

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.

0117.000 COMPLIANCE ASSISTANCE POLICY FOR SMALL BUSINESS

Level One Department of Environmental Quality

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PURPOSE

Many small businesses are subject to detailed and potentially complex environmental laws. It is reasonable to infer that these businesses may not have the technical expertise to determine the applicability of every environmental law or all appropriate compliance measures and options. The end result is that many small businesses either ignore the regulations or try to interpret and implement a solution without sufficient knowledge or information. One of ADEQ's primary goals is helping businesses achieve environmental compliance, and by forming a "cooperative compliance partnership" with the small business community, ADEQ comes closer to meeting this goal.

This policy is intended to outline ADEQ's method of providing compliance assistance to small businesses, as well as the roles and responsibilities that the Compliance Assistance Section, Air Quality Division, Waste Programs Division, and Water Quality Division will have in the delivery of this service. Compliance assistance will allow the ADEQ to provide coordinated multi-media guidance to small businesses, allowing them to achieve environmental compliance. This cooperative effort between businesses and ADEQ will also provide a mechanism for qualifying small businesses to take part in the Enforcement Waiver Policy offered by ADEQ. This policy represents a one year "pilot program" which will be evaluated and, if necessary, modified throughout the year following its adoption.

DEFINITIONS

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

Technical Assistance: 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.

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 & Enforcement Policy (CEP).

Compliance Assistance Section (CAS): 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): 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: 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: 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 Environmental Compliance Audit may be conducted as part of an ADEQ compliance assistance on-site visit, a third party consultant/contractor or by the small business's employees.

Environmental Requirement: Any applicable federal, state, or local environmental law, permit, or rule.

Enforcement Action: An NOV, administrative order, civil action seeking civil penalties (but not injunctive relief), or a criminal prosecution for violation of an environmental requirement.

APPLICABILITY

1. This policy applies to all small businesses as defined above. 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, compliance assistance will be considered on a case by case basis.

2. 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 Emission Program, and 5) Drinking Water entities that do not meet this policy's definition of small business.
3. 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) Non-Title V Air Program, 7) Title V Air Program, 8) Surface Water and Ground Water Regulating Programs, and 9) Asbestos NESHAPS Program.
4. 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.
5. This policy sets forth internal guidelines which amend ADEQ's enforcement policies in situations involving voluntary self-policing, disclosure and correction. Deviations from these guidelines, where merited, are authorized as long as the reasons for the deviations are documented. This policy and the one-year pilot program it creates are not final agency actions, 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 reserves the right to change this interim policy at any time without public notice.
6. To the extent that existing ADEQ policies and delegation agreements are not inconsistent with this policy, they will continue to apply in conjunction with this policy.

POLICY

ADEQ actively encourages voluntary compliance by providing educational and compliance assistance opportunities to the small business community.

ADEQ shall carry out its responsibilities consistent with the following:

1. ADEQ, through the CAS, shall provide responses to small business requests for compliance assistance to achieve or maintain compliance with environmental regulations in a non-enforcement manner and reduce or eliminate pollution or waste streams.
2. ADEQ, through the CAS, shall serve as a single point of contact for all on-site compliance assistance requests from the regulated community. The CAS will coordinate

with the appropriate divisions to ensure an integrated approach is used in determining a solution for the requesting small business.

3. ADEQ, through the CAS, shall provide by departmental policy, access to an enforcement waiver for qualifying small businesses for violations discovered through CAT activities or self reported audits.
4. ADEQ, through the CAS, shall develop and implement a program to track the effectiveness of the compliance assistance effort and the resources required to implement the policy on a program and departmental scale.
5. ADEQ, through the CAS, shall develop a department-wide work plan for educational outreach and compliance assistance activities based on individual unit/section/division submittals and resource requirements.
6. ADEQ shall make reasonable efforts to educate the small business community on significant changes to environmental laws.

RESPONSIBILITY

The Compliance Assistance Section, ADEQ program staff, division directors and Office of Administrative Council are responsible for the implementation of this policy.

PROCEDURES

A. On-Site Compliance Assistance Eligibility

1. ADEQ divisions will forward all on-site compliance assistance requests to the Compliance Assistance Section for eligibility determination. ADEQ program staff will continue to provide technical assistance to small businesses based upon business requests.
2. To be eligible for on-site compliance assistance, a business must meet the definition of a small business as stated previously. If the small business does not meet this criteria, technical assistance will still be offered to the business by the CAS or program staff on a case by case basis.
3. If the small business meets the criteria to receive on-site compliance assistance, the Compliance Assistance Section will research available program compliance and enforcement files, Section 49-109 filings, and databases to determine the compliance history of the small

business. Using this information, the CAS will make a determination if the small business is eligible for the Enforcement Waiver Policy.

4. An environmental compliance audit is then scheduled with the small business by the CAT. For the initial environmental compliance audit, the CAT will be composed of representatives from the CAS only. The CAS will include technical representatives who will have comparable experience and training to the ADEQ enforcement staff.

B. Small Business Cooperation with Compliance Assistance Section

To obtain relief under this policy, the small business must cooperate as requested by the CAS to determine applicability of this policy. Cooperation includes providing requested documents, access to employees, and assistance in gathering information on violations, noncompliance problems related to the disclosure, and any environmental consequences related to the violations.

C. On-Site Compliance Assistance

1. The CAS will provide the small business with a Memorandum of Understanding (MOU) that clearly outlines the scope of the environmental compliance audit and responsibilities taken by ADEQ and the small business. The CAS must have a copy of this MOU signed by the owner or representative of the small business prior to delivery of any on-site compliance assistance. The CAS will also advise the small business as to what program specific materials are to be available for review by the CAT. A draft MOU is included in Appendix A.
2. Upon arrival at the small business, the CAT will review the audit procedure with the small business owner or representative and answer any questions regarding the process.
3. The CAT will audit the small business with the owner or representative present. Where possible, the CAT staff will provide immediate guidance on any compliance related matters discovered during the audit.
4. ADEQ may undertake enforcement actions for violations discovered by the CAS during the audit or any other time if any of the following four requirements are met:
 - a. The violation is one that may present an imminent and substantial endangerment to public health or the environment;
 - b. The violation has caused actual serious harm to

public health, safety, or the environment;

- c. The violation involves criminal conduct; or
- d. The violation violates the specific terms of a judicial or administrative order or compliance agreement.

The CAS and CAT will propose enforcement referrals to the director, and the director shall report violations discovered during the audit, or at any other time, to appropriate enforcement personnel if the violation is of the character described in subsections a through d above. The proposed referrals are confidential under the Executive/Deliberative Privilege. The director will either refer the violation to the enforcement section or decline the proposed referral.

The CAS manager will meet monthly with the director and review the number of CAT environmental compliance audits conducted, and the number of referrals made to enforcement personnel. The CAS will maintain a public record of these numbers.

- 5. Prior to leaving the site, the CAT will discuss initial findings, distribute appropriate guidance documents, and discuss the timetable for delivering a Facility Compliance Report to the small business. In the Facility Compliance Report, the CAT will identify all compliance violations, the corresponding rule reference for the violation, and potential corrective action plans to attain compliance. Where possible, the CAT will also identify any pollution prevention or waste reduction opportunities for the small business.
- 6. Information obtained during on-site compliance assistance visits will be considered non-confidential or non-proprietary, and will be made available to the public, unless the facility requesting and receiving on-site compliance assistance notifies ADEQ otherwise. Upon receipt of the Facility Compliance Report, the small business has sixty (60) days to notify ADEQ of any information in the report that should be removed or considered confidential under Arizona law before the final report is released to the public. See ARS § 49-205 (A)(1), 49-243 (N), 49-432 (C)(1), 49-928, 49-967, 49-1012.
- 7. If the small business is eligible for the Enforcement Waiver Policy, an offer of the enforcement waiver is made by the director as part of the Facility Compliance Report, including entering a compliance agreement if necessary.

- a. Should the offer of an enforcement waiver be accepted by the small business, a CAT composed of one representative from each pertinent program (Air, Waste, and Water) and a CAS liaison will perform a follow-up environmental compliance audit designed to ensure satisfactory progress is being made by the small business to meet the Facility Compliance Report recommendations.
- b. Should the offer of an enforcement waiver be declined by the small business, the small business will return to the universe of facilities regulated by ADEQ and will not be referred to enforcement.
- c. Should the offer of an enforcement waiver be declined by the small business, a CAT composed of representatives from the CAS only, having technical representatives who will have comparable experience and training to the ADEQ enforcement staff, will perform a follow-up environmental compliance audit designed to assist the small business meet the Facility Compliance Report recommendations. Further assistance will be provided to the small business upon request.

D. Information Exchange Between Compliance Assistance Section & Programs

1. When receiving a request for technical or compliance assistance, the Compliance Assistance Section must have access to a facility's compliance and enforcement history. This will ensure that inappropriate contact is not made to a facility with an outstanding complaint or enforcement action pending.
2. CAS staff will share all information on a small business with program staff on the CAT for Environmental Compliance Audits they will be participating in throughout the process. The CAS will not share the identity of any small business that does not request to participate in the Enforcement Waiver Policy or the Compliance Assistance Policy.
3. Specific non-CAS complaints will be referred to the appropriate program for resolution.

E. Workplan Development for Departmental Compliance Assistance

1. All units and divisions participating in the delivery of Compliance Assistance will track who assistance was delivered to, what resources were used, the types of assistance delivered, and the effectiveness of assistance provided. This data, along with unit/section ideas for improvement will be used to develop workplans for future

compliance assistance efforts in the group.

2. Appropriate units and sections will submit the above CA Workplans to the Compliance Assistance Section for incorporation into a Departmental CA Workplan. These workplans will be due to the Compliance Assistance Section one year from the date of adoption of this policy and every year after.
3. The Compliance Assistance Section will also compile this data into an annual report to be provided to interested parties.

F. Publication and Guidance Document Development

1. Priorities for guidance document, fact sheet, and educational tool development will be determined by upcoming federal or state rule schedules, industry or ADEQ program requests, and analysis of quarterly Technical Assistance reports.
2. If requested, the CAS will provide assistance to ADEQ programs in development of guidance materials to distribute to businesses.
3. All developed documents will be reviewed by appropriate ADEQ programs for content. Prior to publication, all documents developed by the CAS will be reviewed for format, grammar, and readability by the publication coordinator in the Office of Outreach & Information. The publication coordinator will issue publication identification numbers for all documents generated.

Appendix A
Memorandum of Understanding

[date]

[facility name]
[contact]
[address]
[address]

Dear [contact]:

Thank you for requesting on-site compliance assistance for [facility name]. Upon acceptance, this letter will document the agreement whereby your facility will participate in the Compliance Assistance Program administered by the Arizona Department of Environmental Quality. The objective of on-site compliance assistance is to assist facilities identify regulatory compliance issues and methods to correct violations in order to eliminate or reduce, to the maximum extent feasible, the use of toxic substances, the generation of hazardous wastes, and the release of pollutants to the environment. Pollution Prevention guidance will also be provided when opportunities are present.

On-site compliance assistance will be provided at no cost to [facility name], and upon completion of the on-site compliance assistance, [facility name] will be provided with a Facility Compliance Report outlining compliance issues identified for this facility. [Facility name] is under no obligation under this agreement to implement the opportunities identified in the report. In consideration of the on-site compliance assistance being provided to [facility name] at no cost, [facility name] expressly understands and agrees to the following:

[Facility name], on behalf of itself, its officers, directors, agents, and employees, is solely responsible for determining the feasibility or suitability of the information provided during on-site compliance assistance. Neither the Arizona Department of Environmental Quality, the State, nor any of its agents or employees; (1) make any warranty or representation of any kind whatsoever, either expressed or implied, as to the accuracy, safety, completeness, usefulness, or reliability of any information, apparatus, product, methods, or process in any way related to the on-site technical assistance; (2) assume any liability or responsibility for the use of, or for damages resulting from the use of any information, apparatus, product, method, or process in any way related to the on-site compliance assistance; and (3) represent that the use of any information, apparatus, product, method, or process in any way related to the on-site compliance assistance would not infringe privately owned rights.

[Facility name] shall indemnify and hold harmless the Arizona Department of Environmental Quality, the State, and their respective agents and employees from any and all liability resulting from any acts, errors, or omissions arising out of or in any way connected with the on-site compliance assistance. [Facility name] also further agrees not to bring any claims or suits for negligence, breach of contract, indemnity, professional liability, disclosure of information, professional advice, accuracy or reliability of information provided or arising out of or in any way connected with the on-site compliance assistance.

The completion of a site visit does not constitute a warranty or certification that there are no violations at [facility name] or that [facility name] is in full compliance. By requesting or receiving on-site compliance assistance, [facility name] is not relieved of its responsibility to comply with all applicable environmental regulations. The provision of on-site compliance assistance does not affect the authority of other programs within ADEQ to conduct independent inspections or investigations and undertake compliance and enforcement actions.

If the above correctly reflects our agreement, please sign the acceptance of one copy of this agreement on behalf of [facility name] in the space provided below and return that copy to [Compliance Assistance Staff name], Compliance Assistance in the enclosed envelope. The other copy of this agreement is for your records. After we have received a signed copy of this agreement, we will contact you to set up the time and date for the site visit. Thank you for your interest and agreement to participate in this worthwhile program.

Accepted and agreed to this _____ day of _____, 1993.

Print facility name

By

Signature

Print name

Title _____

Sincerely,

The Arizona Department of Environmental Quality

