

**0118.001 ENFORCEMENT WAIVER POLICY (SMALL BUSINESS)**

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

**Originator:**        **Russell F. Rhoades, Director**

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

**Issue Date:**       **March 10, 1997**     **Amended: May 1, 1998**

**PURPOSE**

This policy is intended to promote environmental compliance among small businesses by providing an enforcement waiver program which will encourage voluntary disclosure of violations, utilization of the ADEQ Compliance Assistance Section and the use of environmental audits. In order to obtain an enforcement waiver, the policy requires small businesses to qualify for the policy, report all violations to ADEQ and remedy all violations discovered by environmental audits or ADEQ's Compliance Assistance Section. The purpose of this policy is to guide the agency in determining whether an enforcement waiver should be granted, and no person is entitled to such a waiver as a matter of right pursuant to this policy.

**DEFINITIONS**

Compliance Assistance consists of Technical Assistance provided by ADEQ, with the addition of on-site compliance audits formally requested by a small business along with the Enforcement Waiver Policy for qualifying small businesses. Compliance assistance is only offered to small businesses. Compliance assistance does not include compliance inspections, notices of violation (NOVs), status letters, or enforcement actions conducted pursuant to the ADEQ Compliance and Enforcement Policy.

Compliance Assistance Section means the ADEQ section which is dedicated to providing the regulated community with information and education concerning environmental requirements. The compliance assistance educational program will emphasize small business concerns and will provide environmental compliance audits for small businesses as defined in this policy.

Compliance Audit Team (CAT) is an ad hoc group of ADEQ staff assembled to perform multi-media environmental compliance audits for qualifying facilities who request the service. The team is comprised of Compliance Assistance staff and/or pertinent members of Air, Waste, and Water Divisions, depending on small business compliance issues.

Compliance Agreement is an agreement which identifies any existing violations and the environmental requirements that have been violated. The agreement provides a description of compliance, how

it is to be documented, and a corrective action schedule to which both parties agree. Violation of the agreement will result in an enforcement action.

Environmental Compliance Audit is defined as a systematic, documented, and objective review of facility operations and practices related to meeting environmental requirements. An environmental compliance audit will identify current regulatory issues and allow for development of a plan for resolving these issues. An ADEQ Environmental Compliance Audit may be conducted as part of an ADEQ compliance assistance on-site visit, by a third party consultant/contractor, or by the small business's employees.

Environmental Requirement refers to any applicable federal, state or local environmental law, permit or rule.

Enforcement Action is an NOV, administrative order, or civil action seeking civil penalties (but not injunctive relief, see Applicability ¶ 2, infra) or referral for a criminal prosecution for violation of an environmental requirement.

Small Business is defined as a concern, including its affiliates, which is independently owned and operated and which employs less than twenty full-time employees or had a gross income of less than two million dollars in its last fiscal year.

Technical Assistance is information, education and assistance provided by ADEQ to small businesses by phone, fax, guidance document, fact sheet, seminar, or other method of delivery as a result of normal business activities, informal requests or enforcement actions.

#### **APPLICABILITY**

1. This policy applies to all small businesses as defined above, who meet the qualifications set forth in the following section. Municipalities, counties, and other local governments are not eligible for this policy. Drinking water systems operated by non profit businesses are not eligible for this policy. If a business does not meet the definition of small business, an enforcement waiver will be considered on a case by case basis.
2. This policy does not include civil actions for injunctive relief or a temporary restraining order to address violations not covered under Section A4 infra, but which in ADEQ's opinion, require immediate compliance with environmental requirements.
3. This policy does not apply to the 1) Leaking Underground Storage Tank Program, 2) State Assurance Fund Program, 3) all activities conducted by ADEQ in the state and federal superfund programs, 4) Vehicle Emissions Program, and 5) Drinking Water Programs owned by entities that do not meet

this policy's definition of small business. This policy applies to the 1) Hazardous Waste Management Program, 2) Solid Waste Program, 3) Special Waste Program, 4) Drinking Water Program owned by small businesses (as defined in this policy), 5) Underground Storage Tank Program, 6) Title V Air Programs, 7) Non-title V Air Program, 8) Surface Water and Ground Water Regulating Programs, and 9) Asbestos NESHAPS Program.

4. This policy does not waive any applicable unpaid or delinquent fee, tax or penalty that may be owing to ADEQ. This policy also does not apply to any enforcement action that results from a failure to pay fees, taxes or civil penalties.
5. This policy applies only to ADEQ delegated programs. This policy does not apply to delegated local agencies except for the Pima County Department of Environmental Quality and the Maricopa County Environmental Services Department.

#### **POLICY**

- A. ADEQ may not undertake enforcement actions and if applicable, may waive enforcement action (as defined by this policy) for voluntarily disclosed violations by small businesses if the following seven requirements are met:
  1. The violation was identified and reported voluntarily and not through legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order.
  2. The disclosure occurred before the violation was discovered by ADEQ unless the disclosure occurred during an on-site compliance assistance audit.
  3. The disclosure was made in writing to ADEQ within 10 business days of the violation's discovery.
  4. ADEQ has determined that:
    - a. The violation is not one that may present an imminent and substantial endangerment to public health or the environment;
    - b. The violation has not caused actual serious harm to public health, safety or the environment;
    - c. The violation does not involve criminal conduct; and
    - d. The violation does not violate the specific terms of any judicial or administrative order or compliance agreement.
  5. The small business has made a good faith effort to comply

with applicable environmental requirements by either:

- a. Discovering the violation through an environmental compliance audit conducted by the business or an independent contractor, and disclosing to ADEQ all violations discovered; or
  - b. Discovering the violation during an on-site visit conducted by the ADEQ compliance assistance program.
6. The small business was not previously subject to a notice of violation, citizens suit, or other enforcement action by a government agency for a violation of that particular requirement within the previous twelve months.
  7. The small business must cooperate as requested by ADEQ to obtain the benefit of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in investigating the violation, any noncompliance problems related to the disclosure, and any environmental consequences related to the violations.
- B. If requirements A.1-A.7 are met, the enforcement waiver may be offered by the director. If accepted, the enforcement waiver will remain effective provided that the business corrects the violation(s) within the following time limitations:
1. Violations are corrected within the shortest practicable time period, not to exceed 120 days following detection.
  2. If a violation cannot be corrected within 90 days of detection, the business must enter into a compliance agreement by the 120th day which will include a written corrective action schedule detailing the work to be completed and the timelines to be followed. Correcting the violation includes remediating any environmental harm associated with the violation, as well as implementing steps to prevent or minimize a recurrence of the violation.
- C. This policy does not apply if the small business received waiver pursuant to this policy for violation of the same or a similar requirement within the past three years.
- D. Failure to correct the violation(s) in accordance with Subsection A subjects the business to enforcement action.
- E. Information obtained from any business requesting enforcement waiver assistance will be considered non-confidential or non-proprietary, and will be made available to the public unless the facility requesting and receiving assistance notifies ADEQ otherwise. Upon receipt of the Facility Compliance Report,

the facility has 60 days to notify ADEQ of any information in the final report that should be removed or considered confidential under Arizona law before the report is released to the public. See A.R.S. §§ 49-205(A)(1), 49-243(N), 49-432(C)(1), 49-928, 49-967, 49-1012.

- F. The Compliance Assistance Section shall maintain a public record reflecting the number of requests for enforcement waivers received, the number of enforcement waivers granted, and the number of violations associated with each request. Proposed denials of enforcement waivers will be delivered to the director and will include a brief explanation for the denial, for example: imminent and substantial endangerment, criminal conduct, enforcement action already under way by a county, disclosure not timely made, etc. The proposed denials are confidential because they are covered by the executive deliberative privilege. Upon receiving a proposed denial, the director shall provide an opportunity to the small business to consult with the director and an opportunity to withdraw the waiver request. If the company does not withdraw the request, the director shall either deny or grant the waiver request.
- G. This policy sets forth internal guidelines which amend ADEQ's enforcement and penalty policies in situations involving voluntary self-policing, disclosure and correction. In conjunction with the applicable penalty policy, these guidelines will aid ADEQ personnel in proposing waiver penalties or negotiating settlements in administrative and judicial enforcement actions. The policy also serves to structure the agency's enforcement authority and states the agency's view as to the proper allocation of its enforcement resources. Deviations from these guidelines, where merited, are authorized so long as the reasons for the deviations are documented.
- H. 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 officials may decide to follow the guidance provided in this policy or to act at variance with the guidance based on analysis of case-specific facts and circumstances. Application of this policy to the facts of any individual case is at the sole discretion of ADEQ and is not subject to review by any court. In addition, the policy has no effect on the calculation of any cleanup costs, remedial costs, natural resources damages or emergency response costs associated with a violation. ADEQ reserves the right to change this policy at any time without public notice.
- I. To the extent that existing ADEQ enforcement policies are not inconsistent, they will continue to apply in conjunction with this policy.

#### **RESPONSIBILITY**

The Compliance Assistance Section, section managers, division directors and Office of Administrative Counsel are responsible for implementation of this policy.

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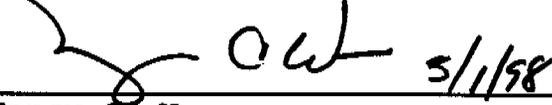
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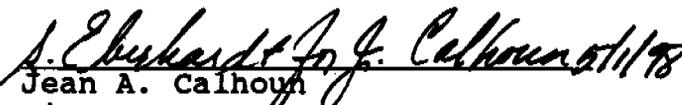
APPROVED BY:

Arizona Department of Environmental Quality:

  
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