

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.

0152.001 WATER QUALITY COMPLIANCE ENFORCEMENT ESCALATION POLICY

Level Three **Arizona Department of Environmental Quality**

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**Contact for
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PURPOSE

The purpose of this policy is to ensure that the initiation and escalation of informal and formal enforcement actions resolving water pollution non-compliance will be performed in a consistent manner. This Water Quality Compliance Enforcement Escalation Policy establishes a uniform system to be used by the Water Quality Division and ADEQ Regional Offices in pursuing and escalating environmental enforcement while conforming with the department-level compliance and enforcement policy and complying with the Gregory v. Schafer First Amended Consent Decree No. CV 93-01458(Gregory v. Schafer).

ADEQ's agency-wide Compliance and Enforcement Policy(ADEQ Policy 10) requires ADEQ to select the type of informal and formal enforcement action to correct facility environmental non-compliance after considering such factors as comparative risk to human health or the environment, indifference to the law, previous compliance history and other relevant factors. ADEQ strives to respond to every instance of noncompliance; however, such action is not always feasible nor desirable. Furthermore, every violation need not be met with an identical enforcement response, but rather a considered response that is appropriate to the violation.

AUTHORITY

Arizona Revised Statutes (A.R.S.), §49-142, §§49-261 through 263, §49-334, and §49-362.

Arizona Administrative Code (A.A.C.) R18-5-411, R18-9-130, R18-9-706, R18-9-819, and R18-11-120.

DEFINITIONS

"Water Quality Permit" is defined in this policy as an Aquifer Protection Permit, Groundwater Quality Protection Permit, Reuse Permit, or any other permit, discharge authorization, or construction approval issued by ADEQ, pursuant to the Arizona Revised Statutes, or the Arizona Administrative Code.

"Discharge Limit" is defined in this policy as any restriction, prohibition, limitation, or criteria established by statute, rule, Water Quality Permit, Administrative Order, or Consent Judgment on quantities, rates, concentrations, combinations, toxicity, and characteristics of pollutants.

"Formal Enforcement" is defined as issuing an Administrative Order, e.g. consent or unilateral order, or the filing a civil action for injunctive relief, civil penalties, or other civil remedy.

"Informal Enforcement" is defined as issuing a Notice of Opportunity to Correct(NOC), Notice of Violation (NOV), caution letter(CL) or status letter.

"Discharge Limit Violation (DLV)" is defined as a:

1. Deviation from a discharge limit at a given monitoring point;
2. Failure to report a discharge limit parameter;

"Technical Review Criteria (TRC) Violation" is defined as a:

1. Deviation from a Category 1 TRC discharge limit (see Attachment A) by more than 1.4 times the discharge limit;
2. Deviation from a Category 2 TRC discharge limit (see Attachment A) by more than 1.2 times the discharge limit;
3. A deviation from a pH discharge limit; or
4. Failure to report a single discharge limit parameter or inspection requirement on an ADEQ approved or supplied Self-Monitoring Report Form.

"Caution Level Exceedance (CLE)" is defined as one of the

following (see Attachment B):

1. For a daily sampling discharge limit or inspection requirement:
 - A. 4 or more (but less than 9) TRC violations in a quarterly review period; or
 - B. 9 or more (but less than 18) discharge limit violations in a quarterly review period.
2. For a five sample per week discharge limit or inspection requirement:
 - A. 3 or more (but less than 6) TRC violations in a quarterly review period; or
 - B. 6 or more (but less than 12) discharge limit violations in a quarterly review period.
3. For a two sample per week discharge limit or inspection requirement:
 - A. 2 or more (but less than 5) TRC violations in a quarterly review period; or
 - B. 5 or more (but less than 10) discharge limit violations in a quarterly review period.
4. For a five sample per month discharge limit or inspection requirement:
 - A. 2 or more (but less than 4) TRC violations in a quarterly review period; or
 - B. 4 or more (but less than 8) discharge limit violations in a quarterly review period.
5. For a weekly sampling discharge limit or inspection requirement:
 - A. 1 or more (but less than 3) TRC violations in a quarterly review period; or
 - B. 3 or more (but less than 6) discharge limit violations in a quarterly review period.
6. For a two sample per month discharge limit or inspection requirement:
 - A. 1 TRC violation in a quarterly review period; or

- B. 2 or more (but less than 4) discharge limit violations in a quarterly review period.
7. For a monthly sampling discharge limit or inspection requirement:
 - A. 1 TRC violation in a two consecutive quarter review period; or
 - B. 2 or more (but less than 4) discharge limit violations in a two consecutive quarter review period.
 8. A discharge limit violation of a quarterly, biannual, or annual sampling discharge limit or inspection requirement.

"Significant Noncompliance" (SNC) includes (see Attachment C):
[The definition of Significant Noncompliance (SNC) is based largely upon the definition of SNC established in a September 21, 1995, Memorandum issued by the U.S. EPA's Office of Enforcement and Compliance Assistance for use in EPA's Clean Water Act programs.]

1. For a daily sampling discharge limit or inspection requirement:
 - A. 9 or more TRC violations in a quarterly review period; or
 - B. 18 or more discharge limit violations in a quarterly review period.
2. For a five sample per week discharge limit or inspection requirement:
 - A. 6 or more TRC violations in a quarterly review period; or
 - B. 12 or more discharge limit violations in a quarterly review period.
3. For a two sample per week discharge limit or inspection requirement:
 - A. 5 or more TRC violations in a quarterly review period; or
 - B. 10 or more discharge limit violations in a quarterly review period.

4. For a five sample per month discharge limit or inspection requirement:
 - A. 4 or more TRC violations in a quarterly review period; or
 - B. 8 or more discharge limit violations in a quarterly review period.
5. For a weekly sampling discharge limit or inspection requirement:
 - A. 3 or more TRC violations in a quarterly review period; or
 - B. 6 or more discharge limit violations in a quarterly review period.
6. For a two sample per month discharge limit or inspection requirement:
 - A. 2 or more TRC violations in a quarterly review period; or
 - B. 4 or more discharge limit violations in a quarterly review period.
7. For a monthly sampling discharge limit or inspection requirement:
 - A. 2 or more TRC violations in a two consecutive quarter review period; or
 - B. 4 or more discharge limit violations in a two consecutive quarter review period.
8. A TRC violation of a quarterly, biannual, or annual sampling discharge limit or inspection requirement.
9. Two or more CLE within two, three, or four applicable consecutive review periods.
10. Submittal of an ADEQ approved or supplied Self Monitoring Report Form (SMRF) 30 or more days after the due date set by a Water Quality Permit, Administrative Order, or Consent Judgment.
11. Failure to correct a violation after being given an opportunity to do so pursuant to a Notice of Opportunity to Correct.

12. Failure to implement a contingency plan or compliance schedule as required by a Water Quality Permit.
13. Failure to construct, operate, or maintain a facility in accordance with the Best Available Demonstrated Control Technology (BADCT) as required in an Aquifer Protection Permit.
14. A discharge or release of wastewater for reuse without a Reuse Permit.
15. Permitting any amount of sewage or industrial waste to flow into any waters, upon or under any lands, of the state in a manner detrimental to the quality of the receiving body of water, or the use of the receiving lands, or prejudicial to the public health, safety or welfare in violation of A.A.C. R18-9-803.A.
16. Any discharge that has the potential to cause an aquifer water quality standard or surface water quality standard violation.
17. Failure to employ an operator required pursuant to Arizona Administrative Code Title 18, Chapter 5, Article 1 at the grade and classification appropriate for the facility.
18. Failure to obtain the required construction approval(s) required by statute or rule prior to constructing or operating a sewerage system requiring such approval(s).
19. Failure to submit an application for an individual Aquifer Protection Permit as required by Arizona Revised Statutes 49-241.

"Significant Risk to Human Health or the Environment" shall be based on all of the following factors:

1. Toxicity or potential disease causing characteristics of the discharge;
2. Quantity of the discharge;
3. Duration of the discharge;
4. Proximity of the discharge to:
 - A. An ecological or environmentally sensitive

environment as defined by state or federal statute;

- B. An actual or potential drinking water supply
- C. A populated area; or
- D. A navigable water as defined by the Clean Water Act.

- 5. Whether or not the discharge or release has been cleaned up or abated prior to the initiation of formal enforcement action.

"Significant Indifference for Human Health or the Environment" shall at a minimum be based on any one or a combination of the following factors:

- 1. Failure to conduct the normal operation and maintenance (O&M) as required by a Water Quality Permit;
- 2. Failure to take the appropriate corrective measures, established in facility O&M or contingency plans, to remedy existing violations and to prevent future violations;
- 3. The facility's documented history of environmental non-compliance;
- 4. Severity of the violation (degree of deviation); or
- 5. Duration of the violation.

"Extreme Noncompliance" (XNC) includes:

- 1. A discharge that violates an aquifer water quality standard or surface water quality standard.
- 2. An unpermitted discharge as defined by statute or rule or Water Quality Permit which:
 - A. Causes risk to human health or the environment;
 - B. Displays indifference for human health or the environment; or
- 3. A potentially negligent, reckless or knowing disregard and violation of a water quality permit, standard, statute or rule.

POLICY

This policy establishes a priority scheme for responding to with respect to water pollution environmental noncompliance. Those discharge limit or TRC violations constituting a caution level exceedance (CLE) will result in issuance of a caution letter (CL), while operation and maintenance(O&M) violations that fail to meet the definition of significant(SNC) or extreme noncompliance(XNC) will result in issuance of a notice of opportunity to correct ("NOC").

The discharge limit or TRC violations that meet the definition SNC or XNC will result in issuance of a notice of violation (NOV).

The definition for SNC and XNC addresses comparative environmental risk by escalating enforcement actions for violations that may pose significant harm to human health or the environment or the program regulatory scheme.

This policy is not a final agency action, but intended solely as guidance. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the State of Arizona. ADEQ may decide to follow the guidance provided in this policy or to act at variance with this guidance based upon an analysis of case specific facts and circumstances. However, in all cases, the intent if not the letter of Gregory v. Schafer will guide ADEQ decision making in this area.

RESPONSIBILITY

All Water Quality Compliance Section and ADEQ Regional Office staff are responsible for implementing the Notice of Opportunity to Correct(NOC) and Notice of Violation(NOV) procedures of this policy. Implementation of CL procedures shall be the responsibility of the Water Quality Compliance Section, Data Unit, in consultation with the Water Quality Enforcement Unit. The responsibility for specific implementation of this policy as it may apply to enforcement actions beyond the issuance of a NOV rests with the manager of the Water Quality Enforcement Unit under the general direction of the Water Quality Compliance Section manager.

PROCEDURES

1. A CL shall be issued to a facility owner or operator for

all DLV that meet the definition of a CLE.

- A. The CL shall be issued within 30 days of the required submittal date of the self-monitoring report form (SMRF).
 - B. The CL shall indicate that the facility has met the definition of a CLE per this policy and if the facility experiences another CLE within the next three consecutive review periods that it shall be considered in Significant Noncompliance and a NOV shall be issued.
 - C. The CL shall notify the facility of compliance assistance programs offered by ADEQ and implemented through policy.
2. A Notice of Opportunity to Correct (NOC) may be issued to a permittee for an O&M violation discovered during the course of an inspection provided the violation was not previously documented in a prior NOC sent to the facility and if it does not meet SNC or XNC criteria.
 - A. The NOC shall be issued within 45 days after the inspection.
 - B. The NOC shall specify a compliance deadline by which the violation must be corrected, which shall not exceed ~~6~~ four calendar months from the date of issuance of the NOC.
 - C. The NOC shall indicate that the facility must submit documentation of compliance to ADEQ on or before the compliance deadline demonstrating that the violation has been corrected to avoid further inspection or enforcement action.
 3. If a facility fails to submit documentation of compliance on or before the deadline specified in an NOC, or if ADEQ determines that documentation submitted does not demonstrate compliance, then within 180 days of the original inspection date, ADEQ shall conduct a follow-up inspection of the facility to determine whether the facility has corrected the violation.
 4. If during a reinspection ADEQ determines that a facility

has failed to correct a violation previously cited in a NOC, ADEQ shall issue a NOV within fifteen calendar days of the reinspection date.

5. A Notice of Violation (NOV) shall be issued for all violations that meet, SNC, XNC criteria or for failure to correct NOC identified violations.
 - A. If the NOV is for violations discovered during the course of an inspection it shall be issued within 45 days of the inspection date.
 - B. If the NOV is for violations discovered through a review of a SMRF, it shall be issued within 60 days of the required submittal date of the SMRF.
 - C. In the case of a municipality, the NOV shall be issued either to the mayor or the manager of the municipality with a copy sent to the person(s) directly responsible for the violation or for resolving the violation e.g., the emergency contact named in a Water Quality Permit, the City Manager, the Environmental Manager, or the Public Works Director.
 - D. In the case of a private entity, the NOV shall be issued either to the owner of the facility with a copy sent to the person(s) directly responsible for the violation or resolving the violation e.g., the emergency contact named in a Water Quality Permit, or the facility manager. If the owner of the facility is a corporation, partnership, or other comparable legal entity, the NOV shall be issued to the president, general partner, or other similarly responsible official within the legal entity.
 - E. A copy of the NOV shall be sent to the relevant county health agency or other delegated agency, any other appropriate environmental regulatory agency and to the ADEQ regional office.

- F. When appropriate, notification of the issuance of a NOV will be provided to any affected identified environmental justice community. The manager of the Water Quality Compliance Section or his designee will coordinate with the ADEQ Administrative Counsel and ADEQ Environmental Justice liaison in providing this notice.
 - G. The compliance deadline established within the standard NOV issued for a non-submittal violation shall allow the permittee up to ten working (10) days from date of receipt of the NOV to submit the delinquent SMRFs.
- 6. ADEQ shall review all submitted SMRFs for discharge limit exceedances and inspection requirements noncompliance to determine whether they meet the definition of CLE, SNC or XNC criteria. The information contained in the submitted SMRF's shall be entered into the compliance and enforcement database within 30 days of receipt by ADEQ.
 - 7. ADEQ shall issue either an NOV or NOC for each identified violation discovered during an inspection, unless the violation is corrected before the conclusion of the inspection. If the violation is corrected before the conclusion of the inspection ADEQ shall note in the inspection report the nature of the violation and the manner in which it was corrected. ADEQ shall provide a copy of the inspection report to the facility within 30 days of the inspection date.
 - 8. ADEQ shall preferentially negotiate a Consent Order or Consent Judgement for all SNC violations that can not or have not been remedied via informal enforcement action. Failure to enter into a Consent Order or Consent Judgement with ADEQ will generally result in the issuance of a unilateral order by ADEQ or the filing of a civil complaint by the Attorney General at the request of ADEQ.
 - 9. If a violation(s) meet the definition of XNC, per this policy, ADEQ shall:
 - A. Issue a NOV, if an NOV had not already been issued for the violation meeting SNC criteria; and
 - B. Seek penalties and a corrective action compliance

schedule by the filing of a civil complaint by the Attorney General at the request of ADEQ.

10. All Administrative Orders shall include corrective action compliance schedules. Each Order shall include language advising the facility that violation of Administrative Order condition may subject them to civil penalties pursuant to state statute for each instance of violation.
11. All Consent Judgment agreements made by ADEQ with regulated entities shall include corrective action compliance schedule time frames with stipulated penalties for failing to meet agreed conditions.
12. Any violation of a Consent Judgment that provides for stipulated penalties shall result in ADEQ seeking full payment of stipulated penalties.
13. Refusal to pay stipulated penalties within a reasonable time following violation of a Consent Judgment shall result in ADEQ seeking appropriate remedy through a civil complaint with the assistance of the Attorney General.

ATTACHMENTS

- A. TRC Discharge Limits
- B. Caution Levels for Discharge Limit and Inspection Requirement Violations
- C. SNC for Discharge Limit and Inspections Requirements Violations

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Level Three Arizona Department of Environmental Quality

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APPROVED

Karen Smith Date
Division Director,
Water Quality Division

Michael J. Traubert Date
Manager,
Water Quality Compliance Section

Mark R. Santana Date
Administrative Counsel,
Office of Administrative Counsel

The Policy Review Committee has posted, reviewed, and accepted this policy by motion as of September 21, 2000.

Lea Ann Dorrel Date
Policy Management
System Coordinator

ATTACHMENT A

TRC DISCHARGE LIMITS

Category 1 - Conventional Pollutants
(40% exceedance of discharge limit)

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demand
Total Organic Carbon

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Turbidity
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAs
NTA
Oil and Grease
Other Detergents or Algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Temperature

Category 2 - Toxic Pollutants
(20% exceedance of discharge limit)

Metals (all forms)

Other metals not specifically
listed under Category 1

Inorganic

Cyanide
Total Residual Chlorine

Organics

All Organics are Category 2 except those specifically
listed in Category 1

Other

Flow
Radio nuclides
Fecal Coliform
Viruses

ATTACHMENT B

CAUTION LEVELS FOR DISCHARGE LIMIT AND
INSPECTION REQUIREMENT VIOLATIONS

Monitoring Frequency	TRC Violations	Discharge Limit Violations	Review Period
Daily	4-8	9-17	
Quarterly			
5 per week	3-5	6-11	
Quarterly			
2 per week	2-4	5-9	Quarterly
5 per month	2-3	4-7	Quarterly
1 per week	1-2	3-5	Quarterly
2 per month	1	2-3	Quarterly
1 per month	1	2-3	2
Quarters			
Quarterly		1 or more	
Quarterly			
Biannually		1 or more	
Biannual			
Annually		1 or more	
Annual			

ATTACHMENT C

SNC FOR DISCHARGE LIMIT AND
INSPECTION REQUIREMENT VIOLATIONS

Monitoring Frequency	TRC Violations	Discharge Limit Violations	Review Period

Daily	9 or more	18 or more	
Quarterly			
5 per week	6 or more	12 or more	
Quarterly			
2 per week	5 or more	10 or more	
Quarterly			
5 per month	4 or more	8 or more	
Quarterly			
1 per week	3 or more	6 or more	
Quarterly			
2 per month	2 or more	4 or more	
Quarterly			
1 per month	2 or more	4 or more	
2 Quarters			
Quarterly	1 or more		
Quarterly			
Biannually	1 or more		
Biannual			
Annually	1 or more		
Annual			