

## **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.

### **0115.000 ADMINISTRATIVE HEARING PROCEDURES FOR DELEGATED PROGRAMS**

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

**Originator:**                **Mark R. Santana, Administrative Counsel**

**Contact for  
Information:**                **Mark R. Santana**

**Issue Date:**                **May 9, 1997**

#### **PURPOSE:**

This policy's purpose is to establish procedures for setting administrative hearings where local agencies are enforcing delegated Arizona Department of Environmental Quality (ADEQ) programs pursuant to delegation agreements.

#### **DEFINITIONS**

"Local agency" means a county, city or other public agency that has been delegated authority to enforce a delegated ADEQ program pursuant to A.R.S. § 41-1081 and A.R.S. § 49-107.

#### **POLICY**

The ADEQ delegation agreements with local agencies (LAs) require these LAs to utilize the Administrative Procedures Act and the ADEQ/Office of Administrative Hearings hearing process when the LAs issue administrative orders (compliance, abatement) pursuant to a delegated program. This policy provides guidance on how LA administrative enforcement hearings are to be handled by LA and ADEQ program staff.

#### **RESPONSIBILITY**

Compliance and enforcement staff, the Office of Administrative Counsel, and LAs are responsible for the implementation of this policy.

#### **PROCEDURES**

1. When an LA takes administrative enforcement action pursuant to a delegated authority, the request for hearing is sent to the LA. The request must be filed with the LA within the time period set forth in the statute applicable to the particular delegated authority.
2. When an LA receives a written request for a hearing, the LA should forward to the ADEQ manager of the delegated program (section manager), a packet containing copies of (1) the administrative order, (2) the written request for hearing, (3) the proof of service (certified mail card or affidavit of

service), and (4) a cover letter, identifying the attorney who will represent the LA. The letter should include the address, phone number and fax number of the deputy county attorney.

3. The packet will be date stamped upon receipt. The ADEQ program will, within five working days, prepare an assignment request memorandum, requesting the assignment of an assistant attorney general (AAG) to advise the LA attorney on the hearing. The hearing packet and assignment request memorandum will be given to the ADEQ case administrator within three working days. The case administrator will forward the assignment memorandum to the Office of Administrative Counsel (OAC). OAC will then forward the assignment request to the Attorney General's Office for assignment. The AAG will not "Second" or assist the LA attorney in trying the case, but will serve as an information resource and advisor for the LA attorney.
4. The case administrator will manage the LA administrative enforcement hearing like other ADEQ enforcement hearings with the exception that the assigned AAG will be provided with copies of all pleadings filed in the matter. The case administrator will provide copies of ADEQ's administrative hearing rules to the LA's attorney and the respondent (or respondent's attorney if the respondent is represented by counsel). The case administrator will assign a letter to the ADEQ administrative case number, identifying the hearing as an LA administrative hearing.
5. The Office of Administrative Hearings (OAH) will provide the administrative law judge to conduct the hearing. Unless the parties (LA and respondent) agree otherwise, the hearing will be held at OAH. If the parties agree to pay all travel and lodging costs, OAH will consider allowing the administrative law judge to conduct the administrative hearing at an agreed upon location in the county where the administrative order was issued. The LA and respondent should make such a request as early in the hearing process as possible. The request should identify at least one location where the hearing might be conducted.
6. The provisions of the Administrative Procedures Act and the ADEQ Rules of Procedure (A.C.C. R18-1-201 et seq) remain fully applicable to LA administrative enforcement hearings.

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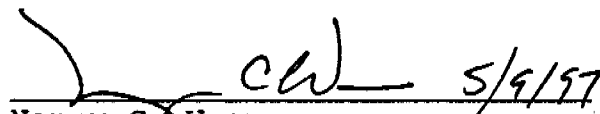
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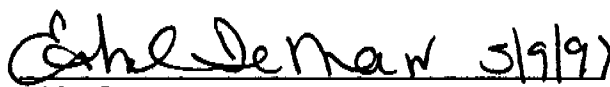
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Arizona Department of Environmental  
Quality:

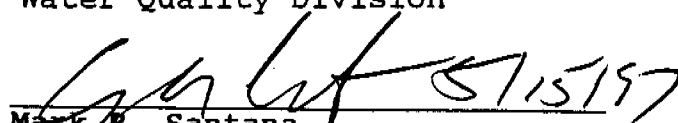
  
Russell F. Rhoades  
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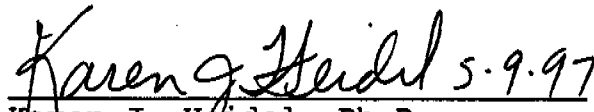
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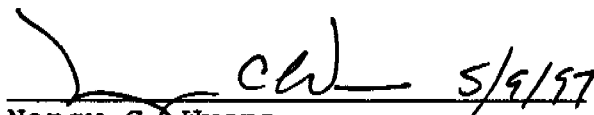
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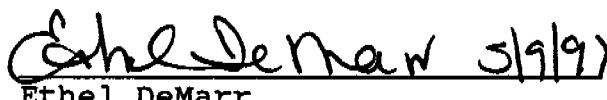
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