



Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

Official Audit Report – Issued June 15, 2020

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## Department of Environmental Protection

For the period July 1, 2017 through June 30, 2019





Commonwealth of Massachusetts  
Office of the State Auditor  
Suzanne M. Bump

*Making government work better*

June 15, 2020

Mr. Martin Suuberg, Commissioner  
Department of Environmental Protection  
1 Winter Street, Second Floor  
Boston, MA 02108

Dear Mr. Suuberg:

I am pleased to provide this performance audit of the Department of Environmental Protection. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2017 through June 30, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Department of Environmental Protection for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump  
Auditor of the Commonwealth

cc: Ms. Kathleen A. Theoharides, Secretary, Executive Office of Energy and Environmental Affairs

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## LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
CWA	Clean Water Act
EEA	Executive Office of Energy and Environmental Affairs
EPA	United States Environmental Protection Agency
DEP	Department of Environmental Protection
OSA	Office of the State Auditor
QAPP	quality assurance program plan
TMDL	total maximum daily load
TUR	toxics use reduction
TURA	Toxics Use Reduction Act
WPP	Watershed Planning Program

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## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Environmental Protection (DEP) for the period July 1, 2017 through June 30, 2019. In this performance audit, we examined DEP's compliance with the Massachusetts Toxics Use Reduction Act, including the proper submission of toxics use reports and plan summaries, as well as the quality assurance program plan related to the DEP Division of Watershed Management's Watershed Planning Program and its requirements for submitting reports to the United States Environmental Protection Agency (EPA) as required by the federal Clean Water Act.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">8</a></b>	DEP did not submit reports on surface water quality data or make these data available online.
<b>Recommendations</b> <b>Page <a href="#">9</a></b>	<ol style="list-style-type: none"><li>1. DEP should reevaluate its data collection and processing methods to reduce time taken in performing manual processes, particularly data entry.</li><li>2. DEP should work to validate surface water quality information, use the information to compile an Integrated List of Waters Report and submit it to EPA on time, and upload the data within required timeframes, even in periods of employee turnover and changes in information systems.</li><li>3. DEP should consider using sources other than state-run laboratory services to test data samples.</li><li>4. DEP should consider using information from external sources that has been collected and reported in a valid manner.</li><li>5. DEP should finish implementing its new surface water quality database.</li></ol>
<b>Finding 2</b> <b>Page <a href="#">12</a></b>	DEP did not ensure that all users of toxic substances, or toxics, filed biennial toxics use reduction plan summaries and annual toxics use reports.
<b>Recommendations</b> <b>Page <a href="#">13</a></b>	<ol style="list-style-type: none"><li>1. DEP should develop policies and procedures regarding its process to ensure that toxics users have filed the required reports and plans.</li><li>2. DEP should establish monitoring controls to ensure that these policies and procedures are followed.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

The Department of Environmental Protection (DEP) was established by Section 7 of Chapter 21A of the Massachusetts General Laws as a subdivision of the Executive Office of Energy and Environmental Affairs (EEA). DEP is the guarantor of the people’s right, under Article 97 of the Massachusetts constitution, to “clean air and water” and “the natural scenic, historic, and esthetic qualities of their environment.” According to its program plan and performance partnership agreement with the United States Environmental Protection Agency (EPA) for federal fiscal years 2016 through 2019,

*[DEP’s] mission is to protect and enhance the Commonwealth’s natural resources—air, water, land; to provide for the health, safety, welfare and enjoyment of the people and the protection of their property; and to advance environmental protection and sustainable economic development.*

Also, DEP’s website states,

*[DEP] ensures clean air, land and water. We oversee the safe management and recycling of solid and hazardous wastes. We ensure the timely cleanup of hazardous waste sites and spills. And we work to preserve the state’s wetlands and coastal resources.*

EPA administers federal laws and regulations similar to those DEP administers, but it delegates much of its enforcement authority in Massachusetts to DEP.

DEP operates from a central office in Boston and four regional offices in Springfield, Worcester, Wilmington, and Lakeville, as well as a state laboratory in Lawrence. As of the end of our audit period, DEP had approximately 700 full-time-equivalent employees working with local communities to protect the environment. During fiscal years 2018 and 2019, DEP received state appropriations totaling \$51,799,826 and \$57,539,138, respectively.

### Massachusetts Toxics Use Reduction Act

The Massachusetts Toxics Use Reduction Act (TURA) was enacted in 1989 under Chapter 21I of the General Laws as a way to reduce the use of toxics in an effort to improve public health and the environment through a more economical use of these materials. TURA requires certain facilities that manufacture, process, or otherwise use listed toxics<sup>1</sup> in their operations, at levels that exceed specific thresholds, to file annual toxics use reports detailing their management of toxics and to undergo a

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1. Listed toxics are substances that have been designated as toxic in certain federal laws (Section 313 of the Emergency Planning and Community Right-to-Know Act and the Comprehensive Environmental Response, Compensation, and Liability Act) and have not been delisted by the Massachusetts Administrative Council on Toxics Use Reduction.

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planning process to identify opportunities for toxics use reduction (TUR). According to EEA’s website, “The Administrative Council [on TUR] is the governing body of the TURA program and is responsible for program policy oversight.” The chairperson of this council is the Secretary of Energy and Environmental Affairs. DEP administers Massachusetts’s TURA program, whose duties include collecting chemical use information and other data submitted by toxics users, providing compliance guidance to toxics users, certifying TUR planners,<sup>2</sup> and taking enforcement actions for noncompliance.

Toxics users that are subject to TURA are required to prepare a toxics use report for DEP every year, pay the annual toxics use fee<sup>3</sup> calculated based on toxics use, develop an initial TUR plan the next even-numbered year after filing the report, update the TUR plan every two years thereafter, and submit a summary of each document to DEP. Alternatively, users may prepare a resource conservation plan or implement an environmental management system after they complete the initial TUR plan and two TUR plan updates. Failure to file annual reports, develop plans, or pay toxics use fees can result in DEP enforcement action, including fines.

### **Watershed Planning Program—Quality Assurance Program Plan**

DEP’s Division of Watershed Management maintains the Watershed Planning Program (WPP), which conducts surface water<sup>4</sup> quality monitoring. DEP prepares a five-year quality assurance program plan (QAPP) for WPP; the plan is approved by EPA. According to DEP’s website,

*The QAPP documents the elements of WPP’s monitoring program, including goals and objectives, sampling designs, data quality objectives, sampling logistics, equipment used, training provided, quality control sampling, documentation, data validation and management, corrective actions, and data reporting. In addition to this overarching QAPP, individual Sampling and Analysis Plans (SAPs) are prepared annually for each monitoring project within the five-year approval period. Standard Operating Procedure (SOP) documents are also maintained for all field and laboratory operations and are revised as needed to reflect any changes in methodologies.*

WPP’s QAPP for 2015–2019 documents DEP’s plan for testing Massachusetts lakes and ponds based on random sampling, referred to as a probabilistic sampling design. Under the plan, each year from 2015

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2. TUR planners certify that each plan submitted by a toxics user meets the requirements of Section 50.40 of Title 310 of the Code of Massachusetts Regulations and identifies and evaluates options for TUR. Planners are certified by DEP to ensure competence through sufficient education and work experience. They must also complete a TUR planning program; pass a uniform certification examination; and, to maintain certification, earn continuing education credits related to TUR activities.
  3. This fee is calculated using the number of employees and number of listed chemicals manufactured, processed, or used during the filing year.
  4. Surface waters are aboveground water bodies, such as rivers, lakes, and wetlands, as opposed to groundwater, which is underground.

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through 2019, a different geographic region of the state would be tested. DEP would design its sampling process, acquire samples to be tested, have them tested, validate the test results through documented quality control procedures, and assess the results to determine whether waters were impaired<sup>5</sup> or were usable for their designated purposes.

Two of WPP's 2015–2019 QAPP program goals were related to the federal Clean Water Act (CWA) and our audit objective. The first goal is as follows:

- *Collect chemical, physical and biological data to assess the degree to which designated uses (such as primary and secondary contact recreation, fish consumption, aquatic life use and aesthetics) are being met in waters of the Commonwealth (CWA 305[b] purposes).*

The second related program goal, which discusses total maximum daily load (TMDL) implementation plans,<sup>6</sup> is as follows:

- *To support the analysis and development of TMDL implementation plans to reduce pollutant loads that contribute to water quality violations and impairments (CWA 303[d] purposes).*

Additional program goals include the following, according to the 2015–2019 QAPP:

- *Screen fish in selected waterbodies for fish tissue contaminants . . . to provide for public health risk assessment.*
- *Locate pollution sources and work to promote and facilitate timely correction. . . .*
- *Collect water quality data to enable the determination of water quality trends in parameter concentrations and/or loads.*
- *Develop new or revised water quality standards. . . .*
- *Measure the effectiveness of water quality management projects or programs.*

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5. Impaired waters are waters that do not meet water quality standards for their classifications and intended uses.

6. DEP's website states, "A TMDL is a calculation of the highest amount of a pollutant that a water body can take in and still meet standards for healthy systems. The federal Clean Water Act requires states to identify water bodies that do not meet these standards and develop TMDLs for them." Implementation plans are prepared by DEP to track, monitor, and evaluate processes intended to meet TMDL targets.



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## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Environmental Protection (DEP) for the period July 1, 2017 through June 30, 2019.

We conducted this performance audit 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.

Below is a list of our audit objectives, indicating each question we intended our audit to answer, the conclusion we reached regarding each objective, and where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did DEP ensure that annual reports and certified biennial plans were submitted on time by all companies that were required to submit them under the Massachusetts Toxics Use Reduction Act (TURA)?	No; see Finding <u>2</u>
2. Did DEP comply with the requirements of Sections 106, 303(d), and 305(b) of the Clean Water Act (CWA) to report biennially on the impairment of waters and elimination of pollutants and to report annually on water quality information?	No; see Finding <u>1</u>

To achieve our audit objectives, we gained an understanding of the internal controls we determined to be relevant to our audit objectives by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting interviews with DEP's staff and management.

Additionally, we performed the procedures described below.

### Data Reliability

We assessed the reliability of the data obtained from the eDEP system;<sup>7</sup> the assessment included interviewing knowledgeable personnel at the Executive Office of Energy and Environmental Affairs and DEP about the system and testing the data for duplicate records and report dates outside our audit

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7. eDEP is DEP's online filing system used by the public to submit reports, certifications, data, and permits to DEP.

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period. We tested eDEP's controls, which included security management and access control, and determined whether configuration management and contingency planning policies were in place during the audit period.

As a result of our data reliability analysis and information system control testing, we found that the data in eDEP were reliable for the purposes of our audit objectives.

## **TURA**

From eDEP, we obtained all plan and report submissions to DEP for reporting years 2016 and 2017. With these data, we performed the following tests:

- We selected a nonstatistical, judgmental sample of 60 toxics use reduction (TUR) reports for reporting years 2016 and 2017 from a population of 938. We reviewed the reports to ensure the following:
  - that each report was filed by July 1 of the following year under Section 50.32(1) of Title 310 of the Code of Massachusetts Regulations (CMR)
  - that each report contained one completed Form S, required under 310 CMR 50.32(11), and one completed Form R or A, whichever was required under the same regulation.
- We selected a nonstatistical, random sample of 40 biennial TUR plans from a population of 433. We reviewed whether each plan was approved by a certified TUR planner as required by 310 CMR 50.42(3).
- We tested whether all facilities that submitted TUR reports for reporting year 2016 also submitted reports for reporting year 2017. If a 2017 TUR report was not on file for a facility, we reviewed DEP's supporting documentation that substantiated that a filing was not necessary for reporting year 2017.
- We tested whether all facilities that submitted TUR reports for reporting year 2017 also submitted the required biennial TUR plan summaries during 2017 under 310 CMR 50.47. If a facility did not submit the required biennial TUR plan summary during 2017, we determined whether DEP detected the lack of filing and whether it attempted to ascertain why no report was filed in 2017.

When sampling, we used a nonstatistical sampling method, whose results we could not project to the entire population.

## **Watershed Planning Program—Quality Assurance Program Plan**

To determine whether DEP complied with the reporting requirements of Sections 305(b) and 303(d) of the CWA, we requested from DEP a copy of its 2018 Integrated List of Waters Report (submitted to the

United States Environmental Protection Agency [EPA], which refers to it as an Integrated Report) to verify that the report complied with EPA requirements and was submitted in a timely manner.

To determine whether DEP complied with the reporting requirements of Section 106 of the CWA, we requested DEP's 2018 annual updated submission of water quality data to the Water Quality Exchange network.<sup>8</sup>

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8. The Water Quality Exchange is the portal on EPA's website that states use to submit water monitoring data to EPA.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### **1. The Department of Environmental Protection did not submit reports on surface water quality data or make these data available online.**

At the time of our audit, the Department of Environmental Protection (DEP) had not filed a 2018 Integrated List of Waters Report with the United States Environmental Protection Agency (EPA), which was originally due April 1, 2018. The Integrated List of Waters Report assesses whether surface waters across the Commonwealth were impaired or were available for their designated uses. Also, DEP's 2016 Integrated List of Waters Report, originally due in April 2016, was not finalized until December 2019 or approved by EPA until January 2020.

Additionally, DEP did not make available, through either its Integrated List of Waters Report or the Water Quality Exchange on EPA's website, water quality testing data it gathered from 2015 onward.

As a result, DEP is not providing EPA and the public with the information necessary to determine whether Massachusetts watersheds are impaired or are safe for their designated uses.

#### **Authoritative Guidance**

Section 305(b) of the Clean Water Act (CWA) requires each state to report to EPA, every two years, a description of its water quality, an analysis of the status of its waters for their designated uses, and the extent to which pollutants need to be eliminated so that water is suitable for its designated use.

Also every two years, Section 303(d) of the CWA requires each state to identify water bodies that are impaired by pollutants and report this information to EPA. For each water body identified, the state must determine the total maximum daily load of a pollutant that may enter a water body without violating water quality standards for the water's intended use.

States are required to submit the above information in their Integrated Reports.

Additionally, Section 106 of the CWA details water monitoring requirements that the states must meet in order to receive grant funding from EPA for their water monitoring and assessment programs. Specifically, Section 106(e) of the CWA requires states to annually update water quality information related to water bodies that was used to fulfill the Integrated Report requirements of Section 305(b) of the CWA.

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## Reasons for Issue

DEP officials told us that the agency could not conduct timely quality control in order to file reports on time or publish data because it sometimes experienced delays in obtaining results from its laboratory to review and validate. They also stated that the manual processes of using hard copies to record data and accurately report them in the computer system resulted in slow processing of water quality data after results were received. Also, a key quality assurance position at DEP was left unfilled for approximately four years (from June 2015 through March 2019), which affected the completion of reports and publication of data.

Additionally, DEP officials told us that delays in reporting updated water quality data were caused in part by DEP's implementation of a new database to report surface water quality data, which is still in process.

## Recommendations

1. DEP should reevaluate its data collection and processing methods to reduce time taken in performing manual processes, particularly data entry.
2. DEP should work to validate surface water quality information, use the information to compile the Integrated List of Waters Report and submit it to EPA on time, and upload the data within required timeframes, even in periods of employee turnover and changes in information systems.
3. DEP should consider using sources other than state-run laboratory services to test data samples.
4. DEP should consider using information from external sources that has been collected and reported in a valid manner.
5. DEP should finish implementing its new surface water quality database.

## Auditee's Response

*The finding is inaccurate as written, as MassDEP does complete and submit all required reports of water quality data to EPA and makes the validated data available online. As detailed below, MassDEP's efforts to ensure that data are fully validated in accordance with federal regulations and reports are scientifically accurate and useful has resulted in reporting delays. Accordingly, like many other states, Massachusetts has not met the Clean Water Act ("CWA") deadlines for reporting, a fact that is well known to MassDEP, stakeholders who use water quality data, and EPA. Consistent with EPA's guidance, MassDEP has clearly communicated to EPA its intent to combine the 2018 Integrated Report (IR) with the 2020 Integrated Report to re-align with the two-year reporting schedule as set forth in the statute. . . .*

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*Ensuring that our submission of Integrated Reports ("IRs") to EPA under CWA Sections 303(d) and 305(b) is accomplished in a timely and efficient manner while not compromising our obligations to provide the public with scientifically sound, accurate, and useful information on the status of the Commonwealth's waters has been and continues to be a high priority of MassDEP Watershed Planning Program (WPP). Last September, MassDEP established a plan, entitled Plan to Eliminate WPP's Data Validation Backlog (2016–2019 Water Quality Data) ("Plan"), which sets forth the steps MassDEP is taking and an estimated schedule for eliminating WPP's data validation backlog for water quality data. MassDEP's goal is to complete data validation for all 2017 and 2018 datasets by June 2020, and for 2019 data by Fall 2020. WPP is currently on track to meet these timelines. The Auditor's recommendations are generally consistent with the Plan and MassDEP will consider whether those recommendations make additional updates to the Plan appropriate.*

*Many factors contributed to MassDEP's delay in finalizing its 2016 IR:*

- *Following the completion of the 2014 reporting cycle, MassDEP made a policy decision in response to EPA Region 1 and stakeholder input to utilize available data to complete comprehensive statewide (i.e., all watersheds) assessments of the shellfish harvesting, primary and secondary contact recreation, and aesthetics uses, as well as the assessments of the aquatic life use for 15 watersheds for the 2016 reporting cycle. This represented the largest scope of assessments ever undertaken by MassDEP in any previous reporting cycle, and as a result took longer to complete.*
- *At the same time, MassDEP made substantial improvements to specific processes by which water body assessment decisions are made. Each of these improvements required a significant investment of human resources. Improvements include:*
  - *Compliance with a new EPA mandate to transition to its new Assessment Total Maximum Daily Load (TMDL) Tracking and Implementation System (ATTAINS) database for the 2016 assessment and listing cycle. This required MassDEP to reassign its WPP staff from other duties to assist with the complete transfer of all of MassDEP's assessment and listing decisions from the Assessment Database (ADB) to ATTAINS.*
  - *Commencing with the 2016 IR, MassDEP vastly expanded the amount of data it relies on to include water quality data collected by outside groups (e.g., quality-assured volunteer monitoring data) rather than rely solely on WPP-collected data. Extensive reviews of non-WPP data, including a significant volume of new data submitted during the public comment period, were conducted by WPP staff to determine data validity and potential usefulness of these data for 2016 IR decisions.*
  - *MassDEP undertook the first major revision to the Massachusetts Consolidated Assessment and Listing Methodology (CALM) Guidance Manual. The CALM describes the procedures by which MassDEP analyzes data and makes assessment decisions. The 2016 CALM provided for the documentation and submittal to MassDEP of external data from nongovernmental sources that sought to have their data considered for use in assessing and listing waters, amongst other things.*
- *Due to the number of use assessments conducted and Category 5 de-listings proposed for the 2016 IR, the review and approval process was prolonged. The draft 2016 IR was submitted for public review and comment in August 2017 (with an extended 60-day*

*comment period instead of 30 days). MassDEP received 16 significant public comment letter submittals (many including submitted data to support the comments), as well as substantive comments from EPA on the proposed de-listings (from Category 5 requiring a TMDL to another category). Because the listing and de-listing process takes into consideration multiple lines of evidence that lend themselves to differing conclusions, MassDEP needed to devote significant resources to respond to each of the comments, and it worked closely with EPA in the process.*

- *Furthermore, during the review process, there were staffing changes at EPA that contributed to a delay in completing the review process. Based on submitted comments, MassDEP made changes to the assessment decisions and ATTAINS where appropriate and generated the Response to Comments (RTC) document. MassDEP worked closely with EPA for an extended period of time to resolve its concerns and incorporate the final decisions into the RTC.*

*On balance, MassDEP concluded that, while we seek to complete the reports as expeditiously as possible, the extra time we took on the 2016 IR was important to providing the public with scientifically sound and accurate information on the status of the Commonwealth's waters. MassDEP's own review of the factors leading to delays in the 2016 IR resulted in the September 2019 Plan, which MassDEP expects will resolve the data backlog on the schedule set out in the Plan, as updated.*

## **Auditor's Reply**

As noted above, the Office of the State Auditor (OSA) found problems with DEP's communication/reporting of water quality information during the audit period, including not filing a 2018 Integrated List of Waters Report with EPA; not finalizing its 2016 Integrated List of Waters Report, originally due in April 2016, until December 2019; and not making available, through either its Integrated List of Waters Report or the Water Quality Exchange on EPA's website, water quality testing data it gathered from 2015 onward. These facts are not disputed by DEP in its response; thus the information in this audit finding is accurate.

OSA agrees with DEP that providing the public with scientifically sound, accurate, and useful information on the status of the Commonwealth's waters should be a high priority for DEP. We also acknowledge that DEP encountered significant obstacles in collecting the data necessary to produce and file reports within the established timelines. Further, we are aware that DEP communicated to EPA its intent to combine the 2018 Integrated List of Waters Report with the 2020 Integrated List of Waters Report and to realign with EPA's two-year reporting schedule. Although we believe it was prudent of DEP to work with EPA on these matters, we do not think this mitigates the fact that there were opportunities, as reflected in our audit recommendations, for DEP to manage this process more effectively and produce these reports in a timelier manner. We believe it is important for DEP to ensure that the water quality

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information that it collects and submits to EPA and publishes on its website is accurate. In order for this information to be as useful as possible, it is equally important that the collection and communication of this information be current and timely.

Based on its response, DEP is taking measures to address the issues OSA identified by developing a plan to eliminate its data validation backlog, which will allow DEP to file its Integrated List of Waters Reports on time. We again urge DEP to consider integrating all of our recommendations into its plan, as we believe they will allow DEP to manage this process more effectively and efficiently.

## **2. DEP did not ensure that all toxics users filed biennial toxics use reduction plan summaries and annual toxics use reports.**

DEP, which is responsible for enforcing the Massachusetts Toxics Use Reduction Act (TURA), did not ensure that all toxics users submitted complete annual toxics use reports and biennial toxics use reduction (TUR) plan summaries. We obtained the entire population of TUR plans and toxics use reports filed for reporting years 2016 and 2017, which were due during our audit period. We compared the list of plan filings by each company against report filings and identified two instances, not investigated by DEP, where a TUR plan summary was not fully completed for the 2017 reporting cycle. (In both instances, one of the components of the TUR plan summary was submitted incomplete.)

Additionally, we identified two instances where a toxics user filed a toxics use report for the 2016 reporting cycle but not for 2017. DEP attempted to contact each toxics user twice but received no response and did not confirm with the toxics users that they were not required to file the reports.

Without ensuring compliance with TURA, DEP cannot be certain that all toxics users in the Commonwealth are working toward and promoting TUR in their workplaces.

### **Authoritative Guidance**

Section 50 of Title 310 of the Code of Massachusetts Regulations (CMR) details the reporting requirements for toxics users. Specifically, 310 CMR 50.32(1) states,

*On or before July 1 of each year, toxics users shall submit a toxics use report including information associated with each covered toxic manufactured, processed, or otherwise used at a facility.*



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Additionally, 310 CMR 50.41(5) states,

*Toxics users shall complete plan updates every two years beginning with the date on which the initial plan is due.*

Further, 310 CMR 50.04 states,

*Any noncompliance with . . . any provision of 310 CMR 50.00 shall constitute a violation . . . for which [DEP] may take an enforcement action.*

Finally, Section 3 of Chapter 21I of the Massachusetts General Laws states that DEP has the authority to enforce the laws and regulations governing TURA, such as the above, to ensure that toxics users are working toward reducing toxics use:

*[DEP] shall ensure that, to the maximum extent practicable, any toxics user found to be violating any law or standard for which the department has enforcement jurisdiction shall practice toxics use reduction in order to come into compliance with the violated law or standard.*

## Reasons for Issue

DEP has inadequate policies, procedures, and other internal controls in place to ensure that all toxics users file the required reports and plans. DEP's management told us that they believed they were not required to follow any specific procedures to identify noncompliance.

## Recommendations

1. DEP should develop policies and procedures regarding its process to ensure that toxics users have filed the required reports and plans.
2. DEP should establish monitoring controls to ensure that these policies and procedures are followed.

## Auditee's Response

*MassDEP has a robust set of policies and procedures for ensuring compliance with required reporting and plan summary submittals. MassDEP has procedures in place for the toxic use reduction (TUR) program to receive, review and conduct [quality assurance / quality control] of required submittals, respond to deficiencies and issue enforcement. MassDEP was successful in ensuring compliance with toxics use planning and reporting requirements for the period under review, although we will endeavor to improve the system and procedures even more. MassDEP agrees that a central internal control document is necessary and is currently working on assembling all existing policies and procedures so these elements are readily accessible in one location.*

*A toxics user is not required to submit the toxics use reduction (TUR) plan itself to MassDEP, but is required to biennially submit an electronic form, that consists of three components, to*

*document that a TUR plan was completed. G.L. c. 21I, §11(F); 310 CMR 50.41(4) and 50.47. These components are: (1) the Plan Summary Submittal Selection Form; (2) a TUR Plan Summary Form for each chemical (system generated form based on Selection Form); and (3) a TUR Plan Summary Certification signed by the Toxic Use Reduction Planner and a Senior Management Official of the company. 310 CMR 50.47(1).*

*The Auditor identified two companies for which a TUR plan summary was not completed for the 2017 reporting cycle. MassDEP's E-DEP filing system is designed with functionality to prevent a submittal if all three components of a plan summary are not complete. For these two companies, due to an undetermined system error, only two (Plan Summary Submittal Selection Form and TUR Plan Summary Certification) of the three components were received. In both instances, the missing component (TUR Plan Summary Form) is a system-generated form for each chemical listed. As this appears to be a technology issue, MassDEP, with the Executive Office of Energy and Environmental Affairs Information Technology Unit, is investigating why the TUR Plan Summary Form was not generated for these two companies, out of 433 filers in 2017. Until this system issue is resolved, the program is going to institute an additional staff review of plan submittal documentation to identify any incomplete Plan Summary Forms. Nonetheless, for the period under review, 99.5% of submitted forms were accurate and complete. For the two companies whose forms were missing a field, MassDEP has confirmed that the facility plans were updated as of 2017.*

*Additionally, the audit report notes (without further identification) "two instances where a toxics user filed a toxics use report for the 2016 reporting cycle but not for 2017. DEP attempted to contact each toxics user twice but received no response and did not confirm that the toxics users were not required to file the reports." During the audit, the Auditor identified 29 companies that filed TUR reports in 2016 but were not among the 433 filers in 2017. MassDEP had in fact investigated those 29 companies and confirmed by phone and email contact that 27 were not subject to the TUR program filing due to either the closure of the facility or the fact that the facility's usage of reportable chemicals fell below TUR program thresholds. For the two cited in the report, MassDEP reached out through phone and email and did not receive a response. Internet research regarding the companies' status, including corporate filings on the Secretary of the Commonwealth's website, did not yield any information on the status of the two filers. MassDEP will undertake additional measures to confirm filer status, including physical visits to such facilities either by MassDEP staff or in cooperation with local authorities, when an existing filer fails to file a new report and the agency is unable to otherwise confirm the reason.*

## **Auditor's Reply**

Although OSA observed that DEP had a process in place for ensuring that toxics users filed required reports and plans, DEP did not provide OSA with any written policies and procedures regarding this process or any documentation to substantiate that it had established other essential controls, such as monitoring controls, to ensure that the process was consistently followed.

OSA found two instances during the audit period where a TUR plan summary was not fully completed for the 2017 reporting cycle. OSA acknowledges that this represents a small percentage of the summaries filed during this cycle, but believes that since these reports relate to a public safety activity, any issues of noncompliance should be brought to DEP management's attention. Based on DEP's response, our audit work in this area was beneficial to DEP, as it indicated that it will investigate, and presumably be able to resolve, this technology issue.

As noted above, during our audit, OSA also found two instances of toxics users filing annual reports in 2016, but not in 2017, that DEP did not properly investigate during its quality assurance process. We acknowledge that DEP attempted to contact both of these users, but we believe that due diligence would have required DEP to continue to investigate and definitively determine why the users failed to file the reports.

Based on its response, DEP is taking measures to address our concerns in this area.