

OFFICE OF THE STATE AUDITOR

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# DIANA DIZOGLIO

Official Audit Report – Issued June 16, 2025

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## Devens Enterprise Commission

For the period July 1, 2021 through June 30, 2023



OFFICE OF THE STATE AUDITOR 

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# DIANA DIZOGLIO

June 16, 2025

William P. Marshall, Chair  
Devens Enterprise Commission  
33 Andrews Parkway  
Devens, MA 01434

Dear Mr. Marshall:

I am pleased to provide to you the results of the enclosed performance audit of the Devens Enterprise Commission. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2021 through June 30, 2023. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Devens Enterprise Commission. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team has any questions.

Best regards,



Diana DiZoglio  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
DEC	Devens Enterprise Commission
DHCD	Department of Housing and Community Development
DPH	Department of Public Health
MCD	Metro West Collaborative Development
MEMA	Massachusetts Emergency Management Agency
NABH	Nashoba Associated Boards of Health

## 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 Devens Enterprise Commission (DEC) for the period July 1, 2021 through June 30, 2023.

The purpose of our audit was to determine the following:

- To what extent did DEC oversee and manage affordable housing units in the Devens Regional Enterprise Zone, referred to in this report as Devens, including compliance with the affordable housing percentages outlined in Section 5.01(4)(c)(1) of Title 974 of the Code of Massachusetts Regulations?
- To what extent did DEC ensure that public health inspections occurred, and that it tracked and followed up on failed inspections, specifically inspections regarding food safety, beach water quality, sewage trucks, hazardous material spillage, and stormwater runoff, in accordance with Section 22 of Chapter 498 of the Acts of 1993?
- What role did DEC play in the assessment of the Devens Community Center for safe occupancy and arrangement for use as a temporary emergency shelter in 2022? Did DEC maintain a continuing role during the building's use?

Below is a summary of our findings, the effects of those findings, and our recommendations, with hyperlinks to each page listed.

<b>Finding 1</b> <b>Page <a href="#">17</a></b>	DEC did not have a written contract with the Nashoba Associated Boards of Health (NABH), as required by Section 22 of Chapter 498 of the Acts of 1993.
<b>Effect</b>	Without a written contract in place, several possible outcomes could occur, including the following: <ul style="list-style-type: none"><li>• NABH could overlook performing services that it verbally agreed to perform, or it could perform at a substandard level, potentially impacting the health and safety of Devens residents and businesses.</li><li>• NABH could overcharge DEC, which could lead to DEC's inability to provide other services to Devens residents and businesses.</li><li>• A dispute between DEC and NABH could result in a cessation of services, which would negatively impact DEC and those it serves. Alternatively, it could result in costly litigation, which would negatively impact DEC's finances and could lead to DEC's inability to provide other services to Devens residents and businesses.</li></ul>
<b>Recommendation</b> <b>Page <a href="#">18</a></b>	DEC management should develop and execute a contract with NABH that details the services provided for Devens, as well as oversight responsibilities, the payment schedule, performance expectations, and penalties for not fulfilling the conditions of the contract.
<b>Finding 2</b> <b>Page <a href="#">18</a></b>	DEC was not able to provide evidence that all food inspections were performed by NABH, as required by Section 22 of Chapter 498 of the Acts of 1993.

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<b>Effect</b>	If DEC does not receive all documentation related to food inspections, then it cannot ensure that inspections are performed, that businesses acknowledge receipt of inspection, and that NABH completes follow-up inspections or monitored instances of repeat noncompliance. Without ensuring these things, DEC may not know whether businesses are in compliance with state food sanitation standards, leading to a higher-than-acceptable risk that individuals may be exposed to food- or pest-borne illnesses or other potential health risks.
<b>Recommendations</b> <b>Page <u>20</u></b>	<ol style="list-style-type: none"><li>1. DEC should maintain a log of food safety inspections to ensure that all required inspections, both annual and follow-up inspections, have occurred and that it receives copies of these inspection reports.</li><li>2. DEC should work with NABH to monitor and resolve all instances of noncompliance and ensure that all businesses acknowledge receipt of the inspections.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

The Devens Enterprise Commission (DEC) was created by Chapter 498 of the Acts of 1993 and is the local regulatory and permit-granting authority for Devens, which includes areas of Ayer, Harvard, and Shirley.

DEC is administered by 12 commissioners who are appointed by the Governor, 6 of whom are nominated by the select boards from the towns of Ayer, Harvard, and Shirley (2 commissioners from each town). Chapter 498 of the Acts of 1993 also allows for a total of four associate commissioners to be appointed by the Governor—one nominated by the Governor and three nominated by the select boards of the three towns. Section 9 of Chapter 498 of the Acts of 1993 states that all the commissioners “shall have proven expertise in one or more of the following areas: industrial development, housing, finance, business, real estate, environment, planning, transportation or municipal government.”

Devens was created to help provide an orderly and expeditious conversion and development of approximately 4,400 acres that were a portion of a former federal military base, Fort Devens,<sup>1</sup> into a nonmilitary-use area. According to the Devens Reuse Plan,

*[Chapter 498 of the Acts of 1993] provides for \$200 million in bonding capacity to fund the redevelopment effort, which is geared to creation of jobs and the protection of the towns from fiscal impacts that might occur if responsibility for the maintenance and redevelopment of Devens were returned immediately to the towns.*

Additionally, according to DEC’s independent auditors’ Report on Examination of Financial Statements, DEC reported the following revenue and expenses for fiscal years 2022 and 2023.

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1. Section 2 of Chapter 498 of the Acts of 1993 defines Fort Devens as “the lands, including all easements, reservations and rights appurtenant thereto, and all buildings, structures, utilities and improvements located thereon comprising all or portion of the military base of that name presently located in the towns of Ayer, Harvard, Lancaster and Shirley and within the ownership, control and jurisdiction of the United States government.”

### DEC Revenue

Revenues	Fiscal Year 2022	Fiscal Year 2023
Permits and Other Fees	\$ 956,909	\$2,102,441*
Taxes**	199,115	225,525
Operating Grants	53,768	27,036
Intergovernmental Grants	4,200	—
Miscellaneous	3,235	140
Investment Income	3,057	52,208
<b>Total</b>	<b><u>\$1,220,284</u></b>	<b><u>\$2,407,350</u></b>

\* Permits and other fees increased significantly in fiscal year 2023 because many projects were slowed or put on hold in previous years due to the COVID-19 pandemic.

\*\* Chapter 498 of the Acts of 1993 grants MassDevelopment the authority to assess and collect property taxes within Devens. Two percent of the tax collected by MassDevelopment is turned over to DEC to fund its operations.

### DEC Expenses

Expenses	Fiscal Year 2022	Fiscal Year 2023
Personnel	\$ 343,916	\$ 454,593
Nonpersonnel	585,883	512,998
Depreciation	1,305	1,207
<b>Total</b>	<b><u>\$ 931,104</u></b>	<b><u>\$ 968,798</u></b>

### Affordable Housing

Chapter 498 of the Acts of 1993 made the Massachusetts Government Land Bank (now MassDevelopment) exclusively responsible for acquisition, control, maintenance, and redevelopment of Devens. To provide for orderly development, a long-term (20- to 40-year) reuse plan and zoning bylaws<sup>2</sup> were developed by the Massachusetts Government Land Bank and the towns of Ayer, Harvard, and Shirley in November 1994. The reuse plan and zoning bylaws provided development goals and planned uses of the property and were passed at town meetings in the three towns, as required by Chapter 498 of the Acts of 1993. According to the Devens Reuse Plan,

*The Devens Reuse Plan provides a comprehensive framework and strategy to reuse the buildings, infrastructure, land and open space to produce jobs and environmental protection in the Devens Regional Enterprise Zone. The focus of the Reuse Plan is to capitalize on the unique attributes of*

2. According to the Devens zoning bylaws, “As provided in [Chapter 498 of the Acts of 1993], the By-Laws furnish the legal foundation and procedural structure for the implementation of the planning and reuse goals and objectives set forth in the Reuse Plan.”

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*Fort Devens to attract new businesses and to support existing industry clusters in the region. The scale of Devens and the magnitude of the challenge requires a long-term vision for the reuse, and a pragmatic, flexible Reuse Plan that can respond to the changes that may occur over the 20–40 year time frame to implement the Reuse Plan. . . .*

*In order to accommodate the needs of a broad range of income groups, and to ensure the stability of the residential core, approximately twenty-five [percent] (25%) of the 282 units to be reused or constructed under the Reuse Plan will be reserved for low and moderate income individuals or families, and/or special needs populations. It is recognized that the success of the residential reuse is dependent on a balance between market rate and the affordable/special needs populations.*

The reuse plan allows for a maximum of 282 units to be reused or constructed under the reuse plan. As of May 1, 2024,<sup>3</sup> there were 198 housing units constructed and occupied. Additionally, plans were in place to reuse or construct 72 more housing units, for a total of 270 units.

According to Section 5.01(4)(c) of Title 974 of the Code of Massachusetts Regulations (CMR),

*"Low-income" shall mean 80% or less of Median Income. "Moderate-income" shall mean 120% or less of Median Income. Median Income shall mean the median income of the Boston Metropolitan Statistical Area, as determined by the U.S. Department of Housing and Urban Development.*

DEC has worked with MassDevelopment and the towns of Ayer, Harvard, and Shirley to provide Devens with additional housing to be reused or constructed under the reuse plan. As of May 1, 2024, occupied housing developed under the reuse plan was as follows:

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3. DEC did not have a housing unit inventory available as of the end of the audit period; however, there were no affordable units created, sold, or unoccupied during the audit period.

Project	Total Number of Occupied Housing Units	Number of Market Rate Housing Units	Number of Low-Income Housing Units	Number of Moderate-Income Housing Units	Percentage of Affordable Housing Units*
Harvard Portion of Devens	75	62	13	0	17.3%
Ayer Portion of Devens	31	20	11	0	35.5%
Veterans Inc.**	14	0	14	0	100.0%
Energy-Efficient Single Homes-Harvard	8	8	0	0	0.0%
Energy-Efficient Townhomes-Harvard	12	12	0	0	0.0%
Grant Road Project-Harvard <sup>†</sup>	58	52	0	6	10.3%
<b>Total Residential Units</b>	<b><u>198</u></b>	<b><u>154</u></b>	<b><u>38</u></b>	<b><u>6</u></b>	<b><u>22.2%</u></b>

\* Affordable housing units comprise low-income and moderate-income units.

\*\* Seven of these units are in Harvard, and the other seven are in Ayer.

† As of May 1, 2024, 72 additional units were planned for Grant Road, 24 of which were to be affordable.

Devens, through DEC and MassDevelopment, is part of the Assabet Regional Housing Consortium, a local community housing consortium. This consortium includes Devens, as well as the towns of Bolton, Boxborough, Harvard, Hudson, Lancaster, Littleton, and Stow. On July 1, 2020, the Assabet Regional Housing Consortium contracted with the Metro West Collaborative Development (MCD)<sup>4</sup> to help share the services and costs of a regional affordable housing coordinator and to help the consortium comply with affordable housing requirements.

## Public Health Inspections

Section 22 of Chapter 498 of the Acts of 1993 established DEC’s responsibilities regarding public health inspections for Devens. Specifically, it states, “The Commission shall have the right to establish a department or contract for services for inspections relating to public health and safety and inspection services.”

At DEC, public health inspections fall into five main categories: food safety, beach water quality, sewage, hazardous material spillage, and stormwater runoff. DEC has an agreement with the Nashoba Associated Boards of Health (NABH) to manage food safety and beach water quality throughout Devens. As part of its responsibilities for food safety, NABH performs inspections of food service establishments in Devens

4. For this contract, the Assabet Regional Housing Consortium is represented by the town of Hudson because Hudson is the lead community in the consortium.

and sends copies of these inspections to DEC. Regarding beach water quality, NABH performs inspections for clarity, temperature, wave intensity, days since last rain, and potential sources of pollution. NABH sends water samples to a local laboratory for E. coli level analysis. NABH provides DEC with copies of the inspections and the E. coli level analysis.

DEC requires any company that plans to dispose of sewage at the Devens Wastewater Treatment Plant to apply for and obtain a permit annually. Before granting a permit, DEC inspects haulage trucks to ensure that (1) there are no visible signs of leakage from the tank, pumps, seal, or engine; (2) the spill kit (which consists of absorbent material and a bucket) is on hand; and (3) the fire extinguisher is fully charged. During the audit period, DEC granted 20 permits to nine companies.

Hazardous materials, including, but not limited to, fuel oil, liquid petroleum, and vegetable oil, are managed through both the initial permitting process and during business operations. During the initial permitting process, DEC is responsible, along with the Devens public safety officer,<sup>5</sup> for ensuring that the business owner and/or contractor considers proper storage of hazardous materials. DEC does not issue or renew occupancy permits until the Devens safety officer has inspected hazardous materials storage and handling. As part of business operations, the Devens Public Safety Officer is responsible for performing periodic inspections.

DEC requires stormwater-runoff monitoring during both construction and business operations. DEC is responsible for inspections during construction, and the organizations occupying the building are responsible for inspections after construction. The organizations are required to provide DEC with a copy of their annual self-inspections.

## **Temporary Emergency Shelter**

On November 22, 2022, the Office of the Governor announced plans for a temporary emergency shelter at the Bob Eisengrein Community Center in Devens. This was in response to increased demand on the Commonwealth's emergency assistance shelter system. The state agencies involved with this temporary shelter included the Massachusetts Emergency Management Agency (MEMA), the Department of Housing and Community Development (DHCD),<sup>6</sup> MassDevelopment, the Executive Office of Health and Human Services, the Executive Office of Public Safety and Security, the Department of Public Health, the

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5. The Devens public safety officer is also the Devens fire chief.

6. DHCD became the Executive Office of Housing and Livable Communities in 2023.

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Department of Mental Health, and the Department of Elementary and Secondary Education. MEMA and DHCD<sup>7</sup> were responsible for managing this temporary shelter and its operations. According to “DHCD’s FAQ: The Commonwealth’s Emergency Assistance Intake Centers at Devens,”

*MEMA will equip the Devens Community Center for this unique mission. Dedicated spaces include:*

- *The Multi-Agency Resource Center which contains meeting rooms with tables, chairs, and computers for housing and human service organizations providing case management, information, and registration for applicable services.*
- *Private space to facilitate necessary health and mental health assessments and services.*
- *The temporary family shelter to meet the basic safe shelter needs of approximately 60 families (125 individuals maximum).*

DEC was not responsible for the operation of the shelter. However, in order for MEMA to use the Bob Eisengrein Community Center, DEC’s director/land use administrator issued a Temporary Emergency Use Certificate of Occupancy to ensure compliance with 974 CMR and the ninth edition of the State Building Code 780 CMR. This certificate was issued for a maximum of 180 days and included the following nine conditions:

1. *The temporary emergency use certificate of occupancy, along with this letter, shall be conspicuously posted at the main entrance to the emergency in-take shelter.*
2. *A ledger shall be maintained within the space known as the Main Entrance containing an accurate number of guests, workers and volunteers on a nightly basis, and in addition the name and contact number of the Responsible Party on a nightly basis. Access to the ledger shall be available to inspectors/public safety officials upon request.*
3. *At time of activation, the head of the fire department shall be provided with a plan for assignment of personnel responsible for oversight of evacuation and the identification of the preferred and any alternative person responsible for reporting fires and other emergencies to the fire department.*
4. *The party responsible for the operation of the temporary shelter shall provide written notification to the Building Commissioner and Fire Chief at least 24 hours in advance of commencement of operation and within 24 hours after use of the emergency in-take shelter has ceased.*
5. *As this is a state-run emergency operation, the Massachusetts Emergency Management Agency, Department of Housing and Community Development, and MassDevelopment (landowner) shall be responsible for daily operations and inspections to ensure all public health*

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7. DHCD managed the shelter through Making Opportunities Count, a contracted shelter provider.

*and safety requirements are being met. Access to the temporary intake shelter for the purposes of ensuring compliance with 780 CMR- Ninth Edition, shall be granted upon request by the building commissioner, fire chief, Devens Enterprise Commission staff (board of health or its designee).*

- 6. Any food services providers must be licensed through the state and/or Nashoba Associated Boards of Health. Mobile food trucks operating in Devens must be permitted through the Nashoba Associated Boards of Health.*
- 7. The shower trailers associated with this use are temporary in nature and shall be removed no later than June 7, 2023. Any damage to the pavement or lawn areas shall be repaired. No tree removal is authorized as part of this approval.*
- 8. Copies of any Memorandums of Understanding and/or Inter-Agency Services Agreements between MassDevelopment and DHCD or MEMA, shall be provided to DEC.*
- 9. This approval also includes the temporary exterior improvements as shown on the 100 Sherman aerial/site plan file entitled: Exterior Setup for Devens.jpg, submitted . . . on 12/7/22. All temporary outdoor uses shall be located so as to minimize any potential nuisance conditions to nearby residents.*

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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 Devens Enterprise Commission (DEC) for the period July 1, 2021 through June 30, 2023.

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, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. To what extent did DEC oversee and manage affordable housing units in Devens, including compliance with the affordable housing percentages outlined in Section 5.01(4)(c)(1) of Title 974 of the Code of Massachusetts Regulations (CMR)?	<b>To a sufficient extent</b>
2. To what extent did DEC ensure that public health inspections occurred, and that it tracked and followed up on failed inspections, specifically inspections regarding food safety, beach water quality, sewage trucks, hazardous material spillage, and stormwater runoff, in accordance with Section 22 of Chapter 498 of the Acts of 1993?	<b>To some extent; see Findings <u>1</u> and <u>2</u></b>
3. What role did DEC play in the assessment of the Devens Community Center for safe occupancy and arrangement for use as a temporary emergency shelter in 2022? Did DEC maintain a continuing role during the building's use?	<b>Minimal role; see <u>Temporary Emergency Shelter</u></b>

To accomplish our audit objectives, we gained an understanding of the internal control environment relevant to our objectives by reviewing DEC's operating by-laws that were in place during the audit period and by interviewing DEC's director/land administrator. In addition, to obtain sufficient, appropriate evidence to address our audit objectives, we performed the procedures described below.

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## Affordable Housing Units

To determine to what extent DEC oversaw and managed affordable housing units in Devens, including compliance with the affordable housing percentages outlined in 974 CMR 5.01(4)(c)(1), we took the following actions:

- We recalculated the actual affordable housing percentage by using the Devens Housing Inventory, which included addresses, types of housing (market value, low income, moderate income), and housing statuses (built or to be constructed), from DEC's Devens Housing Affordability spreadsheet.<sup>8</sup> To calculate this percentage, we took the total number of affordable housing units and divided by the total number of housing units built or to be constructed.
- We reviewed minutes from all 15 meetings held between the Metro West Collaborative Development (MCD) and the Assabet Regional Housing Consortium for evidence that DEC provided oversight of MCD's work monitoring the affordable housing process.
- We performed a site visit and observed a judgmental, nonstatistical<sup>9</sup> sample<sup>10</sup> of 10 affordable housing units out of a population of 30 affordable housing units that were monitored by MCD to ensure that they were indistinguishable from surrounding market-value housing units and were located within Devens.
- In addition, using the above sample of 10 affordable housing units, we reviewed the following documents to assess their affordability eligibility: the property owners' Eligibility to Purchase certifications or Certificates of Compliance, signed deed restrictions, and copies of annual recertification (if applicable).

For this objective, we found no significant issues during our testing. Therefore, we concluded that, based on our testing, DEC appropriately oversaw and managed affordable housing units in Devens, including compliance with the affordable housing percentages outlined in 974 CMR 5.01(4)(c)(1).

## Public Health Inspections

To determine to what extent DEC ensured that public health inspections occurred, and that it tracked and followed up on failed inspections, specifically inspections regarding food safety, beach water quality, sewage trucks, hazardous material spillage, and stormwater runoff, in accordance with Section 22 of Chapter 498 of the Acts of 1993, we took the actions described below.

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8. DEC tracks Devens's compliance with 974 CMR 5.01(4)(c)(1) by using Microsoft Excel to calculate affordable housing unit percentages.
  9. Auditors use nonstatistical sampling to select items for audit testing when a population is very small, the population items are not similar enough, or there are specific items in the population that the auditors want to review.
  10. The sample was weighted to include eight housing units from 2004 and two from other years where housing units were newly constructed or buildings were renovated to allow occupancy. We selected eight housing units from 2004 because there were 24 affordable housing units eligible for occupancy that year.

## Food Safety

We obtained a list of the 13 food establishments in Devens during the audit period that DEC identified as requiring food inspections. We obtained 29 food inspection reports from the audit period for these 13 food establishments and examined the reports for results of the inspections (i.e., whether an inspector indicated that a follow-up was required, business acknowledgements of receipt of inspection, whether the follow-up inspection report was available, and whether identified noncompliance with food safety and sanitation regulations were resolved in the next inspection). In addition, for subsequent inspections of the same business, we calculated the days between inspections. This ranged from 52 to 554 days, with the average being 277.

## Beach Water Quality

We obtained from DEC and the Department of Public Health (DPH) the dates on which the Nashoba Associated Boards of Health (NABH) performed testing for Mirror Lake, the only public beach in Devens. We determined that, for the audit period, there were 22 weeks that the beach water quality needed testing, including E. coli levels, because of state mandates. We obtained information from DPH's [Environmental Public Health Tracking website](#) regarding weeks during which E. coli levels were reported to DPH.<sup>11</sup> We obtained copies of NABH's Beach Sampling Field Data reports (showing water clarity and sources of potential pollution) and the certificates of analysis (reporting E. coli levels) from DEC and compared the weeks of the reports that we received from DEC to the weeks reported to DPH. We examined 13 Beach Sampling Field Data reports and 19 Certificates of Analysis provided by DEC for results. All Beach Sampling Field Data reports provided by DEC showed that NABH checked the water quality and sources of potential pollution. All Certificates of Analysis provided to us by DEC, as well as the data from the DPH website, showed that E. coli levels were within normal ranges when Mirror Lake Beach was open during the audit period.

## Sewage Hauling

We obtained from DEC a list of sewage truck applications and permits issued by DEC. We reviewed the population of nine companies that applied for and received permits for 20 trucks to haul sewage to the Devens Wastewater Treatment Plant during the audit period. For each of the nine companies, we reviewed the permit, the application package, and the haulage company's acknowledgement of

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11. There was no DPH reported information for the week of August 14, 2022.

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the policies and procedures for the audit period (based on the dates of inspection). There were no failed inspections for sewage hauling during the audit period.

### **Spill Prevention**

We obtained a list of all six companies within Devens that DEC identified as requiring a Spill Prevention Control and Countermeasure Plan. We obtained copies of the Spill Prevention Control and Countermeasure Plans in place during the audit period for these businesses and noted the date each plan was issued or updated. We also obtained and examined copies of the permit cards that DEC required the Devens safety officer to complete before DEC issues a Certificate of Occupancy for the businesses that started their final inspections during the audit period. There were no failed inspections for spill prevention during the audit period.

### **Stormwater Pollution Prevention**

For stormwater runoff pollution prevention inspections related to construction, we examined the total population of 66 inspections completed during the audit period, documented through the Safety Culture Application, a web-based inspection software with various inspection templates, that DEC identified as public health–related or general construction inspections. The Safety Culture Application is only used on the DEC director/land use administrator’s smartphone. For inspections using the Project Inspection Template, which is a template in the Safety Culture Application with inspection questions, we reviewed the project inspection report line “Construction Stormwater Management” for DEC’s assessment of stormwater management. For inspections performed using the General Template, which is a template in the Safety Culture Application with inspection notes, comments, and pictures, we reviewed the DEC director’s notes for evidence of a stormwater runoff pollution prevention inspection.

For post-construction stormwater runoff pollution prevention self-inspections, we selected a random, nonstatistical sample of 35 businesses from the population of 106 businesses that were active in Devens during the audit period. DEC provided the self-inspection reports for calendar years 2021 and 2022 and a spreadsheet indicating which businesses in our sample completed self-inspections, which businesses did not complete self-inspections because of COVID-19, and which businesses completed inspections as part of a multiuse property. We verified that the entries in the spreadsheet matched the entries in our sample. We traced each business in our sample to the annual self-inspection reports

from each business for calendar years 2021 and 2022 and verified that the reports were submitted on time (which, in this case, means that DEC received it within 10 business days of October 31, the annual submission due date). We worked with DEC management to understand the actions that DEC took when inspections were received or performed after the annual submission due date. DEC said in an email to us on March 12, 2025, “So as long as we receive the report before December 31st, we typically do not fine, and the company is still in compliance as they have submitted within the calendar year.”

Based on the results of our testing, we determined that, during the audit period, DEC ensured that public health inspections regarding beach water quality, sewage trucks, hazardous material spillage, and stormwater runoff occurred in accordance with Section 22 of Chapter 498 of the Acts of 1993. See Findings [1](#) and [2](#) for more information regarding the results of our testing related to public health inspections for food safety.

### **Temporary Emergency Shelter**

To determine what role DEC played in the assessment of the Devens Community Center for safe occupancy and arrangement for use as a temporary emergency shelter in 2022 and whether DEC maintained a continuing role during the building’s use, we interviewed DEC’s director/land use administrator and examined documentation, including, but not limited to, communications between DEC and the Massachusetts Emergency Management Agency (MEMA), press releases from the Commonwealth, and news articles. DEC established nine conditions that needed to be met for DEC to issue a temporary Certificate of Occupancy for the Bob Eisengrein Community Center so that this center could be used as an Emergency Assistance Intake Center. We then evaluated whether MEMA, which was charged with managing the Emergency Assistance Intake Center, met the required conditions.

Based on the results of our testing, we determined that, during the audit period, MEMA met the nine conditions required by DEC. Beyond these nine conditions, DEC did not have any other role in the assessment of the Devens Community Center for safe occupancy and arrangement for use as a temporary emergency shelter in 2022.

We used nonstatistical sampling methods for testing, and therefore did not project the results of our testing to any populations.

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## Data Reliability Assessment

### Devens Housing Affordability Spreadsheet

DEC used Microsoft Excel to track the inventory of housing in Devens and to calculate the affordable housing percentage. To determine the reliability of DEC's Devens Housing Affordability spreadsheet, we interviewed DEC's director/land use administrator and compared the data on the Devens Housing Affordability spreadsheet to MCD's affordable housing spreadsheet (the Devens housing units monitored by MCD), the organization DEC hired to manage the affordable housing monitoring process.

Further, we analyzed the total population of 211 housing unit records from the audit period on the spreadsheet for duplicate records and blank fields. We reviewed the date field to ensure that all housing units were available for occupancy during or before the audit period. We selected a judgmental sample of 10 units, with the sample weighted to include 5 records from 2004<sup>12</sup> and 5 records from other years during which housing units were newly constructed or buildings were renovated to allow occupancy. We traced the dates on the spreadsheet to the occupancy dates on the Certificates of Occupancy. When the year in the date on a Certificate of Occupancy did not match the year in the date column on the Devens Affordable Housing spreadsheet, we worked with DEC management to resolve the reasons for the discrepancies.

### Safety Culture Application

DEC used the Safety Culture Application to record the results of inspections performed on Devens construction projects, chemical spills, and complaints (such as noise levels or trucks not on truck-route streets). To determine the reliability of the Safety Culture Application, we interviewed DEC's director/land use administrator and reviewed the vendor-provided System and Organization Control II report<sup>13</sup> for information system controls in place over the security, access, configuration, and contingency planning of the Safety Culture Application.

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12. For purposes of this audit, "records from 2004" means that the housing unit was redeveloped in 2001 and was sold and made available for occupancy between 2001 and 2004. DEC listed these records as 2004 for general tracking purposes. We included records from 2004 because 57% (120) of the total population of housing units from the audit period (211) were eligible for occupancy that year.

13. A System and Organization Control report, issued by an independent contractor, is a report on controls about a service organization's systems relevant to security, availability, processing integrity, confidentiality, or privacy.

Further, we performed a walkthrough of the Safety Culture Application with DEC's director/land use administrator because the Safety Culture Application was only used on his smartphone. During our walkthrough, we observed the following:

- the login process;
- examples of completed templates (completed inspections);
- how the user downloads an inspection report as a PDF file;
- the list of available templates;
- how the users share templates; and
- how in-progress and completed inspections are viewed.

In-progress and completed inspections are organized in the Safety Culture Application by date. In follow-up discussions after the walkthrough, we also obtained password requirements and session lock timing information.

## **Public Health Inspections**

To determine the reliability of the list of 106 businesses that were active in Devens during the audit period, we traced a sample of 13 businesses from the list provided to a list of businesses available on the Devens Community website.

We obtained lists from DEC of the 13 food establishments in Devens during the audit period that DEC identified as requiring food inspections; sewage truck permits issued by DEC; and six companies within Devens that DEC identified as requiring Spill Prevention Control and Countermeasure Plans. We relied on these lists because they were the only available sources of the data for our audit purposes.

Based on the results of the data reliability assessment procedures described above, we determined that the information we obtained was sufficiently reliable for the purposes of our audit.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Devens Enterprise Commission did not have a written contract with the Nashoba Associated Boards of Health, as required by Section 22 of Chapter 498 of the Acts of 1993.

The Devens Enterprise Commission (DEC) did not have a written contract with the Nashoba Associated Boards of Health (NABH) during the audit period. DEC has had an agreement with NABH since 2000 to provide services for Devens; however, this agreement was never formalized with a written contract.

Without a written contract in place, several possible outcomes could occur, including the following:

- NABH could overlook performing services that it verbally agreed to perform, or it could perform at a substandard level, potentially impacting the health and safety of Devens residents and businesses.
- NABH could overcharge DEC, which could lead to DEC's inability to provide other services to Devens residents and businesses.
- A dispute between DEC and NABH could result in a cessation of services, which would negatively impact DEC and those it serves. Alternatively, it could result in costly litigation, which would negatively impact DEC's finances and could lead to DEC's inability to provide other services to Devens residents and businesses.

### Authoritative Guidance

Section 22 of Chapter 498 of the Acts of 1993 states, "The Commission shall have the right to establish a department or contract for services for inspections relating to public health and safety and inspection services."

We believe it to be a best practice to have a written contract.

### Reasons for Issue

DEC has had an agreement with NABH since 2000.<sup>14</sup> Once we asked for documentation of this agreement, DEC sent this agreement and a scope of services to NABH detailing the services that NABH provides to Devens and stating that DEC would like to formalize a contract. NABH agreed with the agreement and the scope of services provided, and the director of NABH stated in an email on July 25, 2024 that "the District

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14. DEC was only able to provide an unsigned agreement.

is currently looking to revise our bylaws, and to recognize that we serve Devens," then NABH would be able to formalize a contract. However, as of March 25, 2025, this has not happened.

## Recommendation

DEC management should develop and execute a contract with NABH that details the services provided for Devens, as well as oversight responsibilities, the payment schedule, performance expectations, and penalties for not fulfilling the conditions of the contract.

## Auditee's Response

*The existing scope of services was verified by the current NABH Director. DEC Management is in agreement with this recommendation and is currently working with NABH to address this.*

## Auditor's Reply

Based on its response, DEC is taking measures to address our concerns regarding this matter. As part of our post-audit review process, we will follow up on this matter in approximately six months.

## **2. The Devens Enterprise Commission was not able to provide evidence that all food inspections were performed by the Nashoba Associated Boards of Health, as required by Section 22 of Chapter 498 of the Acts of 1993.**

DEC was not able to provide evidence that NABH performed all follow-up food inspections. In addition, DEC was not able to provide evidence that NABH addressed repeat instances of noncompliance or that all businesses acknowledged receipt of their food inspections.<sup>15</sup> Specifically, 3 (10%) of the 29 food inspections in our sample required follow-up inspections, but DEC was unable to provide 2 of the 3 follow-up reports. Also, of the 6 food inspections in our sample that had items identified as not in compliance, 3 had repeat instances of noncompliance in the same areas. The repeat areas of noncompliance included a lack of proper date-marking and disposal of food, a lack of a testing device that measures the concentration of sanitizing solutions for warewashing<sup>16</sup> facilities, and a lack of procedures for responding to medical events involving bodily fluids. There is no evidence that DEC followed up with NABH about these repeat instances of noncompliance in the same areas. In addition, 4 (14%) of the food inspection

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15. It is important that businesses acknowledge receipt of food inspection results because they are required to do so and because it provides evidence that the businesses are aware of any issues found during the inspection so that they can resolve them.

16. According to the 2013 Food Code, published by the US Department of Health and Human Services, warewashing "means the cleaning and sanitizing of utensils and food-contact surfaces of equipment."

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reports in our sample did not have signatures from the businesses that acknowledged receipt of the inspection.

If DEC does not receive all documentation related to food inspections, then it cannot ensure that inspections are performed, that businesses acknowledge receipt of inspection, and that NABH completes follow-up inspections or monitors instances of repeat noncompliance. Without ensuring these things, DEC may not know whether businesses are in compliance with state food sanitation standards, leading to a higher-than-acceptable risk that individuals may be exposed to food- or pest-borne illnesses or other potential health risks.

### **Authoritative Guidance**

Section 22 of Chapter 498 of the Acts of 1993 states, "The Commission shall have the right to establish a department or contract for services for inspections relating to public health and safety and inspection services."

Establishments serving food are required by Section 590.008 of Title 105 of the Code of Massachusetts Regulations (CMR) to pass an inspection before a permit to prepare and serve food is issued. Specifically, 105 CMR 590.008(C) states,

*The board of health may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with 105 CMR 590.000.*

Further, 105 CMR 590.008(K)(B) states,

*If an inspection reveals that a food establishment does not comply with 105 CMR 590.000, the board of health or its agent shall notify the permit holder or person in charge of the violations and shall order the permit holder to correct the violations. The inspection report may, if so stated, constitute an order to correct, or the board of health or its authorized agent may issue a separate order. An order to correct shall include, but need not be limited to the following: . . .*

*(f) The signature of the person in charge of the food establishment at the time of the inspection, or other proof of service of the order.*

### **Reasons for Issue**

DEC relied on NABH to provide DEC with copies of all inspections but did not have a written contract (see Finding 1) that described what documentation should be provided and on what schedule. Additionally,

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DEC management stated in an email to us dated March 21, 2025, "Not all violations reported on inspection reports are serious enough to warrant a follow-up inspection." According to DEC management, for these types of inspection reports, the violations are discussed with the owner/manager of the business and reinspected during a spot inspection or the next annual inspection. For serious violations, NABH copies DEC on the notice to the business and informs DEC when the issue is resolved.

## Recommendations

1. DEC should maintain a log of food safety inspections to ensure that all required inspections, both annual and follow-up inspections, have occurred and that it receives copies of these inspection reports.
2. DEC should work with NABH to monitor and resolve all instances of noncompliance and ensure that all businesses acknowledge receipt of the inspections.

## Auditee's Response

*It is important to note that the audit period includes a period that included a global pandemic. A number of facilities were shut down for extended periods so inspection times did vary. Inspectors and DEC staff were extremely busy with the added tasks of disseminating information and responding to inquiries about the virus and health and safety procedures that were evolving on a daily basis. This is not an excuse to ignore other health and safety inspection issues — especially related to food service, but it should be recognized that priorities did shift to adapt to a fluid and dynamic situation. The majority of repeat instances of non-compliance were more administrative process-related. Those repeat issues, while minimal, would have been rectified at the following inspection which may have been outside of the audit period. That being said, we welcome these recommendations and will work to implement them to help improve our overall tracking and management of these important public health-related inspections.*

## Auditor's Reply

Based on its response, DEC is taking measures to address our concerns regarding this matter. As part of our post-audit review process, we will follow up on this matter in approximately six months.