

## SUBSTANTIVE POLICY STATEMENT

This Substantive Policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

### 0010.003 COMPLIANCE AND ENFORCEMENT POLICY

**Level One**                    **Arizona Department of Environmental Quality**

**Originator:**                Edward Z. Fox, Director

**Contact for Information:**     Mark R. Santana, Administrative Counsel

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#### POLICY

The Arizona Department of Environmental Quality ("ADEQ") is charged with the implementation of the environmental laws of this state. To accomplish this mission, ADEQ must have a strong compliance and enforcement policy where voluntary compliance is not achieved. This policy identifies the compliance standards that guide the agency in taking enforcement action.

#### DEFINITIONS

"Formal Enforcement" means issuing an administrative enforcement order (abatement, cease and desist, compliance or consent) or filing a civil action for injunctive relief and/or civil penalties.

"Informal Enforcement" means issuing a notice of opportunity to correct, notice of violation, or status letter.

"Significant Non-Compliance" ("SNC") means those violations identified as SNC under individual program policies or guidance. SNC exists only if at least one of the following criteria are met:

- A.    The violation is committed intentionally; or
- B.    The violation cannot be corrected in a reasonable amount of time; or
- C.    The violation is evidence of a pattern of noncompliance; or

- D. The violation poses a risk to any person, the public health or the environment.

#### **RESPONSIBILITY**

All ADEQ compliance and enforcement staff are responsible for the implementation of this policy.

#### **APPLICABILITY**

This policy is applicable agency-wide.

#### **PROCEDURES**

##### Compliance Tracking Log(s)

1. ADEQ shall maintain an accurate, readily accessible crossmedia enforcement tracking log(s) that shows the current enforcement status of each facility that is the subject of enforcement action ("Log[s]"). The Log(s) shall identify by facility, all outstanding Notices of Opportunity to Correct ("NOC"), Notices of Violation ("NOV"), Administrative Orders and Civil Judicial Enforcement activities. The Log(s) shall show the type of enforcement action taken, date of issuance, whether administrative or civil penalties are being sought, if the matter is a civil action, and whether injunctive relief is sought.

Any matter on the Log(s) that is closed shall reflect the date of that closure and the disposition of the matter. Any matter on the Log(s) that is closed shall remain on the Log(s) for at least five years after being closed. The Log(s) also shall reflect the facility name, the owner/operator of the facility, the regulatory program, the facility/source identification number, and a phone number for the area where the file is located. Copies of the Log(s) shall be available to the public at the central and regional offices in accordance with the applicable public record laws.

##### Maintaining Facility Files

1. ADEQ shall maintain an up-to-date compliance and enforcement file on each facility that contains all compliance related

information. Copies of any compliance or enforcement related documents shall be placed in the relevant file within 30 days of receipt or generation by ADEQ, and any compliance or enforcement related information shall be entered into program compliance and enforcement databases within 30 days of receipt or generation.

2. ADEQ shall retain the compliance and enforcement files of all facilities currently permitted and/or licensed, and all documents, materials and information contained therein, for a minimum of five years.

#### Managing Informal Enforcement Actions

1. General Principles

- A. Except for violations identified and corrected during an inspection, ADEQ will take an enforcement action for every identified violation.
- B. ADEQ shall issue an NOV for any SNC violation.
- C. Nothing in this policy requires an NOC, a status letter or an NOV to be issued before issuing an administrative order, or seeking injunctive relief and civil penalties in Superior Court.
- D. After ADEQ determines that the facility has achieved compliance, a written notice of enforcement case closure shall be sent to the facility.

2. Inspections

- A. Notwithstanding any other provisions of this policy, ADEQ shall issue either an NOV or an NOC, for each violation identified during an inspection of a facility, including an inspection conducted during a complaint investigation, unless the violation is corrected before the conclusion of the inspection. If the violation is corrected before the conclusion of the inspection, ADEQ will note on the inspection report the nature of the violation and the manner in which it was corrected.

- B. Where ADEQ discovers a violation or potential violation in the course of an inspection of a facility, ADEQ shall provide a copy of the inspection report to the facility representative at the time of the inspection, or by hand delivery or U.S. mail within 30 working days after the inspection's conclusion (see policy #0156.000 Inspection Procedures Policy, for further discussion of when an inspection concludes), or as otherwise required by federal law. The inspection report shall set forth all violations or potential violations identified during the inspection.
- C. Where a violation is identified during an inspection, an NOC will be issued to a violator unless SNC exists. The ADEQ inspector shall issue an NOC or if the violation constitutes SNC, a notice of violation, to a facility representative within 45 days of the conclusion of the inspection.
- D. If ADEQ issues an NOC, the notice shall specify a deadline by which the violation must be corrected, which shall not exceed 180 days after issuance of the NOC, and shall indicate that the facility must submit documentation of compliance to ADEQ on or before the deadline demonstrating that the violation has been corrected to avoid further inspection or enforcement action. Within 30 days of receipt of documentation of compliance from the facility, ADEQ shall examine the documentation to determine whether or not the facility has corrected the violation and notify the facility of its determination in writing.

If a facility fails to submit documentation of compliance to ADEQ on or before the deadline specified in the NOC, or if ADEQ determines that the documentation submitted by the facility does not demonstrate compliance, then within 180 days of the original inspection date, ADEQ shall either reinspect the facility or otherwise follow up to determine whether the facility has corrected the violation. If the facility submits documentation of compliance after the required submittal date but before a reinspection occurs, ADEQ may cancel the inspection upon a determination that the documentation demonstrates

correction of the violation. If, during a reinspection, or other follow up activities, ADEQ determines that a facility has failed to correct a violation after being given an opportunity to do so, ADEQ shall issue an NOV to the facility within 15 days of the date of the determination. ADEQ shall not issue more than one NOC to the same facility for the same violation.

E. On a monthly basis the inspector shall provide the violator with an action update letter indicating the status of any agency action resulting from the inspection. An update letter shall continue to be sent every month until:

1. the facility is notified that no action is necessary because the facility is in compliance;
2. an informal enforcement action is taken; or
3. a formal enforcement action is taken.

G. Notwithstanding any of the above, an inspector shall provide immediate oral and written notice of any violation that presents an imminent and substantial endangerment to human health or the environment. Such notice shall demand immediate action by the facility to abate the endangerment.

### 3. Self-Monitoring and Reporting

A. A program enforcing self-monitoring and reporting statutes shall review all self-monitoring and other compliance-related reports submitted by facility representatives and enter that information into that program's compliance and enforcement database within 30 days of receipt by ADEQ. If such reports reveal any violation constituting SNC, ADEQ shall, within 60 days of the required submittal date, send a written NOV to the facility owner or operator.

B. A program enforcing self-monitoring and reporting statutes shall establish a computerized reporting tracking system that automatically triggers a finding of

non-submittal whenever ADEQ fails to receive a legally required submittal from a facility within 30 days of the required submittal date. Within 30 days of a finding of non-submittal, ADEQ shall send a written NOV to the facility.

4. Notices of Opportunity to Correct

Every NOC shall include the following elements:

1. The factual nature of the violation.
2. The legal authority regarding compliance.
3. A description of what constitutes compliance and how it is to be documented.
4. A time frame in which ADEQ expects compliance to be achieved. Time frames shall require compliance within a reasonable period of time. Staff shall estimate a realistic time frame for compliance to be achieved. The notice shall further direct the facility to provide ADEQ with written notice that the violation has been corrected within the established time frame.
5. A statement that upon receipt of notice from the facility that the violation has been corrected, ADEQ will, within 30 days, determine if the facility has corrected the violation and notify the facility whether the violation has been corrected.
6. A statement that ADEQ may take any enforcement action authorized by law for the violation, if the facility fails to correct the violation, or ADEQ determines that the violation has not been corrected within the established time frame.

5. Notices of Violation

A. Every NOV shall include the following elements:

1. The factual nature of the violation

2. The legal authority regarding compliance.
  3. A description of what constitutes compliance and how it is to be documented.
  4. A time frame in which ADEQ expects compliance to be achieved. Time frames shall require compliance at the earliest possible date. Staff shall estimate a realistic time frame for compliance to be achieved. Any time frame greater than 120 days from the receipt of an NOV shall require either a consent order or an executed agreement for a consent decree and a compliance schedule. The notice shall further direct the facility to provide ADEQ with written notice of its compliance status at the end of the established time frame.
  5. An offer to meet.
  6. A statement of consequences, which shall provide that a failure to achieve timely compliance with the NOV will result in an administrative order or civil action requiring compliance within a reasonable time frame and/or substantial civil penalties and that achieving compliance does not preclude ADEQ from seeking civil penalties for violations as allowed in the statute.
- B. After issuance of an NOV, face to face compliance meetings are encouraged. Each meeting shall conclude with a written statement by ADEQ which sets forth what occurred during the meeting and any agreements reached. The parties should initial the statement prior to the conclusion of the meeting.
- C. The stated compliance time frame in an NOV is a firm limit. Any failure to meet the time frame, even though good faith efforts are being made, will be allowed by ADEQ only in a compliance schedule negotiated in the context of a consent order or consent judgement. If during the negotiation of a consent order there is an unreasonable delay in achieving compliance and/or evidence of bad faith negotiations, ADEQ shall issue a

unilateral administrative order and/or refer the case to the Attorney General for enforcement.

#### Status Letters

1. Status letters may only be used for violations that are not SNC or are not discovered during an inspection.
2. When ADEQ records indicate existing violations older than 180 days and an ADEQ action has not been initiated, a compliance status letter may be sent to a facility prior to the issuance of an NOV. The status letter shall state the compliance status of the facility based upon ADEQ records and that within 30 days of receipt of the letter, the facility shall submit evidence that (1) a previously identified violation has been corrected or (2) the violation does not exist.
3. The status letter shall further state that if there is no response, or the facility's response does not establish that the violation has been corrected or does not exist, an NOV will be issued at the end of the 30 day period. The status letter may offer the facility the opportunity to enter into a consent order or judgment if it wishes to avoid the issuance of a notice of violation.

#### Managing Formal Enforcement Actions

1. ADEQ shall diligently and expeditiously prosecute all enforcement actions.
2. ADEQ shall document all cases from the outset to meet the most stringent requirements of the legal system at any subsequent time in the compliance and enforcement process.
3. ADEQ shall conduct internal review of enforcement cases to advance cases through the compliance and enforcement continuum in a consistent and timely manner. ADEQ shall establish mechanisms that assure consistent and timely treatment, such as regular staff meetings on enforcement cases.
4. ADEQ shall maintain standardized wording to be included in consent orders and compliance orders.

5. Where appropriate, ADEQ shall utilize Attorney General assistance if facilities are represented by legal counsel negotiating consent orders.
6. In no event shall ADEQ staff grant oral waivers or modifications of legal requirements. Waivers and modifications may only be granted in writing and only under such circumstances as authorized by law. All waivers must be approved by the Division Director, Deputy Director or Director.
7. ADEQ shall issue a unilateral administrative order and if statutorily authorized, seek administrative penalties, or pursue judicially imposed injunctive relief and civil penalties if a facility fails to either comply with an NOC, NOV, or status letter, or enter into a consent order.
8. ADEQ shall seek injunctive relief and civil penalties with issuance of a unilateral administrative order or the referral of an enforcement action to the Attorney General. The referral will be made in a timely manner and, absent compelling circumstances, within 30 days after a facility has failed to either comply with an NOV or enter into a consent order.

#### Administrative Hearing Docket

ADEQ shall maintain a cross-media enforcement docket showing the status of every enforcement action, including date filed, nature of relief sought, date set for hearing or trial, and any disposition. This docket shall be open for public inspection. The docket shall be maintained by the Office of Administrative Counsel.

#### Enforcement Case Priorities

In preparing enforcement referrals to the Attorney General's Office, each program will numerically prioritize enforcement cases considering the risk to human health and environment posed by the violations, the violator's indifference to the law, extent of deviation and the violator's previous enforcement history. This numeric prioritization shall be

communicated to the Attorney General's Office in the assistant attorney general assignment request memorandum. The Air Quality, Water Quality Assurance Fund, Hazardous Waste, Underground Storage Tank and Leaking Underground Storage Tank programs are not subject to this provision.

#### Compliance Enforcement Committee

ADEQ will maintain a cross-media compliance and enforcement committee ("CEC") with representation from each program to share information, problems and ideas and to coordinate cross-media cases through the enforcement process. The CEC shall consist of the managers of each enforcement and compliance section, or where a section has a compliance or enforcement unit, that unit supervisor. The committee shall be chaired by the Administrative Counsel.

#### Publication of Enforcement Information

1. ADEQ will issue a press release whenever a court enforcement action is filed or resolved. A press release may be issued when an administrative order is issued.
2. When a press release concerning a consent order is to be released, the facility and interested persons should be notified that a press release is being issued. The facility and interested persons are not entitled to amend or modify the press release.

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