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February 1, 2021

Performance Audit  
Recommendations and  
Corrective Actions for Audit:  
17-05

ENVIRONMENTAL  
COMPLIANCE

The Department of  
Environmental Conservation  
Conducts a Wide Variety of  
Activities to Identify Violations  
But Could Improve Resolution  
Follow-Up

Dated: September 29, 2017

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# Overview

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The State Auditor's Office (SAO) makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations, although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities one and three years after the calendar year in which the audit report is issued. Our annual performance reports summarize whether we are meeting our recommendation implementation targets.

<http://auditor.vermont.gov/about-us/strategic-plans-and-performance-reports>

This report addresses the requirements of Act 155 (2012) to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state's financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our current contract for this work requires the contractor to provide the results of its recommendation follow-up.

Rec #	Recommendation	Follow-Up Date	Status	Review Comments
1	Direct the Waste Management & Prevention Division (WMPD) to require the Underground Storage Tank (UST) program to immediately inspect all facilities with underground storage tanks that have not been inspected in the last three years and amend their process to ensure that the inspection mandate is followed.	2018	Implemented	WMPD reviewed its inspection process and conducted inspections for the nine facilities that had not been inspected in the three years prior to the audit.
		No further follow-up is required because the recommendation was implemented.		
2	Direct the Watershed Management Division (WSMD) to require the wastewater program to immediately inspect all facilities it identified for inspection to the Environmental Protection Agency that were not inspected and to develop a process to ensure that the agreed-upon type of inspection is conducted	2018	Implemented	WSMD conducted the three outstanding facility inspections. It uses internal documents and communications to ensure that all inspections are completed.
		No further follow-up is required because the recommendation was implemented.		
3	Direct WSMD to require the wetlands program to develop guidance as to when it is, and is not, appropriate to investigate cases of possible violations.	2018	Partially Implemented	The Department of Environmental Conservation (DEC) reported that guidance for wetlands violation investigations has been developed as part of a new DEC Compliance Procedure (see recommendation #6), which is currently with the DEC commissioner for final review and signature.
		2020	Implemented	DEC's new compliance procedure, which took effect on March 14, 2019, includes guidance on determining whether an investigation should be conducted for possible violations.
4	Require each division to have management controls in place to ensure that follow-up on violations occur and that return to compliance is confirmed.	2018	Partially Implemented	DEC reported that it has developed a new Compliance Procedure (see recommendation #6), which has been submitted to the DEC commissioner for final review and signature. This procedure contains a requirement for Program Managers (supervisors) to regularly check the open incidents in ECD's central tracking system assigned to them and their staff. The procedure also requires Divisions [Air, Waste, Watershed, Drinking Water and Groundwater, and Environmental Compliance Division (ECD)] to develop their own procedures to identify how they will comply with the requirement for regular checks of central incident tracking system. In addition, for violations that are not tracked in the central system (e.g., inspection violations), the new Compliance Procedure states that return to compliance is a non-negotiable facet of DEC's goals and that return to compliance should be confirmed and documented.
		2020	Implemented	DEC's new compliance procedure, which took effect on March 14, 2019, includes the guideline that all divisions regularly check the Department's central incident tracking system for the status of incidents that have been assigned to them and to ensure prompt resolution. The new procedure calls for tracking and follow-up on all violations. It requires confirmation of return to compliance via documentation, follow-up site visits, photographs, or other evidence.

Rec #	Recommendation	Follow-Up Date	Status	Review Comments
5	Direct WSMD to have the wetlands program develop a protocol that ensures the use of its tracking database.	2018	Partially Implemented	DEC reported that it is in the process of developing a new database that links the Wetlands database to DEC's central incident tracking system and ensures that this system is used for Wetlands incidents.
		2020	Implemented	A new protocol for tracking Wetlands incidents was established. DEC integrated the Wetlands tracking system with DEC's central incident tracking system in June 2019, eliminating the practice of duplicate data entry. The new DEC compliance procedure requires that all staff, including Wetlands staff, enter incidents of non-compliance into a tracking system. It also directs staff to regularly review the incidents assigned to them in the Department's central incident tracking system.
6	Ensure that (1) all programs have compliance procedures that include all attributes in the 2001 DEC procedures document or any requirements that supersedes this document and (2) ECD's enforcement section have a process or procedure in place so that violations are handled in a manner consistent with that of the programs.	2018	Partially Implemented	DEC reported that it has developed a new compliance procedure that requires each division to develop annual compliance plans and procedures and outline its priority enforcement areas. This procedure document has been submitted to the DEC commissioner for final review and signature. According to DEC, the documentation required by the draft compliance procedure will be used to ensure consistency between the programs and ECD.
		2020	Partially Implemented	DEC's 2019 compliance procedure supercedes the compliance procedure of 2001 and applies to all DEC divisions and programs. This procedure requires each division to develop their own procedure and a strategic overlay. As of mid-December 2020, DEC was in the process of working with each division to ensure compliance with the new requirements. The DEC-wide compliance procedure also includes protocols to ensure that violations are handled consistently between DEC's programs and its Environmental Compliance Division.
7	Create a process by which all complaint data is accurately and completely reported to the legislature, as required by 10 V.S.A. §8017, as well as in performance reports.	2018	Partially Implemented	With respect to the legislative report required by V.S.A. §8017, DEC's Commissioner instructed program heads to submit complaint data to be added to this report. DEC also provided a template and instructions to ensure the accuracy and completeness of the data to be provided for the legislative report. The State Auditor's Office reviewed DEC's 2018 legislative report and confirmed that the new reporting methodology was implemented. Regarding its performance data, DEC stated that it plans to incorporate all complaint data in its next performance report.
		2020	Implemented	Starting with the 2019 annual performance report, DEC implemented a methodology to capture and report on the number and resolution of all complaints. Under this methodology, DEC's program offices are (1) instructed to submit complaint data and (2) provided with a template and instructions to ensure the accuracy and completeness of the data to be provided by the programs.