actions include compliance orders and civil lawsuits. The Department may issue compliance orders and civil lawsuits for major violations, repeat violations, and to impose appropriate penalties.

Among its many efforts, ADEQ continues to pursue enforcement against Innovative Waste Utilization (IWU) for actions related to the company's operations and its hazardous waste permit at its south Phoenix facility. The facility and its employees were the subject of a lengthy investigation by a coalition of federal, state, and local law enforcement agencies. When the investigation lead to a raid and the arrest of several key employees at the facility for selling hazardous waste to make methamphetamine in early 2003, ADEQ suspended IWU's license to operate the facility, issued a compliance order, and permanently revoked the facility's license. The Department then hired and oversaw the work of a contractor to properly handle, remove and dispose of the waste at the facility.

Additionally, ADEQ continues to pursue enforcement action against Kinder Morgan for soil and groundwater contamination caused when Kinder Morgan's fuel pipeline ruptured near Tucson and released tens of thousands of gallons of fuel into the environment in July 2003.

Audit Findings

In addition to the numerous and significant achievements of the Department highlighted in this letter and in the Sunset Factors report, the report includes findings from the three Division performance audits. The Department has agreed with all the findings in the audits and has agreed to implement all the recommendations. For example, through the Water Quality Division, the Department will review the potential to expand the drinking water Monitor Assistance Program to improve the Department's oversight of drinking water quality monitoring by public water systems. Further, the Department will institute fees for engineering reviews performed by the Water Quality Division and already has begun the recalculation of APP fees, as recommended by the Office of the Auditor General.

Additionally, the Department, through the new Tank Programs Division, will increase compliance and enforcement efforts of the financial responsibility requirements for owners and operators of underground storage tanks. Likewise, the Department will review the State Assurance Fund cost ceilings to ensure they represent the true costs of cleaning up leaking USTs. The Department, through the Waste Programs Division, also will consider steps to issue enforcement actions more quickly with the goal of returning facilities to compliance more quickly, as suggested by the audit. Finally, through the Air Quality Division, the Department will continue to improve the air quality in Arizona and to issue timely and appropriate enforcement actions when the Department discovers violations of the air quality laws.

We thank the Office of the Auditor General both for its effective communication throughout the audit and Sunset review process and for this opportunity to respond to the Sunset Factors report.

Sincerely,

Stephen A. Owens
Director