

# Arizona Department of Environmental Quality

Department met its statutory objective and purpose in some areas we reviewed but had not complied with State conflict-of-interest requirements and did not fully implement some key information technology (IT) security policies and requirements

Performance Audit and  
Sunset Review

September 2021  
Report 21-117

A Report to the Arizona Legislature

Lindsey A. Perry  
Auditor General





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September 28, 2021

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Misael Cabrera, Director  
Arizona Department of Environmental Quality

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona Department of Environmental Quality*. This report is in response to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Department of Environmental Quality agrees with all the findings and plans to implement all the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

*Lindsey A. Perry*

Lindsey A. Perry, CPA, CFE  
Auditor General

## Arizona Department of Environmental Quality

**Department met its statutory objective and purpose in some areas we reviewed but had not complied with State conflict-of-interest requirements and did not fully implement some key information technology (IT) security policies and requirements**

### Audit purpose

To respond to the statutory sunset factors and determine whether the Department had implemented key IT security policies and requirements, complied with State conflict-of-interest requirements and aligned its conflict-of-interest process with recommended practices, and processed Vehicle Emissions Inspection Program (VEIP) comments in accordance with its policies.

### Key findings

- Department responsibilities include administering Arizona's environmental laws and programs and federal laws for which the State has regulatory authority to help prevent and address environmental pollution, including issuing permits and conducting inspections for air quality, waste management, and water quality, and implementing the VEIP.
- According to Department data, the Department reduced the average time needed to issue all permits by 76 percent between 2016 and 2020, helped to close more than 1,200 leaking underground storage tank sites across the State that were releasing petroleum between fiscal years 2011 and 2020, and helped more than 200 public water systems return to and stay in compliance with safe drinking water regulations since fiscal year 2016.
- The Department did not comply with several State conflict-of-interest requirements, such as requiring all employees to complete a disclosure form upon hire and maintaining a special file of completed forms disclosing substantial interests, increasing the risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct. The Department improved its conflict-of-interest policies and practices during the audit, including adopting recommended practices.
- The Department did not fully implement some key IT security policies and requirements, such as ensuring that Department contractors and all Department employees completed annual security awareness training and disabling unnecessary IT system accounts.
- The Department exceeded its time frames for processing 4 of 5 VEIP comments we reviewed, which included general feedback, incidents at testing sites, and complaints.

### Key recommendations

The Department should:

- Continue to implement its updated conflict-of-interest policies and procedures to help ensure it complies with conflict-of-interest requirements and follows recommended practices and provide periodic training on its conflict-of-interest requirements and process to all employees and public officers.
- Create a written action plan that prioritizes developing and implementing required IT security policies and procedures, and develop and implement IT security policies and procedures consistent with its action plan.
- Respond to and close comments regarding the VEIP within required time frames.



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The Arizona Auditor General has released the second of 2 audit reports of the Arizona Department of Environmental Quality (Department) as part of the Department's sunset review. The first performance audit (Report 21-116) assessed whether the Department met its responsibilities to develop aquifer water quality standards, conduct ambient groundwater monitoring, monitor agriculture pesticides, and reduce impaired surface waters in the State. This report provides responses to the statutory sunset factors and determined whether the Department had implemented key information technology (IT) policies and requirements, complied with State conflict-of-interest requirements and aligned its conflict-of-interest process with recommended practices, and processed Vehicle Emissions Inspection Program (VEIP) comments in accordance with its policies.

## Mission and purpose

The Department's mission is "to protect and enhance public health and the environment in Arizona." The Department's responsibilities include:

- Administering Arizona's environmental laws and programs and federal environmental laws for which the State has received the primary enforcement authority or has been delegated regulatory authority from the Environmental Protection Agency (EPA). These laws and programs are intended to prevent and address environmental pollution, thereby helping to protect public health. The Department helps oversee compliance with the following federal environmental laws: the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act (see textbox).
- Issuing permits for air quality, waste management, and water quality so that facilities operate within standards established by law for air, soil, and water. In calendar year 2020, the Department issued a total of 6,841 permits.
- Conducting inspections for air quality, waste management, and water quality to help ensure compliance with federal and State environmental regulations. According to the Department, it conducted 4,280 on-site inspections that resulted in 847 enforcement actions in fiscal year 2020.
- Implementing the State's VEIP, which is intended to help the State comply with air quality standards established by the EPA for certain common and widespread air pollutants, such as carbon monoxide and ozone. Statute requires the VEIP for both the Phoenix and Tucson areas.<sup>1</sup> Additionally, the VEIP has been incorporated into

### Department helps oversee compliance with the following federal environmental laws

**Clean Air Act**—Establishes regulations for air emissions and requires states to develop State Implementation Plans to meet National Ambient Air Quality Standards.

**Clean Water Act**—Establishes regulations for pollution into surface waters, such as lakes and rivers.

**Resource Conservation and Recovery Act**—Establishes regulations for solid and hazardous waste, such as transportation and treatment.

**Safe Drinking Water Act**—Establishes regulations for public water systems to ensure that drinking water meets national standards.

Source: Auditor General staff review of the EPA's website and Code of Federal Regulations.

<sup>1</sup> A.R.S. §§49-541 and 49-542 require emissions testing in Area A, which includes parts of Maricopa, Pinal, and Yavapai Counties, and in Area B, which includes parts of Pima County. This report will refer to Area A as the Phoenix area and Area B as the Tucson area. Initially, the VEIP began testing for carbon monoxide and ozone precursor emissions in the Phoenix and Tucson areas because they are the most populous in the State and typically have higher pollution levels than less populated areas of the State.

Arizona's State Implementation Plan (SIP) as part of its efforts to help ensure compliance with federal air quality standards in the Phoenix and Tucson areas. All states are required to submit a SIP to the EPA for approval to demonstrate how they will implement, maintain, and enforce federal air quality standards and fulfill other requirements of the Clean Air Act.

## Organization, responsibilities, and staffing

As of July 2021, the Department reported having 432 filled full-time equivalent (FTE) positions and 13 vacancies. The Department comprises the following administrative functions and 3 regulatory divisions:

- **Administrative functions (125 FTEs, 1 vacancy)**—The Department has multiple internal functions to help manage its administrative and business activities as well as establish Department policies. These include administrative counsel, communications and outreach, continuous improvement, financial services, human resources, information technology (IT), and intergovernmental and community affairs.
- **Air Quality Division (87 FTEs, 3 vacancies)**—The Air Quality Division is responsible for identifying and ensuring appropriate control of various sources of air pollution and compliance with federal and State environmental laws. The Air Quality Division's core responsibilities include air quality forecasting; monitoring and analyzing data, such as meteorological and ambient air quality data; issuing permits to, and conducting inspections of, regulated facilities, such as rock crushing and screening facilities, hot mix asphalt plants, and concrete batch plants to help ensure that these facilities meet State and federal environmental standards.

The Air Quality Division also oversees the State's VEIP. All vehicles model years 1967 and newer registered in the greater Phoenix and Tucson areas are required to pass a vehicle emissions inspection test prior to being registered with the Arizona Department of Transportation (ADOT)—Motor Vehicle Division.<sup>2</sup> The Department has used a private contractor to perform vehicle emissions inspection tests since 1991. As of July 2021, the contractor operated 18 testing locations—15 locations in the Phoenix area and 3 in the Tucson area.

In addition, Laws 2019, Ch. 141, requires the Department to implement a pilot program to assess the potential for a remote sensing inspection program in the State. According to the Department, remote sensing inspection programs are intended to reduce the amount of onsite vehicle emission inspections by providing vehicle owners alternative ways to receive an emissions test. In April 2020, the Department contracted with 2 remote sensing pilot program contractors to explore various forms of remote sensing technology within the State. Statute requires the Department to operate the pilot program for at least 3 consecutive years by July 2025.<sup>3</sup>

- **Waste Programs Division (117 FTEs, 5 vacancies)**—The Waste Programs Division is responsible for regulating solid and hazardous waste management and facilities, hazardous waste generators, waste tire management and facilities, and underground storage tanks (USTs) by issuing permits and conducting inspections.<sup>4</sup> Additionally, the Waste Programs Division approves closure activities, including cleanup and remediation, of contaminated areas, such as leaking USTs; investigates and remediates soil and groundwater contamination with regulated and hazardous substances, including Water Quality Assurance Revolving Fund (WQARF) sites; and administers the emergency response program, which responds to hazardous environmental emergencies to minimize the impact to the public and the environment.<sup>5</sup>

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<sup>2</sup> Certain vehicles, such as new vehicles before the sixth year of registration after initial purchase or lease, motorcycles, and electrically powered vehicles are exempt from emissions testing requirements.

<sup>3</sup> Both pilot programs were scheduled to begin testing in September 2020; however, the Department reported that the pilot programs were suspended due to budget reductions and delays caused by the COVID-19 pandemic. According to the Department, the pilot programs will begin in August and October 2021.

<sup>4</sup> USTs are defined as a tank, or combination of tanks and underground pipes connected to tanks, that is or was previously used to contain regulated substances, such as petroleum, and which has at least 10 percent of the total volume of the tank and underground portions of pipes connected to the tank underground.

<sup>5</sup> WQARF sites are geographical areas that may pose a risk to public health or the environment due to hazardous substances that have contaminated the soil and groundwater and that have current or planned investigations and cleanup activities.

- **Water Quality Division (103 FTEs, 4 vacancies)**—The Water Quality Division is responsible for ensuring that regulated water systems deliver safe drinking water to customers and for monitoring and assessing the quality of surface and groundwater throughout the State. The Water Quality Division is also responsible for identifying water pollution and preparing plans to address it; issuing permits, such as Aquifer Protection Permits (APP), to regulate discharges of pollutants to surface water and groundwater; developing surface and groundwater quality standards, and investigating complaints and violations of State water laws.<sup>6</sup> See Arizona Auditor General Report 21-116 for more information about the Water Quality Division and its various programs.

Additionally, the Department works with the following entities that support the Department’s mission:

- **Agricultural Best Management Practices Committee**—According to statute, committee members consist of representatives from various agricultural and livestock industries, State and local agencies, and universities.<sup>7</sup> This committee is responsible for setting best management practices for controlling dust from certain agricultural activities, which the Department adopts as part of its rules.
- **Arizona State Emergency Response Commission**—According to statute, commission members consist of representatives of various State agencies and representatives nominated by the Arizona Fire Chief’s Association.<sup>8</sup> This commission oversees and provides support to the 15 local emergency planning committees, representing each of Arizona’s counties, to help develop emergency response plans.
- **Statewide Water Quality Management Working Group**—Group members represent State agencies and designated planning agencies from various regions of the State. This advisory group reviews federal amendments to the Clean Water Act and helps to develop comprehensive water quality management plans for the State.
- **WQARF Community Advisory Boards**—As of June 2021, there are 11 WQARF Community Advisory Boards that advise the Department, public, and responsible parties about issues, concerns, and opportunities related to the cleanup of WQARF sites.<sup>9</sup>

Further, the Department provides staff support to the Oil and Gas Conservation Commission, which regulates the drilling and production of oil and gases, such as helium.

## Revenues and expenditures

As shown in Table 1 (see pages 4 through 5), the Department has various revenue sources, including a tax on fuel stored in USTs; fees charged for licenses and permits; and the VEIP’s inspection fees. For fiscal year 2021, the Department’s net revenues totaled approximately \$135.4 million, while its expenditures and transfers totaled nearly \$156 million. Most of the Department’s expenditures were or are estimated to be for professional and outside services, such as for the contractor that operates the VEIP, and payroll and related benefits. The Department’s fund balances are declining for various reasons, including the reimbursement of some UST program expenses that were approved in prior years (see Table 1, footnote 14, for more information).

<sup>6</sup> APPs are required for facilities that discharge pollutants to groundwater, such as car washes and mining sites.

<sup>7</sup> A.R.S. §49-457.

<sup>8</sup> A.R.S. §49-123.

<sup>9</sup> The 11 WQARF Community Advisory Boards are for the following WQARF sites: 56th Street and Earll Drive; Broadway-Pantano; Central Phoenix; Cooper Road and Commerce Avenue; East Central Phoenix; Highway 260 and Johnson Lane; Highway 260 and Main Street; Miracle Mile; Shannon Road/El Camino del Cerro; Stone Avenue and Grant Road, 7th Street and Arizona Avenue and Park-Euclid; and West Central Phoenix.

**Table 1**  
**Schedule of revenues, expenditures, and changes in fund balances**  
**Fiscal years 2019 through 2021**  
(Unaudited)

	2019	2020	2021
<b>Revenues</b>			
Taxes <sup>1</sup>	\$35,222,787	\$34,441,475	\$35,514,829
Licensing, permitting, and other fees <sup>2</sup>	30,918,098	31,335,203	32,965,968
Charges for goods and services			
Vehicle emission inspection fees <sup>3</sup>	27,156,150	27,671,759	28,883,926
Other	965,011	649,569	720,681
Intergovernmental <sup>4</sup>	18,183,421	17,524,467	21,354,388
State General Fund appropriations <sup>5</sup>		200,000	15,000,000
Fines, forfeits, and penalties	1,242,919	456,550	579,195
Interest income	2,431,852	1,656,784	345,358
Automations Projects Fund <sup>6</sup>	2,217,000	2,583,000	
Other	299	69,249	72,575
<b>Total gross revenues</b>	<b>118,337,537</b>	<b>116,588,056</b>	<b>135,436,920</b>
Remittances to the State General Fund <sup>7</sup>	(201,453)	(17,567)	(19,435)
<b>Total net revenues</b>	<b>118,136,084</b>	<b>116,570,489</b>	<b>135,417,485</b>
<b>Expenditures and transfers</b>			
Payroll and related benefits	39,250,845	41,999,585	43,550,720
Professional and outside services <sup>8</sup>	60,683,612	61,473,095	62,060,012
Travel	758,004	649,888	375,164
Aid to organizations <sup>9</sup>	7,004,786	26,051,755	35,733,694
Other operating <sup>10</sup>	10,108,452	10,426,054	9,665,895
Capital and noncapital purchases	923,515	495,099	646,164
<b>Total expenditures</b>	<b>118,729,214</b>	<b>141,095,476</b>	<b>152,031,649</b>
Transfers to other State agencies <sup>11</sup>	3,836,600	3,406,847	3,660,181
Transfers to the State General Fund <sup>12</sup>	10,993,900	1,000,510	199,062
Transfers to the State Automation Projects Fund <sup>13</sup>	3,200,000	200,000	
<b>Total expenditures and transfers out</b>	<b>136,759,714</b>	<b>145,702,833</b>	<b>155,890,892</b>
Net change in fund balances	(18,623,630)	(29,132,344)	(20,473,407)
Fund balances, beginning of year	135,575,628	116,951,998	87,819,654
<b>Fund balances, end of year<sup>14</sup></b>	<b>\$116,951,998</b>	<b>\$87,819,654</b>	<b>\$67,346,247</b>

<sup>1</sup> Amount primarily consisted of monies from a 1-cent-per-gallon excise tax on fuel placed in petroleum USTs established by A.R.S. §49-1031. This tax is scheduled to be repealed on January 1, 2024. In addition, as authorized by A.R.S. §49-360, the Department received \$1.8 million annually from Public Water System taxes that were levied on businesses operating a municipal water delivery system.

<sup>2</sup> The Department collected or received various licensing, permitting, and other fees. For example, the Department received a \$1.50 fee assessed on motor vehicle registrations as required by A.R.S. §49-551; permitting fees related to air pollution control as required by A.R.S. §49-426; and fees from several water quality protection programs such as the APP required by A.R.S. §49-241.

<sup>3</sup> A.R.S. §49-543 authorizes the Department Director to set and alter fees to pay for the VEIP's full costs. The fees are collected by the Department's VEIP contractor and remitted to the Department.

<sup>4</sup> Intergovernmental revenues consisted primarily of federal grants (see footnote 9 for an example of a federal grant the Department received).

<sup>5</sup> State General Fund appropriations in fiscal year 2020 were for the Maricopa County Dust Suppression Pilot Program established by Laws 2019, Ch. 263, §140. In fiscal year 2021, the Department received \$15 million from the State General Fund for the WQARF in accordance with A.R.S. §49-282(B). In fiscal years 2019 and 2020, the Legislature did not appropriate monies to the Department from the State General Fund to pay for the WQARF program, and instead appropriated monies from the Department's other funds, such as the UST and Air Quality Funds, to pay for this program.

<sup>6</sup> Consists of Automation Projects Fund revenues received in fiscal years 2019 and 2020 to pay for the automation of 7 permitting and compliance processes on the myDEQ web portal as authorized by Laws 2018, Ch. 276, §118, as amended. In fiscal year 2020, the Department allocated some of these monies to help pay for various indirect administrative costs, such as Department staff salaries and rent for Department

## Table 1 continued

buildings. This allocation was consistent with the Department's indirect rate and cost allocation methodology, which were approved by the EPA. In fiscal year 2021, the Department returned nearly \$200,000 of these monies when the project was completed (see footnote 13 for additional information).

- <sup>7</sup> The Department remitted various revenues, including fines, forfeits, and penalties, to the State General Fund. For example, the Department is required to collect and remit interest on the unpaid monies owed to the Department, including taxes, penalties, and assessments as required by A.R.S. §49-113(B) and civil penalties and punitive damages as required by A.R.S. §49-287(I)(J).
- <sup>8</sup> Professional and outside services expenditures consisted of various services for which the Department contracted, including the VEIP, Arizona Attorney General's Office legal services, and temporary staffing. Nearly 40 percent of the professional and outside services expenditures were for its vehicle emission inspection services contract, which pays the contractor based on the number of vehicles inspected.
- <sup>9</sup> Aid to organizations consisted of monies the Department provided to local governments and businesses for various purposes. The Department provided approximately \$4 million, \$20 million, and \$32 million in fiscal years 2019, 2020, and 2021, respectively, to participants in the Department's UST program for leak prevention projects and environmental cleanup activities. It also provided financial assistance to various organizations using federal grant monies. For example, the Department provided approximately \$604,000, \$710,000, and \$701,000 during fiscal years 2019, 2020, and 2021, respectively, in federal financial assistance to various organizations from the Nonpoint Source Implementation Grants program, an EPA grant that focuses on watersheds with water quality impairment caused when rainfall or snowmelt moving over and through the ground picks up natural and human-made pollutants.
- <sup>10</sup> Other operating expenditures consisted of various expenditures such as rent; insurance; utilities including telecommunication; software programming, support, and maintenance; printing; and subscriptions and publications.
- <sup>11</sup> Transfers to other State agencies were for various purposes. For example, in fiscal year 2021, the Department transferred nearly \$1.5 million to the Arizona Department of Agriculture for oxygenated fuels vapor recovery in accordance with Laws 2020, Ch. 58, §7; \$927,300 to the Arizona Department of Administration (ADOA) for bus subsidies in accordance with Laws 2020, Ch. 58, §4; \$400,000 to the ADOA Employee Travel Reduction Fund in accordance with A.R.S. §49-551(D); and \$326,000 to ADOT for its appropriation from the Department's Air Quality Fund in accordance with Laws 2020, Ch. 58, §87.
- <sup>12</sup> Transfers to the State General Fund were required by Laws 2018, Ch. 276, §§140(8) and 143(2), to provide adequate support and maintenance for State agencies.
- <sup>13</sup> The Department was required to transfer \$3.2 million to the Automation Projects Fund in fiscal year 2019 to pay for the automation of 7 services on the myDEQ web portal (see footnote 5 for additional information) in accordance with Laws 2018, Ch. 276, §141, as amended. In addition, the Department transferred \$200,000 to the Automation Projects Fund in fiscal year 2020 to pay for an Arizona Department of Agriculture project in accordance with Laws 2019, Ch. 263, §167. Although in fiscal year 2021 the Department returned \$199,062 to the Automation Projects Fund from the unused monies it received for the portal, because the Department initially transferred monies to pay for the project, these monies were returned to the Department in fiscal year 2022 when the project ended.
- <sup>14</sup> The Department's fiscal years ending fund balances comprised various funds that are subject to appropriation, have external restrictions, or are designated for specific purposes. Nearly \$60 million of the fiscal year 2020 ending fund balances belonged to the UST program that provides for leak prevention projects and environmental cleanup activities. In fiscal year 2021, the Department's fund balances decreased because the UST program's ending fund balance decreased to \$32 million. According to the Department, this decrease was related to approximately \$32.2 million of reimbursement requests it received for its Tank Site Improvement Program and Corrective Actions Pre-approval Program that were approved in fiscal years 2020 and 2021, because the UST Revolving Fund had sufficient resources to pay for these requests, and payments were primarily made in fiscal year 2021.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2019 through 2021 and the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020.

## Department did not comply with some conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

### Statute addresses conflicts of interest for public agency employees and public officers

Arizona law requires employees of public agencies and public officers to avoid conflicts of interest that might influence or affect their official conduct. To determine whether a conflict of interest exists, employees/public officers must first evaluate whether they or a relative has a “substantial interest” in (1) any contract, sale, purchase, or service to the public agency or (2) any decision of the public agency.

If an employee/public officer or a relative has a substantial interest, statute requires the employee/public officer to fully disclose the interest and refrain from voting upon or otherwise participating in the matter in any way as an employee/public officer.<sup>10,11</sup> The interest must be disclosed in the public agency’s official records, either through a signed document or the agency’s official minutes. To help ensure compliance with these statutory requirements, the Arizona Department of Administration (ADOA)’s State Personnel System employee handbook and conflict-of-interest disclosure form (disclosure form) require State employees to disclose if they have any business or decision-making interests, secondary employment, and relatives employed by the State at the time of initial hire and anytime there is a change. The ADOA disclosure form also requires State employees to attest that they do not have any of these potential conflicts, if applicable, also known as an “affirmative no.” In addition, A.R.S. §38-509 requires public agencies to maintain a special file of all documents necessary to memorialize all disclosures of substantial interest, including disclosure forms and official meeting minutes, and to make this file available for public inspection.

#### Key terms

- **Substantial interest**—Any direct or indirect monetary or ownership interest that is not hypothetical and is not defined in statute as a “remote interest.”
- **Remote interest**—Any of several specific categories of interest defined in statute that are exempt from the conflict-of-interest requirements, such as a public officer or employee being reimbursed for actual and necessary expenses incurred in the performance of official duty.

Source: Auditor General staff review of A.R.S. §38-502 and the *Arizona Agency Handbook*. Arizona Office of the Attorney General. (2018). *Arizona agency handbook*. Phoenix, AZ. Retrieved 5/24/2021 from <https://www.azag.gov/outreach/publications/agency-handbook>.

<sup>10</sup> See A.R.S. §§38-502 and 38-503(A) and (B).

<sup>11</sup> A.R.S. §38-502(8) defines “public officer” as all elected or appointed officers of a public agency established by charter, ordinance, resolution, State constitution, or statute. According to the *Arizona Agency Handbook*, public officers include directors of State agencies and members of State boards, commissions, and committees—whether paid or unpaid.

In response to conflict-of-interest noncompliance and violations investigated in the course of our work, such as employees/public officers failing to disclose substantial interests and participating in matters related to these interests, we have recommended several practices and actions to various school districts, State agencies, and other public entities.<sup>12</sup> Our recommendations are based on guidelines developed by public agencies to manage conflicts of interest in government and are designed to help ensure compliance with State conflict-of-interest requirements by reminding employees/public officers of the importance of complying with the State’s conflict-of-interest laws.<sup>13</sup> Specifically, conflict-of-interest recommended practices indicate that all public agency employees and public officers complete a disclosure form annually and that the form include a field for the employee/public officer to provide an “affirmative no,” if applicable. These recommended practices also indicate that agencies develop a formal remediation process and provide periodic training to ensure that identified conflicts are appropriately addressed and help ensure conflict-of-interest requirements are met.

## Department had not complied with several State conflict-of-interest requirements and its conflict-of-interest process was not fully aligned with recommended practices

Prior to our review, the Office had not complied with some State conflict-of-interest requirements, and its conflict-of-interest process was not fully aligned with recommended practices designed to help ensure that employees/public officers comply with State requirements. Specifically, the Department:

- **Did not require employees to complete a disclosure form upon hire**—Although the Department had developed a conflict-of-interest disclosure form, it did not require employees to complete the form when they were hired, as required by ADOA. The Department also reported it did not know how many employees had completed a conflict-of-interest disclosure form as of October 2020. Instead, the Department reported it required employees to complete a disclosure form only when they believed a conflict of interest existed, as outlined in its policy.
- **Used disclosure form that did not address all required disclosures**—The Department’s conflict-of-interest disclosure form did not include disclosures of financial interests in contracts, sales, purchases, and services of the Department, as required by statute.<sup>14</sup> Rather, the disclosure form only required disclosure of “decisions, case investigations, and other substantial interests.” Although the Department’s disclosure form referenced the State’s conflict-of-interest statutes, it did not provide specific examples or guidance to help Department staff know what specific conflicts to disclose.
- **Lacked special disclosure file, as required by statute**—The Department did not maintain a special file of completed forms disclosing substantial interests that could be made available for public inspection, as required by statute.<sup>15</sup> Further, the Department did not keep a listing of employees who have disclosed substantial interests, and Department staff did not know where the disclosure forms for individual employees were maintained.

Also, the Department had not fully aligned its conflict-of-interest process with recommended practices. For example, the Department did not require its public officers, such as board/commission/committee members,

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<sup>12</sup> See, for example, Arizona Auditor General Reports 21-402 *Higley Unified School District—Criminal Indictment—Conspiracy, Procurement Fraud, Fraudulent Schemes, Misuse of Public Monies, False Return, and Conflict of Interest*, 19-105 *Arizona School Facilities Board—Building Renewal Grant Fund*, and 17-405 *Pine-Strawberry Water Improvement District—Theft and misuse of public monies*.

<sup>13</sup> Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2003). *Recommendation of the council on guidelines for managing conflicts of interest in the public service*. Paris, France. Retrieved 4/16/2020 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 8/4/2020 from <https://www.ethics.org/knowledge-center/conflicts-of-interest-report/>; and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 3/4/2021 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

<sup>14</sup> A.R.S. §38-503.

<sup>15</sup> A.R.S. §38-509.

to complete a conflict-of-interest disclosure form or require its employees to complete or update disclosure forms on an annual basis. Additionally, the disclosure form the Department had been using did not require its employees to attest that they did not have any substantial interests, also known as an “affirmative no” statement.

## Department’s noncompliance with State conflict-of-interest requirements increased the risk that employees and public officers did not disclose substantial interests that might influence or affect their official conduct

The Department’s noncompliance with State conflict-of-interest requirements and not fully aligning its conflict-of-interest process with recommended practices increased the risk that Department employees and public officers would not disclose substantial interests, which might influence or affect their official conduct. For example, by not requiring Department employees to complete disclosure forms when hired and by not adopting recommended practices that would require employees and public officers to complete or update disclosure forms annually, the Department could not ensure that all employees and public officers complied with statute by disclosing substantial interests and refraining from participating in any manner related to these interests.<sup>16</sup> Consequently, the Department may have been unaware of potential conflicts and the need to take action to mitigate those conflicts.

Additionally, because the Department did not store completed forms disclosing substantial interests in a special file or have a listing of employees who completed disclosure forms, the Department lacked a method to track which and how many employees disclosed an interest and make this information available in response to public requests.

## Department’s conflict-of-interest policy was not comprehensive and staff were not trained on requirements, but Department improved its conflict-of-interest policies and practices during the audit, including adopting recommended practices

We identified 2 main deficiencies that contributed to the problems we identified. Specifically, the Department:

- **Lacked some conflict-of-interest policies and procedures**—Prior to our review, the Department lacked comprehensive policies and procedures related to conflicts of interest. For example, the Department had not developed policies or procedures that explained all the required elements of disclosure, how the Department would review or remediate conflicts of interest, or the consequences of noncompliance. However, as of April 2021, the Department updated its conflict-of-interest policies and procedures, including adopting recommended practices. For example, the Department’s updated policy requires all employees and public officers to complete a conflict-of-interest disclosure form upon initial hire, annually, and when a change occurs affecting substantial interest(s).<sup>17</sup> Additionally, the Department adopted a new conflict-of-interest disclosure form from the Arizona Department of Administration (ADOA), which requires disclosure of or attestation regarding (1) any substantial interest in any contract, sale, purchase, service or decision involving the State, (2) secondary employment, (3) any relatives employed by the State, and (4) includes an “affirmative no” attestation.
- **Had not provided conflict-of-interest training**—Prior to May 2021, the Department had not provided training on conflict-of-interest requirements to its employees or public officers. However, in May 2021, the Department trained its managers on its new conflict-of-interest policy and form. According to the Department, the managers worked with Department staff to complete the new conflict-of-interest forms. The Department

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<sup>16</sup> A.R.S. §38-503.

<sup>17</sup> According to the Department, it sent the new conflict-of-interest disclosure form to its employees, contractors, and temporary workers. As of August 2021, the Department reported that it had received completed disclosure forms from all but 8 employees.

also reported that it plans to provide conflict-of-interest training to new employees and annual training to its managers.

## Recommendations

The Department should:

1. Continue to implement its updated conflict-of-interest policies and procedures to help ensure it complies with State conflict-of-interest requirements and follows recommended practices, including:
  - a. Requiring all employees and public officers to complete a conflict-of-interest disclosure form upon hire and annually, including attesting that no conflicts exist, if applicable.
  - b. Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest.
  - c. Storing all substantial interest disclosures in a special file.
  - d. Establishing a process to review and remediate disclosed conflicts.
2. Continue to provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and public officers on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.



Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of the Department. The sunset factor analysis includes additional findings and recommendations not discussed earlier in the report.

**Sunset factor 1: The objective and purpose in establishing the Department and the extent to which the objective and purpose are met by private enterprises in other states.**

The Department was established in 1986 and its mission is “to protect and enhance public health and the environment in Arizona.” Arizona statute requires the Department to coordinate with organizations that have similar goals, promote and coordinate the management of air and water resources, promote recycling, and handle the storage and transportation of pollutants. Statute also requires that the Department regulate water and air pollution and create a solid waste management plan.

To accomplish its mission, the Department has 7 core functions:

- **Citizen outreach**—The Department reported that it involves citizens and encourages participation in decision making. For example, the Department provides notices for public meetings, such as WQARF site meetings, which allow citizens to observe and participate in the meetings.
- **Cleanups**—The Department oversees and provides assistance, such as funding and staff resources, for the removal of contaminated soil and water and cleaning up hazardous chemical releases.
- **Compliance management**—The Department helps to ensure that federal and State environmental standards, such as safe drinking water standards, are met while pollution is reduced through guidance, incentives, and assistance. It also conducts inspections of regulated facilities, such as rock crushing and screening facilities and hazardous waste facilities, investigates consumer complaints, and issues enforcement actions for noncompliance, such as discharging a pollutant into groundwater without the applicable APP.
- **Financial assistance**—The Department reimburses UST owners/operators for leak cleanups and works with the Water Infrastructure Finance Authority of Arizona (WIFA) to provide financial assistance to small drinking water systems to help provide safe drinking water.<sup>18,19</sup> The Department also provides grants through the Water Quality Improvement Grant program to help communities address nonpoint source pollution resulting from water runoff, such as rain, picking up pollutants and carrying them to surface water sources, such as lakes and rivers.<sup>20</sup>
- **Monitoring and assessment**—The Department collects samples of air, soil, and water to analyze for the presence of contaminants in the environment. For example, the Department collects data on the presence of air pollutants, such as ozone, nitrogen oxides, and volatile organic compounds. The Department uses this data to identify whether there are areas of the State not meeting national ambient air quality standards.

<sup>18</sup> The UST owner/operator must demonstrate meeting the financial responsibility requirements for USTs, such as being insured for a leak.

<sup>19</sup> WIFA provides funding to help Arizona communities construct and maintain their wastewater and drinking water infrastructure. The Department submits recommendations to WIFA regarding small drinking water systems that are eligible to receive financial assistance through a grant.

<sup>20</sup> Nonpoint source pollution refers to pollution coming from many diffuse sources, such as sediment from construction sites and acid drainage from abandoned mines.

- **Policy development**—The Department works with national and State organizations to advocate for Arizona and help influence environmental policy.
- **Pollution control**—The Department approves construction of facilities and issues permits authorizing facilities to operate within specified standards for air, soil, and water and provides financial and technical assistance for areas where standards are not being met. For example, the Department identifies sources of contamination near public water systems and works with these systems to develop and implement mitigation strategies to protect the water sources. As explained in the Introduction (see pages 1 through 5), the Department also oversees the implementation of the VEIP to help the Phoenix and Tucson areas comply with federal carbon monoxide and ozone standards.

We did not identify any states that met the Department's objective and purpose through private enterprise.

**Sunset factor 2: The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.**

The Department has met its statutory objective and purpose or has improved the efficiency with which it has operated in some areas we reviewed. Specifically, the Department:

- **Improved efficiency and reduced average time needed to issue permits**—According to the Department, it increased the efficiency of all its permitting processes by eliminating unnecessary steps; ensuring the correct regulations were cited on the permit applications; and providing checklists to applicants to show required documents. In addition, the Department deployed myDEQ in 2016, which is a web-based portal that provides various services, such as offering online permit applications and compliance report submission to permittees. The Department reported that myDEQ further increases efficiency by using technology to validate key application information for accuracy and reduce errors or missing data that may have occurred when applicants submitted paper applications. According to Department data, these actions have decreased the average time needed to issue permits by 76 percent between 2016 and 2020.
- **Assisted in closing leaking UST sites**—According to Department data, between fiscal years 2011 and 2020, the Department helped to close more than 1,200 leaking UST sites across the State that were releasing petroleum. Department staff reported that a leaking UST site is considered “closed” when the contamination has been remediated, the surrounding soil and water meets applicable State standards for the presence of chemicals, and no further action is needed to address the release. To assist in closing leaking UST sites, the Department provides oversight, technical assistance, and financial assistance to UST owners/operators who are taking corrective action to remediate a release. For the more than 1,200 leaking UST sites that were closed between fiscal years 2011 and 2020, it took an average of nearly 10 years to close a leaking UST site, ranging from less than 1 year to more than 30 years.<sup>21</sup>

The Department uses monies from the UST Revolving Fund to contract with vendors or provide reimbursement to UST owners/operators to help remediate and close leaking UST sites. The UST Revolving Fund's purpose is to provide partial coverage for permanent closures, leak prevention, and corrective action costs related to leaking USTs. The UST Revolving Fund's primary revenue source is the Underground Storage Tank Tax, which is paid by UST owners/operators at the rate of 1 cent per gallon of petroleum placed in the UST. The UST Revolving Fund's fund balance increased from \$12 million in fiscal year 2011 to more than \$83 million in fiscal year 2018.<sup>22</sup> As of fiscal year 2020, the UST Revolving Fund had a fund balance of nearly \$59 million.

- **Assisted public water systems to provide safe drinking water**—According to Department data, since fiscal year 2016, the Department has helped more than 200 public water systems return to and stay in compliance with safe drinking water regulations, resulting in more than 1 million people receiving healthy drinking water. The Department uses various methods to help public water systems comply with safe drinking

<sup>21</sup> There is no required time frame for closing leaking UST sites.

<sup>22</sup> The UST Revolving Fund's fund balance increased because monies were consolidated from various other UST program-related funds and transferred to the UST Revolving Fund in fiscal year 2016.

water regulations, including providing technical assistance on how to improve and repair water system operations, such as fixing a well; training public water system staff on how to budget and set rates for the systems; and working with WIFA to provide grants to help repair systems or treat the water.

We also identified areas where the Department could better meet its statutory objective and purpose and/or improve its efficiency. Specifically:

- **Department did not develop all required aquifer water quality standards (AWQS), conduct ambient groundwater and agricultural pesticide monitoring, or reduce impaired waters in the State—**As explained in Arizona Auditor General Report 21-116, the Department has not performed some key groundwater and surface water standard development and monitoring responsibilities, limiting its ability to keep these waters safe by identifying and addressing potential pollution. These include:
  - Not developing AWQS for 8 contaminants in rule, as required by statute. Developing AWQS for these contaminants, which include arsenic and uranium, helps to regulate the quality of groundwater in the State and protect private well users by establishing the highest level of contaminants allowed in the State's aquifers.
  - Not conducting statutorily required ongoing ambient groundwater monitoring of the State's aquifers by detecting the presence and evaluating the effects of contaminants in groundwater. Specifically, the Department has not fulfilled key statutory ambient groundwater monitoring responsibilities since 2017.
  - Not monitoring agricultural pesticides in groundwater and surrounding soil to help prevent or address contamination from agricultural pesticide use, as statutorily required. For example, the Department is responsible for identifying pesticides with the potential to pollute groundwater, monitoring for these pesticides in areas of the State where they are primarily used or may migrate into groundwater, and determining whether any of these pesticides threaten to pollute groundwater. The Department has not conducted this required monitoring since 2013.
  - Not reducing the total number of impaired surface waters in the State, which are surface waters that do not meet federal surface water quality standards. Federal and State laws require the Department to develop and implement plans to help remediate impaired surface waters. However, the Department has not reduced the total number of impaired surface waters in the State or developed some required plans in a timely manner to address pollutants that affect the safe use of surface waters.

We recommended that the Department develop all required AWQS in rule, conduct statutorily required ambient groundwater monitoring and agricultural pesticide monitoring, and reduce the number of impaired surface waters in the State. We also recommended that the Department perform a workload analysis to assess its costs for performing these various responsibilities and work with the Legislature as needed to obtain the needed resources to do so.

- **Department did not fully implement some key IT security policies and requirements—**Arizona State agencies are required to develop IT security-specific policies and procedures consistent with the ADOA's Strategic Enterprise Technology Office's (ASET) State-wide policies and credible industry standards.<sup>23</sup> ASET's policies are intended to help State agencies implement recommended IT security practices and to protect the State's IT infrastructure and the data contained therein. However, we identified multiple IT security areas where the Department either lacked Department-specific policies or had not fully implemented the IT security processes described in its policies. For example, as of November 2020, 27 of 58 Department contractors, or 47 percent, and 16 of 466 Department employees, or 3 percent, had not completed annual security awareness training, as required by ASET. Although the Department had developed a security awareness training policy, it lacked some details recommended by credible industry standards, such as establishing how compliance with training requirements will be tracked. In addition, we found that 14 of the 47 Department

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<sup>23</sup> National Institute of Standards and Technology (NIST). (2020). *NIST Special Publication 800-53, Revision 5: Security and privacy controls for federal information systems and organizations*. Gaithersburg, MD. Retrieved 12/15/2020 from <https://doi.org/10.6028/NIST.SP.800-53r5>.

accounts we reviewed were no longer needed.<sup>24</sup> Poor account management practices may allow individuals to inappropriately access Department IT systems or alter information within these systems. The Department reported that it disabled the 14 unnecessary accounts in December 2020.

## Recommendations

The Department should:

3. Create a written action plan that prioritizes the development and implementation of IT security policies and procedures required by ASET and recommended by credible industry standards. The action plan should include specific tasks and their estimated completion dates, as well as a process for regularly reviewing and updating the plan based on its progress.
4. Develop and implement IT security policies and procedures consistent with its action plan, ASET requirements, and credible industry standards.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

### Sunset factor 3: The extent to which the Department serves the entire State rather than specific interests.

The Department provides services and performs regulatory activities throughout the State. For example, the Department:

- Issues air quality, waste management, and water quality permits to facilities throughout the entire State. Permits allow facilities to operate and discharge pollution within specified parameters, as determined by State and federal environmental standards.
- Manages the Arizona State Emergency Response Commission, which receives and coordinates emergency notifications of chemical releases and helps counties across the State with hazardous chemical emergency preparedness and planning activities.
- Offers online services, such as permit applications and compliance data submission by permittees, through the myDEQ portal.
- Offers hourly air quality forecasts on its website for Nogales, Phoenix, Tucson, and Yuma, which are areas of the State that are either in, or close to, nonattainment status for air quality standards. The Department also posts a daily forecast on its website to show the air quality index for the entire State. These forecasts help Arizonans plan when to remain indoors if the pollution is forecasted to be high, potentially causing health problems, and to make plans to reduce further pollution, such as carpooling.

However, we found that the Department did not comply with some State conflict-of-interest requirements and had not fully aligned its conflict-of-interest process with recommended practices, such as requiring all employees and public officers to complete and annually update a conflict-of-interest disclosure form, maintaining a special file for substantial interest disclosures, and establishing a process to review and remediate disclosed conflicts. During the audit, the Department developed conflict-of-interest policies and procedures and we recommended that the Department continue to implement these policies and procedures to help ensure it complies with State conflict-of-interest requirements (see Finding 1, pages 6 through 9).

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<sup>24</sup> We reviewed a judgmental sample of 30 of 107 Department accounts that were not identified as being associated with the Department's employees, such as accounts used by vendors, and all 17 Department administrator accounts. Administrator accounts allow users to manage and modify IT systems.

**Sunset factor 4: The extent to which rules adopted by the Department are consistent with the legislative mandate.**

The Department has not adopted all statutorily required rules. For example:

- A.R.S. §49-203(A)(3) requires the Department to adopt rules for “a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.” The Department reported it has not adopted these rules because it lacks a statutorily authorized funding source to develop the required rules and operate this program. According to the Department, at its July 2021 annual strategic planning meeting, it determined to seek a statutory change to provide a funding source for this program during the 2022 legislative session.
- A.R.S. §49-761 requires the Department to adopt various rules for solid waste facilities, such as requirements for storing, processing, treating, and disposing of solid waste; best management practices for these facilities; and financial assurance requirements for facility closure. The Department had initiated the rulemaking process to address statutorily mandated solid waste rule requirements in 2007; however, the Governor’s rule moratorium was enacted in 2009 and the rulemaking process was never completed.<sup>25</sup> The Department reported that it has not adopted the required rules since that time because it has prioritized other rulemakings and because many county and municipal governments have enacted ordinances that address solid waste management at the local level.

In addition, as explained in Arizona Auditor General Report 21-116 and in Sunset Factor 2 (see page 12), statute requires the Department to adopt rules developing or updating the State’s AWQS for contaminants. However, the Department had not developed or updated the AWQS for 8 contaminants, including arsenic, and we recommended that the Department develop or update the AWQS in rule for these contaminants.

**Recommendations**

The Department should:

5. Work with its Assistant Attorney General to determine whether and when it can develop and adopt rules as required by statute.
6. Contingent on receiving an exemption to the rule-making moratorium, adopt rules as required by statute.

**Department response:** As outlined in its [response](#), the Department agrees with the finding and will implement the recommendations.

**Sunset factor 5: The extent to which the Department has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Department has generally encouraged input from the public before adopting its rules, as required by statute. Specifically, we reviewed 4 rulemakings that the Department undertook in 2019 and found that the Department informed the public of its rulemaking and generally provided opportunities for public input. For example, the Department published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing the impact to the public, the name of Department staff who could be contacted about the proposed rules, and meetings where the public could provide input.

However, in the Department’s 2019 rulemaking that addressed VEIP regulations, the Department accepted written comments for only 21 days after the notice of proposed rulemaking was published, rather than the 30 days required by statute.<sup>26</sup> Department staff reported that during this rulemaking, the Department expected the notice

<sup>25</sup> Executive order 2021-02, “Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative rules,” has continued restrictions on State agencies’ rulemaking.

<sup>26</sup> A.R.S. §41-1023(B).

to be published sooner than it was, but the notice's publication date was delayed and the public comment period was not revised accordingly, resulting in only 21 days for the comment period. During the audit, the Department updated its rulemaking policies and procedures to include steps to ensure the close of comment date provides 30 days for public comment prior to and after filing the notice of proposed rulemaking.

We also tested 6 Department public meetings held between November 2020 and March 2021 and found that the Department generally complied with open meeting law requirements. Specifically, we attended and requested meeting minutes for the WQARF community advisory board meetings for the East Central Phoenix WQARF, West Central Phoenix WQARF, Highway 260 and Main Street WQARF, Shannon Road/El Camino del Cerro WQARF, and Highway 260 and Johnson Lane WQARF as well as the Agriculture Best Management Practices Committee meeting. For these meetings, the Department posted its public meeting notices more than 24 hours before the meetings and provided recordings of the meetings within 3 working days after the meeting for 4 of 6 meetings, as required by statute. For the other 2 meetings, the Department provided recordings 4 working days after the meeting. In addition, during the audit, in March 2021, the Department added the statutorily required disclosure statement on its website indicating where the physical and electronic locations of its public meeting notices would be posted.<sup>27</sup>

## Recommendations

The Department should:

7. Continue to implement the revisions to its rulemaking policies and procedures to ensure the public receives the full 30 days to submit written comments after publishing the notice of a proposed rulemaking.
8. Make public meeting minutes, or a recording of these public meetings, available for public inspection within 3 working days following a meeting.

**Department response:** As outlined in its [response](#), the Department agrees with the findings and will implement the recommendations.

### Sunset factor 6: The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the Department to timely investigate and resolve complaints within its jurisdiction.

The Department primarily receives complaints related to its Air Quality, Waste Programs, and Water Quality divisions.<sup>28</sup> Our review of a random sample of 27 complaints received in fiscal year 2020 found that the Department:<sup>29</sup>

- **Responded to most complainants within the required time frame**—Department policies and procedures require that Department staff contact complainants within 5 business days of being assigned a complaint. The Department met this requirement for 23 of the 25 complaints we reviewed for which the complainant provided contact information.<sup>30</sup> For the 2 complaints that did not meet this requirement, the Department took 6 and 46 business days to contact the complainant. For the complaint that took 6 business days to contact the complainant, the Department reported there was confusion about which Department program would best respond to the complaint. The Department was not able to explain why it took 46 days to contact the complainant for the other complaint.

<sup>27</sup> A.R.S. §38-431.02(A)(1)(a).

<sup>28</sup> Complaints may also be referred to another agency, such as a county environmental services agency, or closed if the allegations are not a violation of the Department's statutes.

<sup>29</sup> We selected a stratified random sample of 10 of 400 complaints received by the Air Quality Division, 8 of 184 complaints received by the Waste Programs Division, and 9 of 196 complaints received by the Water Quality Division.

<sup>30</sup> For 2 of 27 complaints, this requirement did not apply because the complainant did not leave contact information.

- **Closed most complaints we reviewed in a timely manner**—The Department closed 24 of the 27 complaints we reviewed within 180 days.<sup>31</sup> The Department took 207, 306, and 386 days to close the other 3 complaints. Other than the 5-day time frame to contact complainants, the Department has not established additional guidance or time frames to help ensure that all complaints are closed in a timely manner, such as guidance for prioritizing complaints for investigation or time frames for assigning complaints to staff and completing complaint investigations. As of June 2021, the Department reported it was revising its complaint-handling policies and procedures to improve its complaint-resolution processes and help ensure complaints are resolved in a timely manner.

In addition, we reviewed a sample of comments regarding the VEIP, which included general feedback, incidents at vehicle testing sites, and complaints.<sup>32</sup> Our review found that the Department:

- **Exceeded time frames to respond to and close most of the VEIP comments we reviewed**—Our review of a judgmental sample of 5 of the 23 comments regarding the VEIP submitted through the Department’s website in fiscal year 2020 found the nature of comments varied, including a concern that noted problems viewing the Department’s online wait time cameras and a customer inquiring about their eligibility for vehicle repair assistance in order to pass an emissions test.<sup>33</sup> For 4 of 5 comments, we found that the Department did not provide an initial response to the customer within 2 business days as required by Department policy. Specifically, the Department took between 3 and 7 days to respond to these 4 comments. The Department reported that these comments may have been delayed because the customers did not specify it was for the VEIP, including 3 customers who selected the “miscellaneous” option when submitting their comment online.<sup>34</sup> When a customer selects the “miscellaneous” option, Department staff must manually review and assign the comment to the applicable division/program, which may lead to delays in responding to the comments. Further, for 4 of 5 comments we reviewed, the Department exceeded its 2 business week time frame set in policy to resolve and close the comments. The Department took between 1 and 5 additional business days to resolve and close these comments. However, it did not have a documented explanation for these delays.
- **Incorrectly referred 1 comment to another State agency**—We found that Department staff incorrectly referred 1 customer to ADOT regarding an emission testing requirement staff incorrectly believed to have been set by ADOT. After we brought this to the Department’s attention, Department management reported that staff were informed that this was a Department requirement and to not refer these comments to ADOT.
- **Did not document its review of comments received by the VEIP contractor**—We judgmentally sampled and reviewed 5 of 645 comments submitted directly to the contractor in fiscal year 2020, including comments regarding contractor staff behavior and allegations of potential vehicle damage caused by testing equipment. The contractor’s policy requires comments to be closed in 30 days or less, and it closed 3 of 5 comments we reviewed within 30 days. The other 2 comments involved customers who were injured at vehicle emissions testing sites as the result of accidents. In both cases, the contractor took action to address the incidents, including calling emergency medical services. Additionally, the contractor logged the comments and left them open in the event that the customers followed up with the contractor. However, neither customer subsequently contacted the contractor, and the contractor closed these comments after 34 and 38 days.

In addition, the Department reported that all comments received by the contractor are reviewed by Department staff to ensure they are handled appropriately and may be discussed with contractor management, as needed. However, we were unable to verify that Department staff had performed reviews of all comments received by the contractor because the Department did not document its review. During the audit, in December 2020, the Department developed and began implementing a new policy and procedure requiring Department staff to

<sup>31</sup> Our Office has determined that Arizona agencies should investigate and adjudicate complaints within 180 days of receiving them.

<sup>32</sup> The public can submit comments regarding the VEIP either to the Department through its website or directly to the contractor.

<sup>33</sup> Both comments were ultimately closed due to customer nonresponse.

<sup>34</sup> For the fourth comment, the customer selected the option “permits and registrations issued by the Department.”

use an online contract monitoring dashboard to review and document their review of comments received by the contractor, including ensuring the contractor closed comments within 30 days.

## Recommendations

The Department should:

9. Respond to complainants within 5 business days of assigning the complaint to staff for investigation, as required by Department policy.
10. Investigate and resolve complaints within 180 days by developing and implementing policies and procedures for complaint investigation and resolution, including guidance for prioritizing complaints for investigation and time frames for completing the various steps in the complaint resolution process, such as assigning complaints to staff and completing complaint investigations.
11. Respond to comments regarding the VEIP within 2 business days, and ensure comments are closed within 2 business weeks, as required by Department policy.
12. Develop and implement guidance for referring VEIP comments to other agencies, including guidance on when supervisory review is required before comments are referred to other agencies.
13. Continue to implement its new policy and procedure for reviewing and documenting its review of comments received by the VEIP contractor.

**Department response:** As outlined in its [response](#), the Department agrees with the findings and will implement the recommendations.

### **Sunset factor 7: The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under the enabling legislation.**

A.R.S. §§41-192(A)(1) and 49-103 require the Attorney General to act as the Department's legal advisor and to provide all legal services the Department requires, including prosecuting violations of environmental statutes.

### **Sunset factor 8: The extent to which the Department has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

According to the Department, since 2013, it has made 1 change that has addressed statutory deficiencies in its enabling statutes. Specifically, Laws 2018, Ch. 170, required the Department to establish an underground injection control (UIC) program, which regulates the underground injection or discharge of 6 categories of hazardous and nonhazardous liquids and gases, including wells injecting fluids for natural gas storage or production and injection wells used to extract minerals such as sulfur and uranium. Although the Department already had a statutory mandate to administer a UIC program, the Department reported that it lacked the necessary authority to assume the primary enforcement authority for the program from the EPA, such as having the authority to issue permits and penalties for a UIC program. However, Laws 2018, Ch. 170, established additional regulations that the Department reported would allow Arizona to assume the primary enforcement authority for the UIC program from the EPA.<sup>35</sup>

### **Sunset factor 9: The extent to which changes are necessary in the laws of the Department to adequately comply with the factors listed in this sunset law.**

We did not identify any needed changes to the Department's statutes.

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<sup>35</sup> The Department began working with stakeholders to update the rules for the UIC program in June 2018. As of July 2021, the Department is in the process of updating its rules to administer and operate the UIC program.

**Sunset factor 10: The extent to which the termination of the Department would significantly affect the public health, safety, or welfare.**

Terminating the Department would significantly affect public health, welfare, and safety if its responsibilities were not transferred to another State agency. For example, the Department maintains permit programs for water quality, such as the APP program, to protect water sources in the State and ensure safe drinking water. The Department also assists with the cleanup of hazardous chemical releases, regulates hazardous and nonhazardous waste, regulates air pollution sources through permits, and administers the VEIP to reduce air pollution in the State. Finally, the Department conducts routine inspections of air quality, solid and hazardous waste management, and water quality facilities, investigates complaints, and takes enforcement actions for violations of environmental regulations.

In addition, eliminating the Department without transferring its responsibilities to another State agency would likely result in the EPA implementing federal laws in the State that the Department currently administers, such as the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. According to the Department, this may shift implementation of those laws away from compliance assistance to enforcement due to the EPA's limited resources. Finally, according to the Department, terminating the Department could end several State-specific programs, such as the WQARF program, which identifies, assesses, and remediates sites in Arizona where there has been a chemical release that threatens the environment.

**Sunset factor 11: The extent to which the level of regulation exercised by the Department compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.**

We found that the level of regulation exercised by the Department appears appropriate and is generally similar to the level of regulation exercised by environmental agencies in 3 other states we judgmentally selected and contacted—Colorado, Nevada, and Utah.<sup>36</sup> Specifically, Arizona and the 3 states implement federal environmental laws, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act. To implement these federal laws, states must follow certain requirements. For example, to implement the Clean Air Act, Arizona and the 3 states have adopted state implementation plans to help reduce air pollution in areas that do not meet air quality standards. Additionally, Arizona and the 3 other states issue air quality, waste management, and water quality permits to implement and help ensure compliance with federal environmental laws. For example, all 4 states issue pollution discharge elimination permits, which regulate the discharge of pollutants into surface waters and are required as part of implementing the Clean Water Act. Arizona and the 3 other states also conduct routine inspections of, and have the authority to take enforcement actions against, their respective air quality, waste management, and water quality permit holders, including issuing civil penalties for noncompliance. Finally, Arizona, Colorado, and Utah conduct inspections in response to events such as environmental complaints.

Additionally, we found that the level of regulation the Department exercises in implementing the VEIP is generally similar to the 3 other states we contacted. However, there are some differences in how the states implement their vehicle emissions inspection programs, such as:

- **Type of program**—Arizona and Colorado both administer centralized programs which use a single contractor to perform tests. However, Nevada and Utah administer decentralized programs and license privately-owned testing stations. Further, Utah authorizes its counties to oversee county-based testing programs.
- **Types of tests performed**—Arizona and Colorado perform similar types of tests, including on-board diagnostic (OBD), idle, and dynamometer simulation testing.<sup>37</sup> Nevada and Utah's Salt Lake County perform OBD and idle tests only.

<sup>36</sup> We selected these 3 states because they are located in the Southwest and have similar levels of ozone nonattainment to Arizona. Specifically, Arizona and the 3 states all have at least 1 ozone nonattainment area.

<sup>37</sup> OBD tests use a vehicle's built-in computer system to monitor emission control system failures; idle tests measure vehicle emission output while a vehicle is idling; and dynamometer tests measure vehicle emission output using a machine that simulates vehicle driving.

- **Testing exemptions**—Arizona and Colorado allow vehicles to be exempt from testing until their sixth and seventh model years, respectively, whereas Nevada allows exemptions for 2 years for nonhybrid vehicles and 5 years for hybrid vehicles. Utah allows exemptions for 2 model years.

**Sunset factor 12: The extent to which the Department has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.**

The Department employs private contractors for several mission-critical functions. The scope of these contracts includes specialized air quality services, such as modeling and sampling; operating the Monitoring Assistance Program to assist public water systems with the collection, transportation, analysis, and reporting of regulated contaminants; assessing and remediating UST and WQARF sites; searching for the responsible party for leaking USTs and WQARF sites; and conducting UST inspections. Additionally, the Department uses a contractor to help administer the VEIP.<sup>38</sup>

We compared the Department's use of private contractors to state environmental agencies in Colorado, Nevada, and Utah and found:

- Similar to Arizona, Colorado uses a contractor to perform vehicle emission inspection tests.
- Nevada reported using private contractors for various purposes, such as reviewing ecological risk assessments and responding to releases of hazardous substances.
- Utah reported that it does not employ private contractors for any mission-critical functions. However, the Utah state environmental agency contracts with local health departments to perform some functions, such as drinking water inspections.

We did not identify any additional areas where the Department should consider using private contractors.

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<sup>38</sup> The Department has used the same contractor to perform the vehicle emissions inspections since 1991. The current VEIP contract is effective until June 30, 2024.



# SUMMARY OF RECOMMENDATIONS

## Auditor General makes 13 recommendations to the Department

The Department should:

1. Continue to implement its updated conflict-of-interest policies and procedures to help ensure it complies with State conflict-of-interest requirements and follows recommended practices, including:
  - a. Requiring all employees and public officers to complete a conflict-of-interest disclosure form upon hire and annually, including attesting that no conflicts exist, if applicable.
  - b. Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest.
  - c. Storing all substantial interest disclosures in a special file.
  - d. Establishing a process to review and remediate disclosed conflicts (see Finding 1, pages 6 through 9, for more information).
2. Continue to provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and public officers on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities (see Finding 1, pages 6 through 9, for more information).
3. Create a written action plan that prioritizes the development and implementation of IT security policies and procedures required by ASET and recommended by credible industry standards. The action plan should include specific tasks and their estimated completion dates, as well as a process for regularly reviewing and updating the plan based on its progress (see Sunset Factor 2, pages 11 through 13, for more information).
4. Develop and implement IT security policies and procedures consistent with its action plan, ASET requirements, and credible industry standards (see Sunset Factor 2, pages 11 through 13, for more information).
5. Work with its Assistant Attorney General to determine whether and when it can develop and adopt rules as required by statute (see Sunset Factor 4, page 14, for more information).
6. Contingent on receiving an exemption to the rule-making moratorium, adopt rules as required by statute (see Sunset Factor 4, page 14, for more information).
7. Continue to implement the revisions to its rulemaking policies and procedures to ensure the public receives the full 30 days to submit written comments after publishing the notice of a proposed rulemaking (see Sunset Factor 5, pages 14 and 15, for more information).
8. Make public meeting minutes, or a recording of these public meetings, available for public inspection within 3 working days following a meeting (see Sunset Factor 5, pages 14 and 15, for more information).
9. Respond to complainants within 5 business days of assigning the complaint to staff for investigation, as required by Department policy (see Sunset Factor 6, pages 15 through 17, for more information).

10. Investigate and resolve complaints within 180 days by developing and implementing policies and procedures for complaint investigation and resolution, including guidance for prioritizing complaints for investigation and time frames for completing the various steps in the complaint resolution process, such as assigning complaints to staff and completing complaint investigations (see Sunset Factor 6, pages 15 through 17, for more information).
11. Respond to comments regarding the VEIP within 2 business days, and ensure comments are closed within 2 business weeks, as required by Department policy (see Sunset Factor 6, pages 15 through 17, for more information).
12. Develop and implement guidance for referring VEIP comments to other agencies, including guidance on when supervisory review is required before comments are referred to other agencies (see Sunset Factor 6, pages 15 through 17, for more information).
13. Continue to implement its new policy and procedure for reviewing and documenting its review of comments received by the VEIP contractor (see Sunset Factor 6, pages 15 through 17, for more information).

## Scope and methodology

The Arizona Auditor General has conducted a performance audit and sunset review of the Department pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951.

We used various methods to review the issues in this performance audit and sunset review. These methods included interviewing Department staff, and reviewing Department statutes and rules and Department-provided information, including policies and procedures and website information. In addition, we used the following specific methods to meet the audit objectives:

- To assess the Department's compliance with the State's conflict-of-interest law requirements and alignment with recommended practices, we reviewed statutes, recommended practices, the Arizona Department of Administration's *State Personnel Employee Handbook*, chapter 8 of the *Arizona Agency Handbook*, and the conflict-of-interest forms used by the Department.<sup>39</sup>
- To determine the Department's compliance with the ASET IT security requirements and credible industry standards, we compared the Department's IT policies, procedures, and practices to ASET requirements and credible industry standards. We also conducted interviews with Department staff, assessed whether the Department was limiting access to its active directory, and reviewed the Department's process for ensuring staff and contractors complied with IT security awareness training requirements. Additionally, we reviewed whether the Department's 58 contractors and 466 employees completed annual security awareness training as of November 2020. Finally, we reviewed a judgmental sample of 30 of 107 Department accounts and all 17 of the Department's administrator accounts to determine compliance with account management requirements.
- To assess the Department's compliance with the State's open meeting law requirements, we attended and/or reviewed the notices, agendas, and meeting minutes for 6 public meetings held between November 2020 and March 2021. In addition, we reviewed the Department's website to determine if the website included the statutorily required disclosure statement indicating where the physical and online locations of its public meeting notices would be posted for its boards, commissions, and committees.
- To assess the Department's complaint-handling processes, we reviewed a sample of 27 of 780 complaints received in fiscal year 2020 by the Department's 3 divisions. Specifically, we selected a stratified random sample of 10 of 400 complaints from the Air Quality Division, 8 of 184 complaints from the Waste Programs Division, and 9 of 196 complaints from the Water Quality Division. Additionally, to assess the Department's complaint-handling and oversight of VEIP comments—which include feedback, incidents, and complaints—we selected a judgmental sample of 5 of 23 comments and 5 of 645 comments that the Department and the VEIP contractor received in fiscal year 2020, respectively.

<sup>39</sup> Recommended practices we reviewed included: Organization for Economic Cooperation and Development (OECD). (2003). *Recommendation of the council on guidelines for managing conflicts of interest in the public service*. Paris, France. Retrieved 4/16/2020 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>; Ethics & Compliance Initiative (ECI). (2016). *Conflicts of interest: An ECI benchmarking group resource*. Arlington, VA. Retrieved 8/4/2020 from <https://www.ethics.org/knowledge-center/conflicts-of-interest-report/>; and Controller and Auditor General of New Zealand (2020). *Managing conflicts of interest: A guide for the public sector*. Wellington, New Zealand. Retrieved 3/4/2021 from <https://oag.parliament.nz/2020/conflicts/docs/conflicts-of-interest.pdf>.

- To compare the Department's regulatory activities and use of private contractors with other states, we reviewed the Department's contracts and website, information from the EPA website, and selected 3 states—Colorado, Nevada, and Utah—for comparison.<sup>40</sup> We reviewed these states' websites to gather information about their regulatory responsibilities and contacted staff in these 3 states to learn more about their use of contracted services and level of regulation.
- To obtain information for the report's Introduction, we reviewed the Department's website and Department-provided information on its staffing. We also reviewed information from the EPA and federal laws and requirements. Additionally, we compiled and analyzed unaudited information from the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2019 through 2021 and the State of Arizona *Annual Financial Report* for fiscal years 2019 and 2020.
- Our work on internal controls included reviewing the Department's policies and procedures, and where applicable, testing compliance with these policies and procedures for handling complaints; disclosing conflicts of interest; and complying with State IT security or credible industry standards. Our work included reviewing the following components and associated principles of internal controls:
  - Control environment, including the establishment of an organizational structure, the assignment of responsibility, and delegation of authority to achieve an entity's objectives.
  - Control activities, including the design of control activities, design activities for information systems, and implementing control activities through policies.

We reported our conclusions on applicable internal controls in Finding 1 and in our responses to the statutory sunset factors.

We selected our audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit and sunset review of the Department in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation to the Department Director and staff for their cooperation and assistance throughout the audit.

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<sup>40</sup> We selected these 3 states because they are located in the Southwest and have similar levels of ozone nonattainment to Arizona. Specifically, Arizona and the 3 states all have at least 1 ozone nonattainment area.

# DEPARTMENT RESPONSE



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

September 21, 2021

Lindsey A. Perry  
Auditor General  
2910 N. 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018-7271

Dear Ms. Perry:

This letter provides the Arizona Department of Environmental Quality's (ADEQ) response to the September 14, 2021 revised preliminary draft of the department's Sunset Factors report. We appreciate the diligence and hard work of the Auditor General's staff in completing this report and their consideration of our feedback on the previous draft.

The auditors identified 13 recommendations for improvement the department should address. Specifically:

**Finding 1:** Department did not comply with some conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

**Recommendation 1:** The Department should continue to implement its updated conflict-of-interest policies and procedures to help ensure it complies with State conflict-of-interest requirements and follows recommended practices, including:

**Recommendation 1a:** Requiring all employees and public officers to complete a conflict-of-interest disclosure form upon hire and annually, including attesting that no conflicts exist, if applicable.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: As of September 16, 2021, all full-time and temporary employees have signed an ADOA-authorized conflict of interest form according to our updated policy. We have also created standard work to require disclosure forms annually from all full-time employees, temporary employees, and ADEQ statutory committees in December.

**Recommendation 1b:** Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ADEQ has updated the conflict of interest form to match that of ADOA.

**Recommendation 1c:** Storing all substantial interest disclosures in a special file.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: All forms are now stored with the Department's Human Potential Office in special files designated for conflict of interest disclosures.

**Recommendation 1d:** Establishing a process to review and remediate disclosed conflicts.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department now has an established process for remediating disclosed conflicts through our Human Potential Office.

**Recommendation 2:** The Department should continue to provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and public officers on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: New employees will be provided conflict of interest training during new employee orientation and all employees will be provided annual conflict of interest training each December, pursuant to ADEQ policy.

**Sunset Factor 2:** The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.

**Recommendation 3:** The Department should create a written action plan that prioritizes the development and implementation of IT security policies and procedures required by ASET and recommended by credible industry standards. The action plan should include specific tasks and

their estimated completion dates, as well as a process for regularly reviewing and updating the plan based on its progress.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ASET uses RiskSense software statewide to assess security performance of Arizona agencies. ADEQ's RiskSense security score is 807 and has been over 800 since January 2019. The current statewide security score as of August 1st is 719. (The statewide goal is 725). Of the 15 security controls that ADOA currently tracks, we are green on 14 of them. The one that is not green is the annual network risk assessment that we are currently scheduling but have not completed yet.

**Recommendation 4:** The Department should develop and implement IT security policies and procedures consistent with its action plan, ASET requirements, and credible industry standards.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Sunset Factor 4:** The extent to which rules adopted by the Department are consistent with the legislative mandate.

**Recommendation 5:** The Department should work with its Assistant Attorney General to determine whether and when it can develop and adopt rules as required by statute.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Sunset Factor Report references Nonpoint Source Rules and Solid Waste Rules. For nonpoint source rulemaking, the Department does not believe it has funding with an authorized use for this purpose (see ARS 49-210(D)). For Solid Waste Rules, ADEQ was not successful in a previous attempted to promulgate rules. In early 2009, ADEQ completed an extensive rule writing and stakeholder process to develop comprehensive solid waste rules addressing all statutorily mandated solid waste rule topics. However, the State's rule moratorium became effective in 2009 and the effort was never completed. Since then, a number of factors have metered the Department's capacity to write new rules: 1) limited resources; 2) the need to prioritize rules to prevent increased human health and environmental risk (e.g. biomedical waste rules in progress, hazardous waste rules finalized in 2020); 3) the need to prioritize rulemaking for air quality planning to avoid federal sanctions including the loss of federal highway dollars; and 4) the need to prioritize rulemaking that is required to maintain ADEQ primacy and delegation of federal programs.

**Recommendation 6:** The Department should, contingent on receiving an exemption to the rule-making moratorium, adopt rules as required by statute.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Since 2015, ADEQ has conducted 26 rulemakings, including 256 rules that have been improved, 83 rules that were no longer necessary and allowed to expire, and 14 rules that were likewise no longer necessary and were repealed. ADEQ has strategically prioritized rulemaking as described above and will continue to reduce regulatory burden where possible and to write and implement rules to protect human health and the environment when authorized by law.

**Sunset Factor 5:** The extent to which the Department has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

**Recommendation 7:** The Department should continue to implement the revisions to its rulemaking policies and procedures to ensure the public receives the full 30 days to submit written comments after publishing the notice of a proposed rulemaking.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ADEQ has conducted 26 rulemakings since 2015, and to our knowledge, only one public comment period had an incorrect printed date. Although the published notice period was less than 30 days in the single incident cited, ADEQ notified its stakeholders and accepted comment for the full 30 days. ADEQ now has multiple redundancies in place to ensure this will not happen again.

**Recommendation 8:** The Department should make public meeting minutes, or a recording of these public meetings, available for public inspection within 3 working days following a meeting.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Sunset Factor 6:** The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the Department to timely investigate and resolve complaints within its jurisdiction.

**Recommendation 9:** The Department should respond to complainants within 5 business days of assigning the complaint to staff for investigation, as required by Department policy.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: In FY 2020 and 2021, ADEQ received 851 and 900 complaints, respectively, and responded to complainants within 5 days, 79 and 85 percent of the time, respectively. In FY 22 so far, 81% of complaints have been responded to in 5 days or less with an average of 1.8 days to respond. To continue improving, ADEQ is implementing additional goals and protocols to accelerate complaint response.

**Recommendation 10:** The Department should investigate and resolve complaints within 180 days by developing and implementing policies and procedures for complaint investigation and resolution, including guidance for prioritizing complaints for investigation and time frames for completing the various steps in the complaint resolution process, such as assigning complaints to staff and completing complaint investigations.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: See response explanation to recommendation 9.

**Recommendation 11:** The Department should respond to comments regarding the VEIP within 2 business days, and ensure comments are closed within 2 business weeks, as required by Department policy.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Recommendation 12:** The Department should develop and implement guidance for referring VEIP comments to other agencies, including guidance on when supervisory review is required before comments are referred to other agencies.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: We are aware of only one comment out of approximately 2,500 that was referred inappropriately to another agency (ADOT–MVD) from January 2016 through July 2021.

**Recommendation 13:** The Department should continue to implement its new policy and procedure for reviewing and documenting its review of comments received by the VEIP contractor.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

On behalf of ADEQ, we appreciate having had this opportunity to respond to the above recommendations. Moreover, we appreciate the professionalism and cooperation your audit team demonstrated in working with us throughout the performance audit process. We found the process and the results to be both constructive and informative, and we look forward to timely implementation of all the recommendations identified in your audit report.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Cabrera', with a stylized flourish at the end.

Misael Cabrera, P.E.  
Director

