



State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE SECRETARY

January 6, 2021

Mr. Daryl G. Purpera, CPA, CFE
Office of the Legislative Auditor
Post Office Box 94397
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

This is the Department of Environmental Quality's (DEQ) response to the reportable findings and recommendations presented in the Louisiana Legislative Auditor (LLA) Performance Audit Services report titled "**Monitoring and Enforcement of Air Quality**".

DEQ takes its responsibility to promote and protect public health through sound environmental policy very seriously and appreciates the opportunity to respond to the observations within your report. After reviewing the findings and recommendations, DEQ offers the following responses.

Finding 1: Louisiana has seen improvement in air quality since calendar year 2008. However, certain areas of the state are highly industrialized and have high concentrations of air pollution.

Response: As noted in the report, DEQ has achieved and maintained substantial improvements in air quality over the last ten years despite facing some of the largest state environmental regulatory agency budget and staffing cuts in the nation. The comprehensive and robust air quality monitoring and enforcement activities executed by the department have contributed to a substantial decrease (75.1%) in the number of unhealthy air quality days for Louisiana citizens in sensitive groups.

DEQ currently operates over 40 ambient air monitoring sites throughout the state to monitor air quality. Most of the ambient air monitoring sites are in the "highly industrialized" zones referenced in the report (Exhibit 1). DEQ collected over 1300 air quality samples during the 2019 calendar year to test for a subset of the toxic pollutants noted and explained in Appendix C. It should be noted that none of these pollutants were detected in 2019 ambient air concentrations that exceeded the Louisiana Toxic Air Pollutant Ambient Air Standards.

Finding 2; Recommendation 1: DEQ should vary when they inspect facilities so that they are less predictable as state law stresses the importance of unannounced inspections.

Response: DEQ agrees with this recommendation, and notes that during the later years of the audit timeframe (2017), approval was obtained from the United States Environmental Protection Agency-Region 6 (USEPA-R6) to implement an Alternate Compliance Monitoring Strategy (ACMS) for scheduling and performing inspections of permitted facilities. The ACMS was successfully implemented two (2) years ago and has increased the variability of inspection dates.

Finding 2; Recommendation 2: DEQ should require secondary evidence, such as photographs, to ensure that inspections actually occurred.

Response: DEQ disagrees with this recommendation, and offers the following information related to the inspection process. DEQ's Standard Operating Procedure (SOP) requires staff (i.e., inspectors) to leave a completed Field Interview Form (FIF) at each facility inspected, which is signed by a facility representative at the conclusion of the inspection. In the isolated case contained in the audit report, a FIF was not completed, signed, or left at the facilities as the inspector did not visit the facilities as required by existing SOP. DEQ notes that this isolated incident of SOP circumvention was voluntarily reported to your office prior to this incident being discovered during the audit and was used as the basis that formed this recommendation.

Finding 2; Recommendation 3: DEQ should review required self-monitoring reports timely to monitor and regulate air quality in Louisiana.

Response: DEQ agrees with this recommendation, and offers the following additional details related to the self-monitoring report review process. DEQ's Enforcement Division receives Semiannual Monitoring and Deviation reports and Annual Compliance Certifications for the approximately 500 Title V permitted facilities in Louisiana. Once these reports are received, key data points are entered into Advantage RM and an Environmental Scientist (ES) reviews any reported deviations to determine if High Priority Violations (HPVs) or other violations which pose significant threat to human health or the environment are reported. If any of the reported deviations fall into one of these categories, the ES will initiate preparing an addressing enforcement action. Reports which do not contain violations of this nature are submitted to DEQs Electronic Data Management System (EDMS) and are thoroughly reviewed during the next routine inspection or file review. Current staffing levels and the volume of reports received impedes the Enforcement Division staff from performing a thorough review upon receipt of every report and from immediately initiating a formal enforcement for every violation reported in either of the aforementioned reports. As suggested in Recommendation 10, DEQ management will review current staffing levels related to self-monitoring report review and may request additional funding to hire additional staff.

It should also be noted that any permittee who fails to submit a Title V semiannual or annual report is currently being identified during its routine inspection or any other file review. For the past several months, the Enforcement Division has been working to improve the quality of historical data in Advantage RM for the Semiannual Monitoring and Deviation reports and Annual Compliance Certifications. As this data is improved, the Enforcement Division will utilize this information to quickly pursue permittees/respondents who failed to submit the required Title V Reports. Queries of this data will be run at least twice per year following the report submission due dates (March 31 and September 30) to determine if any permittees failed to submit its reports. Additionally, as discussed in more detail is the response to Recommendation 4, DEQ is actively pursuing a mechanism for electronic reporting of Semiannual Monitoring and Deviation reports and Annual Compliance Certifications which should result in improved data quality, automated processing of reports into Advantage RM and EDMS, and more efficient review of reported deviations.

Finding 3; Recommendation 4: DEQ should continue to pursue electronic report submissions like other states.

Response: DEQ agrees with this recommendation. DEQ began researching and developing plans for electronic submission of Title V and other Air quality reports prior to this audit. An internal workgroup was formed and has had regular development meetings. An initial request for a developmental quote was submitted to a contractor in November 2020 to help better determine the cost of providing an electronic reporting submission option. Enforcement Division staff are currently working with the contractor to determine DEQ's exact needs so an accurate quote can be obtained. DEQ will continue pursuing electronic submission of Title V and certain other Air quality reports, as it is anticipated this method will reduce workload on staff for processing mail, reduce data errors in Title V Report tracking, improve timeliness of reports being available in the EDMS, and improve the Department's ability to query and manipulate relevant data, including reported deviations. However, it should be noted, that development and implementation of any the electronic submission option that is currently being explored will be dependent upon securing sufficient funding and adequate allocation of Office of Technology (OTS) resources. DEQ is actively researching potential grants and other alternate sources of funding for this project.

Finding 3; Recommendation 5: DEQ should develop formal timeframe goals for how long it should take to issue enforcement actions and monitor its performance based on the timeframe goals.

Response: DEQ agrees with this recommendation, and offers the following additional information related to the enforcement process. The Enforcement Division-Air Enforcement Section has made a substantial effort to address backlog referrals in recent years. This process resulted in actions issued in the later years of the audit period, including FY19, with an increase in time from referral assignment to action issued date. While addressing of backlog referrals is continuing, processes are in place to improve this timeline. Notably, the time from referral assignment to action issuance decreased by 38.9% from FY19 to FY20 (average 344 days).

In addition, all of the activities performed by Enforcement Division staff from the time a referral is assigned until an addressing enforcement action is issued are not fully outlined in the report. More specifically, when inspection referrals are received by the Enforcement Division, a Warning Letter, which is an informal enforcement action, is issued to the facility which encourages a written response to be submitted. In response to the Warning Letter, respondents often request meetings with DEQ or submit information which require further review and consideration to determine valid violations. This information may indicate violations have been corrected, provide additional clarification of the circumstances, or provide documentation that the areas of concern were not violations. These activities, which are important parts to the process, often add to the time it takes to issue an enforcement action. Additionally, many of the states surveyed by the auditor(s) do not have the same quantity or complexity of air quality facilities that are regulated by DEQ. Therefore, it may be inaccurate to compare DEQ to states with less permitted or regulated facilities and/or facilities with less complex operations. However, DEQ does recognize the importance of timely enforcement actions. The Enforcement Division will evaluate the volume and complexity of air enforcement referrals received, all duties and responsibilities involved in preparing addressing actions (as well as post issuance activities, especially the statutory and regulatory requirements respondents are entitled to) and will determine and establish timeliness goals, as appropriate.

Finding 3; Recommendation 6: DEQ should develop additional reporting capabilities for enforcement staff and management to use to better monitor the enforcement process.

Response: DEQ agrees with the recommendation, and offers the following additional information related to the enforcement process. The Enforcement Division-Air Enforcement Section currently runs multiple reports to track and monitor referrals received. These reports contain imperative information which is used to monitor the status of referrals received, issued enforcement actions, settlement offers received and/or settlement agreements. These reports also provide information such as inspection date, referral received and assigned date, and action issued date, which are used to determine timeliness of addressing these cases and identify cases in need of progress. It should be noted the audit report states that DEQ's management can run reports to show the "last action for enforcement cases." However, the reports run include all actions issued and the last task entered into Advantage RM for each action. Although the reports do not currently include information indicating which referrals or actions are already being addressed by a Settlement Agreement or Penalty Assessment, development of this type of report using data systems currently available is in progress. Separate reports are run on a routine basis to monitor the status of cases for which a settlement offer has been received as well as the status of all settlement offers.

The audit report states that the Enforcement Division cannot accurately link all inspections to enforcement actions to determine whether all inspections with violations resulted in an enforcement action. However, when inspection referrals are received by the Enforcement Division, they are immediately assigned an enforcement tracking number within Advantage RM. Once this tracking number is assigned, it remains on the reports Enforcement Division runs and utilizes until the referral is closed with an addressing enforcement action and/or other activity. After which, the violations are deemed addressed in the inspection reports in Advantage RM. This is how inspection referrals are tracked by the Enforcement Division. DEQ has been developing software which will allow management and staff to develop and run more sophisticated reports to improve efficiency in tracking activities. This software will also have the capability to run automated reports which can be used as reminders or triggers for staff. DEQ will continue pursuing development and implementation of this useful tool.

Finding 4; Recommendation 7: DEQ should streamline the process for receiving and processing facility penalty and settlement payments. DEQ should effectively track all penalties it assesses and ensure that facilities pay the penalties.

Response: DEQ agrees with the recommendation and offers the following additional information related to the settlement processes. DEQ acknowledges that there may be room for improvement in the processes and/or manner by which the Financial Services Division (FSD) and the Enforcement Division communicate on payments received for final Penalty Assessments and Settlement Agreements. However, to state that DEQ does not effectively track penalties it has assessed and whether facilities have paid the assessed amounts is somewhat misleading. Penalty assessments and all other issued actions are tracked by Enforcement Division management utilizing the "Issued Action" query in Advantage RM. Additionally, this information is manually verified monthly before being posted to the DEQ's website and is also compiled and reported annually to the Louisiana Legislature.

DEQ issues two types of penalties, Penalty Assessments (PAs) and Expedited Penalty Agreements & Notices of Potential Penalties (XPs), both of which are combined under the term "penalty" in the audit report. PAs are formal enforcement actions which can be appealed, delaying the payment or closure process through hearings or Informal Dispute Resolution (IDR).

XPs are part of a voluntary expedited penalty program, and have other requirements in addition to payment in order to comply. By regulation, facilities are not in compliance with an XP until both payment and the signed XP form certifying compliance are returned to DEQ. Additionally, some XPs also require reports, such as emission inventories, be submitted before the action can be closed. In isolated cases, both XPs and PAs, may also be closed without payment (i.e., Respondent demonstrates an inability to pay or Respondent is insolvent, etc.). Since DEQ-Enforcement Division's primary goal is to obtain compliance, Air Enforcement management tracks PAs and XPs from issuance to closure to ensure all steps of the process, not just payment, are completed.

DEQ will continue tracking PAs and XPs to ensure payments are timely submitted and/or compliance is achieved in the required timeframe. The timeframe by which the FSD processes payments received for penalties and/or XPs and notifies the Enforcement Division of such will be further reviewed and changes will be immediately implemented for areas identified as needing improvement. FSD will continue to work toward faster depositing, classification, and posting of penalty payments to customer accounts and Advantage RM. It is important to note that there are often delays in receiving these payments (mail delays, mail routed to other divisions, identifying information not included, etc.). FSD will continue to work with the Enforcement Division to ensure it is kept informed of any delays in posting payments.

Finding 4; Recommendation 8: DEQ should develop reports that can integrate payment data from the fiscal division, as well as capture information from DEQ's legal division, in order to easily identify what penalties and settlements have been paid.

Response: DEQ agrees with this recommendation. DEQ is currently reviewing all processes and procedures in place for penalty and settlement payment processing and will implement any improvements, as appropriate.

Finding 4; Recommendation 9: DEQ should establish a process that requires facilities to submit acceptable settlement offers within a certain timeframe, such as six months, and draft a penalty amount for those who do not comply.

Response: DEQ agrees with this recommendation, and offers the following information related to the settlement process. Some of the complexities of the enforcement process or not fully detailed in the report. For instance, Compliance Orders and Notices of Potential Penalty (CONOPPs) are subject to appeal. DEQ may grant or deny the hearing request or may enter into Informal Dispute Resolution (IDR). In addition, facilities may require compliance schedules to return to compliance or provide additional information for discussion/consideration. For these reasons, a standard deadline to submit a settlement offer is not appropriate for all facilities. It should also be noted that DEQ has existing procedures to facilitate timely settlement offers such as the "REQUEST TO SETTLE" form and Settlement Agreement Brochure which are attached to all CONOPPs and Notices of Potential Penalty (NOPPs) that are issued by DEQ. DEQ agrees revising the "REQUEST TO SETTLE" form to include a recommended timeframe to submit a settlement offer may improve the existing process.

Finding 5; Recommendation 10: DEQ management should determine whether staffing levels are sufficient to provide quality services, and if not, request funding to hire additional staff.

Response: DEQ agrees with this recommendation. DEQ will analyze positions within the department and consider moving staff in the most appropriate divisions to meet the requirements of the agency. While we appreciate the recommendation to request additional positions for the

agency, given the current funding position of the agency and the state, the ability to obtain more positions may not be feasible at this time.

Finding 5; Recommendation 11: DEQ management should continue to work towards the development and implementation of a comprehensive data system that can provide adequate management reporting.

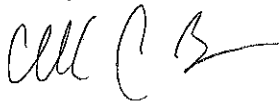
Response: DEQ agrees with this recommendation. DEQ's current data system, Advantage RM, is capable of tracking the Department's activities; however, the number of employees who are able to use the tools/software required to develop and run reports from the data contained in Advantage RM is limited. DEQ is in the process of developing software which will allow additional Enforcement Division and Legal Affairs Division staff to develop and run reports to ensure referrals are addressed in a timely and efficient manner. This software is currently under development with the DEQ's IT Division.

The Legal Affairs Division would like to clarify that regulations are not currently being drafted to allow/require electronic reporting for Title V and/or other air quality reports. However, DEQ is in the process of drafting regulations regarding improving Title V reporting, and is also in the process of pursuing development of a system which will allow facilities to electronically file Title V and/or other Air quality reports. This system will be integrated with Advantage RM and will automate and improve many functions related to reviewing and processing the reports.

Furthermore, and as previously discussed in the responses to Recommendations 3 and 7, certain issues with data accuracy and completeness have already been identified by DEQ. Efforts to resolve these issues and implement processes to ensure data accuracy are underway. The new software under development will allow Enforcement Division management to more frequently monitor the completeness and accuracy of this data entry. DEQ will continue pursuing the development and implementation of software to provide improved reporting and tracking.

As always, we appreciate the assistance of the LLA and will continue to look for ways to optimize DEQ's air quality monitoring and enforcement processes to provide for a better environment for current and future citizens of Louisiana. We look forward to your continued assistance in this endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chuck Carr Brown'.

Chuck Carr Brown, Ph.D.
Secretary