

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.

0098.000 SITE ACCESS POLICY

Level One Arizona Department of Environmental Quality

Originator: Mark R. Santana, Administrative Counsel

Contact For Information: Mark R. Santana

Issue Date: March 3, 1997

PURPOSE

The purpose of this policy is to ensure that any entry onto a regulated facility, or any other property, whether publicly or privately owned, is performed lawfully and with respect for private property rights.

DEFINITIONS

For the purposes of this policy and procedures:

"PRIVATE PROPERTY" means 1) any regulated facility or 2) other property, whether publicly or privately owned, that is not open or accessible to the general public including areas within property open to the general public, to which public access is restricted.

"OWNER" means the owner, owner's agent, operator, operator's agent, or anyone in control of a property or facility, or anyone with apparent authority to grant access.

"CONSENT" means permission 1) either expressed orally, or in writing, or 2) notification where legal authority exists to enter without consent.

POLICY

It is ADEQ's policy to protect the public health, protect the legal standing of ADEQ and its employees, the rights of private property owners, the safety of ADEQ employees in the exercise of ADEQ's authority to enter property to inspect and determine compliance with the environmental laws of the state. Except in emergency situations as described in paragraph 9 of the procedures, no ADEQ employee shall enter private property in the performance of ADEQ activities (1) without obtaining the consent (implied or express, see definition above) of the property owner or a judicial warrant or order and (2) without following the procedures set forth in this document.

RESPONSIBILITY

The Office of Administrative Counsel (OAC), all unit or section managers and all employees whose duties may require entry upon private property shall be responsible for implementing this policy.

PROCEDURES

1. ADEQ employees should not enter private property without either the consent of the owner or a judicial warrant or order. Unannounced inspections are permitted so long as permission is established prior to, or immediately following entry. No consent is necessary for observation of activities or conditions in plain sight made from beyond the property line.
2. Prior to entry to property, employees should determine whether the property is public or private. Employees should be aware that streets, roads and other areas presumed to be public, may in fact be private. If questions exist, employees may contact OAC or where there is an enforcement case, the assigned assistant attorney general for assistance.
3. Prior to entry to private property, employees should make reasonable efforts to determine the owner of the property. If questions exist, employees may contact OAC or where there is an enforcement case, the assigned assistant attorney general for assistance.
4. Except where legal authority exists to enter without consent (regulated facilities), prior to entry to property, employees should request and receive the consent of the owner. An employee may enter the property to obtain consent, but must immediately leave the property if consent cannot be obtained. If relying upon verbal permission, employees should record the time, place and source of the verbal permission in the facility file. If the employee knows the party is unable to give consent, the employee should not enter the property. Rather the employee should locate an individual who has the ability to give consent. Employees should not rely upon verbal permission from persons who have caused entry problems in the past, if those problems remain unresolved. If questions exist, employees may contact OAC or where this is an enforcement case, the assigned assistant attorney general for assistance.
5. Employees should report any entry problems, or any information that may suggest future entry problems, to their unit or section manager and OAC. OAC will report any such information to the members of the Compliance and Enforcement Task Force.
6. Employees may consult with OAC before dealing with any unfamiliar site/facility. If any significant problems are

anticipated, employees should arrange the cooperation of local law enforcement agencies. If local law enforcement agencies are known or expected to be uncooperative, arrange the assistance of the Arizona Attorney General's Office or the Arizona Department of Public Safety. If questions exist, employees may contact OAC or where there is an enforcement case, the assigned assistant attorney general for assistance.

7. If problems, including potential confrontations with owners, law enforcement officers, or third parties develop or might develop prior to, during and after, entry to carry out an inspection or any other official purpose, employees should contact OAC or the Attorney General's Office (AGO) immediately. Employees **shall not** use force to effectuate entry or enter without a search warrant if the owner denies entry. If consent is withdrawn after entry, ADEQ employees should leave immediately. In no event shall ADEQ employees remain on a property after being asked or directed to leave by the owner, unless entry has been made pursuant to judicial warrant or order, or the emergency provisions of paragraph 9.
8. Under no circumstances should employees resist, or interfere with, the actions of any law enforcement officer, whether or not that officer's actions are justified.
9. Where there is a release or discharge or threat of release or discharge that may present an imminent and substantial danger to the public health, welfare, or the environment, and the owner of the property cannot be immediately identified and consent to enter obtained, ADEQ employees may enter the property to evaluate the threat to the public health or take corrective action(s). If questions arise concerning whether such emergency action is necessary, and time permits, OAC or AGO should be consulted.
10. The principles set forth in this policy are intended to provide guidance to ADEQ staff and are not intended to create or recognize any legally enforceable right in any person.

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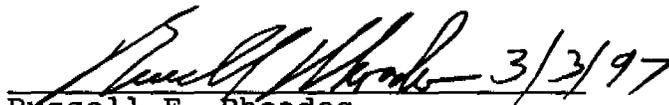
Originator: Mark R. Santana, Administrative Counsel

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APPROVED BY:

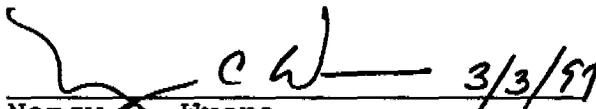
Arizona Department of Environmental Quality:



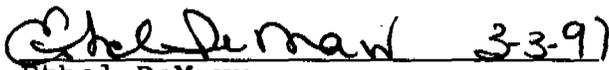
Russell F. Rhoades
Director, ADEQ Date



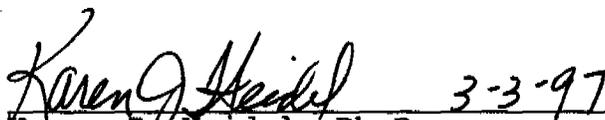
Karen J. Heidel, Ph.D.
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Waste Programs Division Date



Karen J. Heidel, Ph.D.
Acting Director,
Water Quality Division Date