

## CHAPTER 12: SMALL COMMUNITY POLICY

In recognition of the limited financial, technical, and administrative resources available to small communities for environmental compliance, and to promote the development of management tools to be used in identifying, prioritizing, correcting, and preventing future environmental problems, ADEQ will make special penalty considerations for small communities and special districts willing to work with ADEQ to achieve these goals. Although ADEQ will be available to assist in the development of the management plans necessary to achieve and maintain compliance, the focus of ADEQ's compliance assistance efforts will be comprehensive evaluations of compliance with all environmental statutes, rules and regulations that apply to a small community's or special districts operations. Once the requirements of this Chapter have been met, a small community or special district will qualify for a significant reduction or waiver of penalties that might otherwise be imposed for environmental violations.

### ELIGIBILITY FOR SPECIAL CONSIDERATION

For the purposes of this handbook, small communities include non-profit governing entities (incorporated or unincorporated) owning facilities that supply municipal services to fewer than 3,300 residents as determined by the most recent [U.S. Census Bureau Estimate](#).<sup>1</sup> Small communities that supply municipal services to between 3,301 to 10,000 residents as determined by the most recent U.S. Census Bureau Estimate will be considered for eligibility on a case-by-case basis. At the request of such a community and based upon information provided by the community, ADEQ will conduct a capacity test to determine whether the community's administrative, technical and financial capacity is such that the community's compliance with environmental requirements would improve significantly with ADEQ assistance.

Special districts<sup>2</sup> that supply municipal services to fewer than 10,000 residents will be considered for eligibility on a case-by-case basis. At the request of a Special District and based upon information provided by the special district, ADEQ will conduct a capacity test to determine whether the district's administrative, technical and financial capacity is so limited that the small community is unlikely to achieve and sustain environmental compliance without ADEQ assistance.

To qualify for special consideration, an eligible small community or special district must specifically request such consideration from ADEQ. For those small communities servicing between 3,301 and 10,000 residents and special districts servicing less than 10,000 residents, the request must include information to support application of the capacity test described below.

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<sup>1</sup> Those communities qualifying for special consideration will continue to receive the benefits described in this Chapter even if they subsequently exceed the population limits, so long as they have met and continue to meet the other requirements for special consideration.

<sup>2</sup> Special District means any of the following entities established pursuant to title 48 of the Arizona Revised Statutes: municipal improvement district; fire district; county improvement district; special road district; sanitary district; drainage or flood protection district; county flood control district; county jail district; and regional public transportation authority; and regional transportation authority.

ADEQ will maintain a list of small communities and special districts receiving special consideration. This list will be sent to EPA on quarterly basis to assist them in determining whether the small communities and special districts receiving special consideration from ADEQ also qualify for [EPA's Small Local Governments Compliance Assistance Policy](#).

#### **ELIGIBILITY CAPACITY TEST**

ADEQ will determine whether small communities servicing between 3,301 and 10,000 residents and special districts servicing less than 10,000 residents are eligible for special penalty considerations by assessing the indicators listed below. These indicators have been chosen to assist ADEQ in determining whether the technical, managerial, and financial capacity of a small community or special district is so limited that it is unlikely to achieve and sustain comprehensive environmental compliance without ADEQ's assistance. Although ADEQ is available to provide assistance, small communities and special districts are encouraged to conduct their own capacity test using the indicators listed below. These indicators are intended as guidance to be used in making a request for special consideration from ADEQ. Not every indicator needs to be met to qualify, but the small community or special district must submit documentation referencing the applicable indicators below when requesting special consideration from ADEQ.

#### **Capacity Indicators**

1. Compliance with routine reporting requirements (e.g. less than 90% of required monitoring reports were submitted over the past year);
2. No utility operations and maintenance plan, or an existing operations and maintenance plan is not routinely followed (e.g. maintenance logs are not regularly updated, are incomplete, or are not kept at all);
3. Required drinking water sanitary survey has not been scheduled, or the sanitary survey has been performed but the violations have not been addressed;
4. Utility operators are untrained or uncertified, or staffing of certified operators is adequate to meet the operation and maintenance requirements to ensure environmental compliance;
5. Utility systems were installed without state oversight and approval, or began operating without receiving final operation approval;
6. Rights essential to the provision of municipal services are not clearly established and documented by contract (e.g. no contract with the source from which it obtains its drinking water, or for the disposal of its solid waste);
7. No current or approved by-laws, ordinances, or tariffs in place with respect to each of its utility operations;
8. No formal organizational structure for operation and maintenance of the utilities clearly identifying the owner, operator, and the staff and their responsibilities;
9. No written job description clearly defining the responsibilities of utility staff, or staff is unfamiliar with such documentation;
10. Staff is untrained or inadequately trained;
11. Written policies covering personnel, customer service, and risk management either do not exist or are routinely ignored;
12. Lines of communication between utility staff and agencies or private sector staff that can provide assistance are inadequate or nonexistent;

13. Standard accounting principles are not followed in funding of its utilities, and either are not been audited or was issued an adverse opinion following an audit;
14. No annual budget for operation of the utility or has an annual budget that is inadequate to meet the demands of operation, maintenance, and environmental compliance;
15. Utility rates do not include all users or have not been recently reviewed to examine operational sustainability and viability;
16. A significant percentage of accounts (either payable or receivable) are chronically delinquent;
17. The tax base is inadequate to support needed environmental expenditures; or
18. Demographic factors present a quantifiable negative impact on the small community and/or special district's capacity.

ADEQ will document the capacity test and all findings made to support the ultimate determination.

### SPECIAL PENALTY CONSIDERATIONS

There are two types of penalty reductions available for small communities and special districts qualifying for special consideration:

1. An eligible small community or special district can qualify for a 100% penalty reduction, by: 1) making a Good Faith Commitment to environmental compliance as described below; and 2) developing a comprehensive Small Community Environmental Protection Plan (SCEPP) designed to maintain compliance once achieved. A SCEPP may be developed with or without the assistance of ADEQ, but to qualify for the 100% penalty waiver, the SCEPP must be submitted to ADEQ prior to ADEQ's identification of the violation(s) subject to the penalty.
2. If a small community or special district has not yet submitted a Small Community Environmental Protection Plan (SCEPP) to ADEQ, ADEQ will still offset a higher than normal amount of a civil settlement penalty for the development of a SCEPP provided there is also a Good Faith Commitment as described below. As a result, if the small community or special district agrees to correct the violation at issue and adopts an SCEPP as a Supplemental Environmental Project (SEP) described in a consent agreement, ADEQ will offset up to 75% of the civil penalty.<sup>3</sup>

Receipt of these benefits are not automatic. To receive these benefits, a small community or special district must make a request to ADEQ.

### GOOD FAITH COMMITMENT

To qualify for special penalty considerations, an eligible small community or special district must first make a Good Faith Commitment to environmental compliance as demonstrated through cooperation with ADEQ in the identification, prioritization and resolution of environmental violations.

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<sup>3</sup>See the Supplemental Environmental Project section of [Chapter 8](#) (Penalty Determinations) for a description of the normal offset allowed for a SEP.

To demonstrate an overall good faith commitment to cooperating with ADEQ in resolving environmental violations, a small community or special district must:

1. Promptly self-disclose known violations;
2. Make attempts to comply or make a request for compliance assistance prior to the initiation of an enforcement action;
3. Participate in a comprehensive compliance evaluation to identify violations;
4. Promptly correct known violations;
5. Demonstrate a willingness to remediate harm to public health, welfare, or the environment;
6. If necessary, enter into a written and enforceable compliance agreement establishing a schedule to correct all violations as expeditiously as practicable in order of risk-based priority, or to enter into a written and enforceable agreement establishing a schedule to correct all *known* violations expeditiously as practicable in order of risk-based priority and to develop a Small Community Environmental Protection Plan (SCEPP) for all its operations; and
7. Adherence to the terms of the agreement and compliance schedule.

### **Identifying Violations**

The first step towards environmental compliance is a comprehensive evaluation. This compliance evaluation may be conducted with assistance from ADEQ, but must be completed as part of the good faith commitment. A thorough assessment of the compliance status of a small community or special district must include:

1. A comprehensive evaluation of compliance with every applicable environmental requirement;
2. Current and anticipated future noncompliance with those environmental requirements;
3. Comparative risk to public health, welfare, or the environment of each current and anticipated future noncompliance,
4. An evaluation of compliance options; and
5. Special considerations including the level of government that operates the utility systems, regionalization, restructuring, consolidation of staff and processes with other operations within the small community or special district, or the community's resources.

### **Prioritizing Violations**

Once violations are identified, they must next be prioritized for resolution. Violations presenting a risk of ingestion or inhalation of, or contact exposure to, acute toxins, must be the highest priority for remediation and correction. Any identified violation or circumstance that may present an imminent and substantial endangerment to, has caused or is causing actual serious harm to, or presents a serious threat to, public health, welfare, or the environment is to be addressed immediately in a manner that abates the endangerment or harm or reduces the threat. Activities necessary to abate the endangerment or harm and reduce the threat posed by such violations or circumstances must not be delayed.

### **Resolving Violations**

If violations cannot be corrected within 180 days of the commencement of ADEQ's compliance assistance, a small community must enter into a Consent Order<sup>4</sup> with a compliance schedule that incorporates the following:

1. A specified timeframe for correcting all outstanding violations in order of risk-based priority;
2. Interim milestones that demonstrate reasonable progress toward compliance;
3. Provisions to ensure continued compliance with all environmental requirements; and
4. Provisions to ensure future compliance with any additional already promulgated environmental requirements that will become effective after the agreement is signed.

### **SMALL COMMUNITY ENVIRONMENTAL PROTECTION PLAN (SCEPP) REQUIREMENTS**

In addition to the Good Faith Commitment which ensures the identification, prioritization, and resolution of existing violations, a small community or special district must also develop a Small Community Environmental Protection Plan (SCEPP) designed to maintain compliance with environmental requirements. To qualify for special penalty considerations, a SCEPP must be submitted to ADEQ and contain all of the following<sup>5</sup>:

#### **SCEPP Documentation**

The small community or special district must develop a SCEPP manual that contains: the relevant elements listed below, including the policies, procedures (e.g., operational and maintenance), and standards showing how the SCEPP conforms to and will accomplish SCEPP elements to ensure compliance with environmental requirements. No later than one year after the request for special consideration, the small community or special district must submit a copy of the SCEPP manual to ADEQ as proof that the SCEPP was developed.

#### **Environmental Policy**

The SCEPP must include a policy statement that asserts a commitment to environmental excellence to comply with all environmental requirements and use this statement as framework for planning and action.

#### **Environmental Aspects**

The SCEPP must identify which activities, products, and services are subject to environmental regulation.

#### **Legal and Other Requirements**

The SCEPP must identify the environmental laws and regulations that apply to its operations. It must include key compliance dates, including dates when monitoring or other reports are due to ADEQ and the dates of the annual Environmental Compliance and SCEPP Audits (described below).

#### **Objectives and Targets**

The SCEPP must establish goals for its operations that are consistent with its environmental policy that will eliminate the gap between current procedures and an accepted SCEPP framework, and that will improve compliance with environmental requirements. The SCEPP must include specific actions that will achieve its objectives and goals.

#### **Structure and Responsibility**

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<sup>4</sup> See the Consent Order section of [Chapter 6](#) (Formal Enforcement Tools) for a more detailed description of ADEQ's Consent Order process.

<sup>5</sup> A SCEPP template is available from ADEQ.

The SCEPP must identify and establish roles and responsibilities for: 1) all staff and management with environmental compliance obligations; and 2) all staff and management with oversight responsibility for implementing the SCEPP. The SCEPP must also identify the resources to be made available to ensure compliance.

#### **Training, Awareness and Competence**

The SCEPP must include a plan to ensure staff are trained and capable of carrying out their environmental responsibilities.

#### **Communications**

The SCEPP must establish a process for internal and external communications on environmental compliance and SCEPP implementation issues.

#### **Document Control and Records**

The SCEPP must establish a system to ensure effective management of documents relating to the SCEPP and environmental activities including compliance with records retention related to compliance. The small community or special district must develop a process to maintain and manage records of SCEPP performance.

#### **Operational Control**

The SCEPP must establish a system to identify, plan and manage its operations consistent with its objectives and targets.

#### **Emergency Preparedness and Response**

The SCEPP must include an emergency operations plan (EOP) that identifies potential emergencies and their environmental impacts and procedures for preventing or responding to unpreventable emergencies. Existing plans required by law may be used to meet this requirement so long as they are referenced in the SCEPP.

#### **Noncompliance and Corrective and Preventive Action**

The SCEPP must establish a continuous management level review process that identifies and corrects deviations from its SCEPP and take actions to prevent recurrence.

#### **Environmental Compliance Audit**

The SCEPP must establish a process to conduct an annual assessment of key SCEPP activities and track performance including an assessment of compliance with environmental rules and regulations. ADEQ will make the facility-specific inspection checklists it uses to evaluate compliance available upon request.

#### **SCEPP Audit**

The small community or special district must make a commitment to an annual, comprehensive review of adherence to the SCEPP documented in a written report to be presented to the governing body and made available to the public and ADEQ upon request. In addition, the small community must agree to initiate an independent 3<sup>rd</sup> party audit of their SCEPP within 3 years of submitting the SCEPP to ADEQ. ADEQ will be available to conduct this audit upon request.

#### **Management Review**

The governing body of the small community or special district must make a commitment to review the annual Environmental Compliance and SCEPP Audit reports with the goal of continuous improvement of both the plan and environmental performance.

**ICE:**

- 1). Upon receipt of a SCEPP, *Penalty Waiver Request Received from RP* must be entered as an action in the Case screen.
- 2). If a Penalty Waiver is granted through acknowledging a SCEPP, *Penalty Waiver Granted* must be entered as an action in the Case Screen.