



Compliance Handbook



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 section 41-1033, Arizona Revised Statutes, for a review of the statement.



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Introduction

As an environmental agency, we help businesses understand and comply with environmental regulatory requirements and promote positive environmental practices. ADEQ is focusing on two measures to evaluate our success on how well businesses are complying with environmental laws:

1. Decrease return to compliance timeframe by 50% over 5 years.
2. Increase the number of facilities in compliance at the time of inspection by 50% over 5 years.

Compliance actions start with a field inspection, a file review, or a complaint. ADEQ can take informal or formal action against a facility and its owner if deficiencies are found during an inspection. Generally ADEQ prefers to use its informal compliance assurance tools Notice of Opportunity to Correct Deficiencies (NOC) or a Notice of Violation (NOV). The NOC and NOV do not constitute a "final action against the party" and are not appealable agency actions under ARS 41-1092. In some cases, circumstances may require ADEQ to use its formal enforcement authorities, which may result in administrative or criminal actions. But the goal remains to bring facilities back into compliance as quickly as possible.

This Standard Operating Procedure (SOP) documents the standard work processes for all ADEQ compliance personnel. Specific divisions or programs may supplement this SOP with more detailed information related to the particulars of their programs including program specific standard work process. However, any program-specific procedures cannot contradict this document.

Definitions:

Action Update: This is ADEQ's abbreviation of a requirement for a state agency to provide the regulated party an update on the status of any action resulting from an inspection at least once every month. This is a requirement under A.R.S. § 41-1009(I).

AZURITE: Arizona Unified Repository for Informational Tracking of the Environment. This database stores ADEQ's information on all

- Places, which are the facilities, sites or objects that ADEQ regulates, monitors or generally is interested in.
- Customers, which are the businesses and people that ADEQ contacts or is contacted by.
- Person, which are ADEQ employees
- A number of common elements are stored in a single location that may be used across many parts of the database, items like Cities, counties, units of measure, etc.
- All of the program specific systems are also stored as a part of the AZURITE database.

Consent Order: A bilateral administrative order issued with the complete written agreement of the responsible party and ADEQ.

Compliance/Abatement Order: An administrative order issued unilaterally by ADEQ without input from the responsible party.

Enforcement Action Matrix (Matrix): the decision tool used to assess the potential severity of risk to human health and the environment posed by the activity

Exit-debrief: A meeting between the facility personnel and the ADEQ inspector, conducted by the inspector, which takes place at the end of a field inspection before the inspector leaves the facility. The exit debrief includes a review both positive and negative findings of an inspection such as any field-issued documents, potential deficiencies if a field issued notice cannot be provided, and what the actions by ADEQ the facility may expect. If a field-issued inspection report cannot be issued, then the exit debrief form is a mandatory part of the meeting.

Facility contact: The person or persons at a facility who ensures the work to bring the facility in compliance with all regulatory requirements is completed.

Field-issued: An ADEQ document prepared by the inspector that is issued to the facility contact prior to the inspector leaving the facility.

ICE database: Inspections, Compliance and Enforcement (ICE) database tracks and documents facility inspections and compliance. ICE is a component of AZURITE.

Inspection Report: The ADEQ report that documents the inspector's observations of compliance and/or potential non-compliance during an onsite inspection of the facility.

Notice of Opportunity to Correct Deficiencies (NOC): An informal compliance assurance tool used to put a responsible party (such as a facility owner or operator) on notice that ADEQ believes a non-significant violation of an environmental law has occurred.

Notice of Violation (NOV): An NOV is an informal compliance assurance tool used by ADEQ to put a responsible party (such as a facility owner or operator) on notice that ADEQ believes a significant violation of environmental law has occurred.

On-site Representative: An individual who is employed in a managerial capacity at the facility or who has been designated by an officer or manager at the facility to represent the facility during the inspection.

Penalty Non-Compliance: Violations that are significant enough that ADEQ may seek monetary penalties in addition to specific compliance performance.

Responsible Party (RP): The individual or entity identified by rule or statute that is legally responsible to bind the facility and liable for ensuring regulatory compliance. The RP may be different for different programs so it is important to understand the specific programmatic requirements.

Complaint Procedures

This section establishes the standard work flow to obtain and process information for complaints regarding potential violations of environmental law, statute, or rule.

Complaint Receipt Procedures

1. Initial contact with complainant via phone.
2. The ADEQ employee taking the complaint should go to the ADEQ Complaint Website and fill in the webform during the conversation.
3. ADEQ Employee will obtain as much complaint information as possible.
4. Provide name, job title, ADEQ Division/Section/Unit, and phone number to complainant.
5. Request detailed location information, such as street address, nearest cross streets, and county.
6. Note if additional documentation (photographs, documents, witnesses) is available, so that the inspector can contact the complainant to obtain copies.
7. Obtain complainant's contact information (name, address, phone number, email).
8. If the complainant wishes to remain anonymous explain they will receive no follow-up information.
9. Read the disclaimer below from ARS §41-1010:
"Arizona law requires you to provide your name during the course of reporting an alleged violation of law or rule. Under the law, your name will be placed in the public file unless the release of your name may result in substantial harm to any person, including yourself, or to the public health or safety. However, if you intend on remaining anonymous, ADEQ may not force you to identify yourself."
10. If a complainant wants follow up, but wishes to remain confidential, document the specific potential harm posed to the complainant. ADEQ cannot guarantee confidentiality, but we should make every reasonable attempt to protect complainant contact information if there is a potential for harm to the complainant.
11. If there is a specific request for information regarding a complainant who has asked to remain confidential a case-by-case determination must be made by ADEQ's Administrative Counsel.
12. Initial contact with complainant received via web interface:

13. The web form will be sent via email to the appropriate program unit manager based upon the media that has been affected. Complaints pertaining to an unfamiliar or non-reported media will be sent to Administrative Counsel for review and distribution to the appropriate program unit manager.

14. A web-based complaint will be assigned to an inspector for follow-up. The assigned inspector will receive a copy of the email.

15. If the complainant has provided an email address, once the complaint has been assigned, the complainant will receive automatic confirmation of the assignment.

16. Assigned inspectors must make contact with the complainant and the Potentially Responsible Party (PRP) within 5 days of the assignment and proceed as in section A. above.

17. Determine ADEQ Action:

The appropriate ADEQ follow-up action will be program- and county- specific, based upon state and federal delegation agreements. Be sure to understand your program's jurisdictional reach. The inspector works with the unit manager on the appropriate follow-up action:

- a) Inspection is warranted, if ADEQ believes the party has violated laws or rules (Close after inspection)
- b) Refer complaint to another program/agency (Close after referred)
- c) Close complaint without inspection (Not enough specific source information to constitute a valid complaint or complaint is resolved without a site visit)

18. In all cases, immediately log the complaint information into AZURITE and update the complaint screen with appropriate actions throughout the process. Electronic copies of all information should be collected and filed according to ADEQ's filing procedures.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Inspection Procedures

Inspection/File Review Procedures

1. Pre-Inspection Research and Review
 - a) Review information from AZURITE database (Notices, Orders, Judgments, equipment, previous inspections, report submittal dates, permit status), the facility file, and previous inspection reports.
 - b) Staff in satellite offices can contact the program directly to obtain necessary documents.
 - c) Obtain facility/responsible party (RP) contact information. Note: this information may not be available if the inspection is the result of a complaint.
 - d) Prepare documents and materials required for the inspection (standard work for each program)
 - e) Coordinate with other programs or agencies, if necessary and authorized.
 - f) Schedule inspection with RP if announced inspection is warranted.
2. Gaining Site Access/Opening Conference

WHY IS THIS IMPORTANT?

Arizona Revised Statutes § 41-1009 establishes the requirements for an agency to make an inspection. Generally, you'll need permission from the representative on site in order to inspect. Failure to follow the requirements can mean sanctions against the inspector.

- a) Present your ADEQ photo identification. Identify your name, job title, and ADEQ/division. Explain the reason for your visit, scope of your activities, and statutory authority identified in law.
- b) Review and complete Notice of Inspection Rights Form with the on-site representative.
- c) Obtain the on-site representative's signature on Notice of Inspection Rights Form. If the on-site representative refuses to sign the form, but will allow the inspection to continue, note the decision on the form, sign the form and proceed with the inspection.
- d) If the on-site representative refuses entry, the inspector must vacate to a public right-of-way and immediately contact the unit supervisor.

e) If no one is available onsite, the inspector may proceed with inspection if it is determined to be safe and reasonable - Inspectors have the right to proceed with the inspection if there is reason to believe there is a threat to human health or the environment.

f) If "No Trespassing" signs are present, the inspector should consult the unit supervisor; the inspector may enter the property to obtain consent, but must leave the property if consent cannot be obtained. The inspector notes the "No Trespassing" on the form and sign the form.

3. Conduct Inspection

- a) Use relevant checklist for permitted entities, if applicable.
- b) Complete a document review, if applicable.
- c) Conduct a site inspection
- d) Identify alleged violations

WHY IS THIS IMPORTANT?

It's a basic right in our criminal law that a person is presumed innocent until proven guilty. This applies to environmental violations, for both civil and criminal violations. Until a violation is proven in a court or the responsible party agrees to a settlement, ADEQ uses the term "alleged violation."

4. Generate Inspection Report

- a) Document alleged violations in the inspection report. The inspector can recommend correction of deficiencies in the inspection report. The inspector should also document if any deficiencies are corrected by the end of the inspection.
- b) The inspector should use a photograph log to document potential deficiencies. The inspection report will note that photographs were collected and will be made available upon request.
- c) Inspection reports should be field-issued, if possible.

Inspection Procedures

d) If an inspection report cannot be issued in the field, an exit debrief should be provided to the facility contact.

WHY IS THIS IMPORTANT?

Who do you give the inspection report to? The responsible party is the official representative of the facility, usually the owner or the permittee. But that person may not be at the facility. Your unit will have additional instructions if you need to send copies of the inspection report to other people.

e) Consult with unit supervisor for required timeframes to generate inspection report.

f) If the inspector determines a referral to another ADEQ program is appropriate, the inspector must contact the unit manager of that program prior to referring the case.

g) AZURITE Entry - Update the AZURITE ICE Inspection screen module with the appropriate action events within 2 business days.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Informal Enforcement Procedures – Enforcement Action Matrix

This section establishes how to evaluate the risk associated with classes of violations and determining the appropriate compliance assurance response. ADEQ has developed an “Enforcement Action Matrix” (Matrix) to guide Compliance and Enforcement staff and managers when assessing the potential severity of risk to human health and the environment posed by the activity. Each division has a customized matrix to address the specifics of their programs with respect to level of enforcement and management review.

Enforcement Action Matrix

The enforcement action matrix is designed to be used as a tool and not intended as a strict protocol. It is important that all issues are discussed with program management regarding appropriate enforcement response. No tool or guidance can supplant good judgment. When in doubt consult with upper management.

Deviations from the matrix recommendations must be defensible. For multiple deficiencies with different levels of environmental or human health risk, the process for the deficiency with the highest risk to environmental or human health will apply for all the deficiencies.

ADEQ’s goal is to list all deficiencies in one notice, whether an NOC or NOV. The highest level of violation dictates the type of informal enforcement document that is issued. If the case contains even one potential deficiency that is not approved for field-issuance, the inspector will issue the complete notice from the office.

The left side of each Matrix lists the types of deficiencies. The deficiencies are broadly categorized and colored coded:

- **YELLOW**
Lowest environmental or human health risk,
- *Notice of Opportunity To Correct Deficiencies (NOC) should likely be issued,*
- *Unit manager must approve NOCs that are not approved for field-issuance.*
- *Division Director must approve NOC violations that will be listed on the field-issued NOC forms.*
- **ORANGE**
Moderate environmental or human health risk,
- *Discretionary on issuing NOC or Notice Of Violation (NOV).*
- *Section Manager must be consulted and approve.*
- **RED**
Most severe environmental or human health risk,
- *NOV recommended,*
- *Division Director must approve.*

Program Specific Standard Work, as developed, is included in Appendix Additional Documents for this standard operating procedure is listed in Appendix B.

Informal Enforcement Procedures – Field-Generated Notice Of Opportunity To Correct Deficiencies (NOC)

Under A.R.S. § 41-1009(E), an NOC puts a Responsible Party (RP) on notice that ADEQ believes a violation of an environmental law has occurred. ADEQ uses the Enforcement Action Matrix to determine the potential severity of risk to human health and the environment posed by the activity. The NOC:

- Describes the facts known to ADEQ at the time the NOC is issued.
- Cites the laws or rules that ADEQ believes have been violated.
- Identifies any documents that ADEQ relies on for the alleged noncompliance.
- Provides the RP an opportunity to resolve the violation(s) or deficiency(ies) on its own, for no more than 180 calendar days.

NOC Procedure

1. The inspector can issue a field-generated NOC for any deficiencies that are included in the programs specific field forms for a NOC. All other deficiencies should be issued from the office and be evaluated with management using the enforcement action matrix as a guide for consistent and fair decisions.

2. The inspector will give deadlines to return the facility to compliance as quickly as practical. Multiple deadlines may be appropriate.

WHY IS THIS IMPORTANT?

ADEQ achieves the mission to do more environmental good by helping facilities return to compliance as soon as possible. However, it doesn't make sense to give a facility a short deadline if a longer deadline is truly what it will take. To determine a reasonable deadline for a facility to come into compliance, inspectors should ask the facility contact how quickly the facility can reasonably correct any potential deficiencies. As always, the inspectors must use good professional judgment when working with the facility to set an appropriate deadline for each potential compliance condition.

3. When available for the program, standard language should be used to describe the return to compliance conditions.

4. All deficiencies are listed in one case document, whether NOV or NOC. If the case contains even one potential deficiency that is not approved for field-issue, the inspector will issue the complete the notice from the office.

5. The inspector is responsible for following up with the facility on compliance conditions described in the NOC, until the NOC is closed or referred to a community liaison. If the inspector has not received evidence of compliance, the inspector should call the appropriate, responsible person at the facility before each deadline listed in the NOC, depending on the program-specific requirements, as a personal reminder.

6. Action Updates: The inspector is responsible for providing agency update letters to the facility (See Action Update Section)

7. NOC Closure.

a) If the violation is corrected within the time allowed by the NOC, and returns to compliance, the inspector closes the NOC case. ADEQ issues a closure letter to the RP and enters action events into the ICE Case Module as appropriate.

b) After the first instance of a missed compliance deadline in the NOC, the program will follow the Community Liaison (CL) referral process as described in the Community Liaison Referral Section.

Program Specific Standard Work, as developed, is included in Appendix

Additional Documents for this standard operating procedure is listed in Appendix B.

Informal Enforcement Procedures – Office-Generated Notice Of Opportunity To Correct Deficiencies (NOC)

Under A.R.S. § 41-1009(E), an NOC puts a Responsible Party (RP) on notice that ADEQ believes a violation of an environmental law has occurred. ADEQ uses the Enforcement Action Matrix to determine the potential severity of risk to human health and the environment posed by the activity. The NOC:

- Describes the facts known to ADEQ at the time the NOC is issued.
- Cites the laws or rules that ADEQ believes have been violated.
- Identifies any documents that ADEQ relies on for the alleged noncompliance.
- Provides the RP an opportunity to resolve the violation(s) or deficiency(ies) on its own, for no more than 180 calendar days.

Office-Generated NOC Procedure

1. Potential deficiencies to be issued from the office should be evaluated with management using the enforcement action matrix as a guide for consistent and fair decisions.
2. The inspector should get input from the facility contact about the time needed to come into compliance.

WHY IS THIS IMPORTANT?

ADEQ achieves the mission to do more environmental good by helping facilities return to compliance as soon as possible. However, it doesn't make sense to give a facility a short deadline if a longer deadline is truly what it will take. To determine a reasonable deadline for a facility to come into compliance, inspectors should ask the facility contact how quickly the facility can reasonably correct any potential deficiencies. As always the inspectors must use good professional judgment when working with the facility to set an appropriate deadline for each potential compliance condition.

3. As soon as possible, the inspector should consult with the unit manager on deficiencies, using the Enforcement Action Matrix as necessary.

4. The unit manager should review the inspection report prepared in the office. If the unit manager decides that an NOC is appropriate for the remaining deficiencies, the inspector can issue the NOC from the ADEQ office, along with the inspection report (if this was not issued on-site). The NOC should be issued within seven days of the inspection, but no later than 14 days of the inspection.

5. The inspector will give deadlines to return the facility to compliance as quickly as practical. Multiple deadlines may be appropriate. The shortest timeframe will end up determining the timeframe for the NOC.

6. When available for the program, standard language should be used to describe the return to compliance conditions.

7. The inspector is responsible for following up with the facility on the compliance conditions described in the NOC, until the NOC is closed or referred to a community liaison. If the inspector has not received evidence of compliance, the inspector should call the appropriate, responsible person at the facility before each deadline listed in the NOC, depending on the program-specific requirements, as a personal reminder.

8. Action Updates: The inspector is responsible for providing agency update letters to the facility (See Action Update Section)

9. NOC Closure.

- a) If the violation is corrected within the time allowed by the NOC, and returns to compliance, the inspector closes the NOC case ADEQ issues a closure letter to the RP and enters action events into the ICE Case Module as appropriate.

- b) After the first instance of a missed compliance deadline in the NOC, the program will follow the Community Liaison (CL) referral process as described in the Community Liaison Referral Section.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Informal Enforcement Procedures – Notice of Violations (NOV)

ADEQ uses the Enforcement Action Matrix to determine the potential severity of risk to human health and the environment posed by the activity. A Notice of Violation (NOV) puts an RP (such as a facility owner or operator) on notice that ADEQ believes a significant violation of environmental law has occurred.

The NOV:

- Describes the facts known to ADEQ at the time the NOV is issued.
- Cites the laws or rules that ADEQ believes have been violated.
- Provides the responsible party an opportunity to do any of the following before ADEQ takes formal enforcement action (not to exceed 120 calendar days from the date the NOV is issued):
 - Meet with ADEQ and discuss the facts surrounding the violation,
 - Demonstrate to ADEQ that no violation has occurred or,
 - Document that the violation has been corrected.

NOV Procedure

1. All NOVs are office-issued, unless the ADEQ Director specifically authorizes a field-issued NOV.
2. The inspector should get input from the facility contact about the time needed to come into compliance.
3. If after an inspection, the unit manager decides that a NOV may be appropriate, the unit manager provide the section manager a draft notice as soon as possible, but no longer than within 7 calendar days of the inspection.
4. The section manager consults with the division director. The division director's approval for the NOV also means that the program has approval to seek escalated enforcement as needed.
5. All deficiencies are listed in one case document, whether NOV or NOC. If the case contains even one deficiency identified as an NOV deficiency, the inspector will issue the complete NOV from the office.

6. The section manger informs the unit manager to issue the NOV. The NOV should be issued to the facility within 21 days of the inspection.

7. The inspector is responsible for following up with the facility on compliance conditions described in the NOV, until the NOV is closed or referred to enforcement. If the inspector has not received evidence of compliance, the inspector should call the appropriate, responsible person at the facility before each deadline listed in the NOV, depending on the program-specific requirements, as a personal reminder.

8. The inspector reviews any response from the facility. The inspector consults with the unit manager about whether a facility response is complete, and an NOV can be closed. The section manager is responsible a NOV closure.

9. Action Updates: The inspector is responsible for providing agency update letters to the facility (See Action Update Section)

10. NOV Closure: If the violation is resolved within the time allowed by the NOV, ADEQ can issue a closure letter to the RP and either:

- a) Forgo initiating formal enforcement (including seeking civil penalties) or,
- b) Explicitly reserve the right to seek a civil penalty, or seek a civil penalty regardless whether the responsible party achieves or demonstrates compliance.

11. If the violation is not corrected within the timeframe allowed by the NOV, the program will initiate formal enforcement. See the Section on Escalated Enforcement Tools.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Informal Enforcement Procedures – Community Liaison Referral and Follow-Up

ADEQ employs Community Liaisons (CLs) who are located strategically throughout the state. The CLs conduct broad outreach within the regions they serve and assist and educate the regulated community and general public, particularly in rural Arizona, on ADEQ requirements and services. ADEQ's CLs also provide regular briefings for civic leaders, and coordinate communication between agency staff, county health departments and other agencies.

As part of their compliance assistance responsibilities, the CLs assist responsible parties (RPs) with NOCs that have not reached compliance by the first missed deadline. These NOC cases will be transferred to CLs, who will become the case managers responsible for follow-up with the Facility. The CLs will provide program assistance to the RPs in the form of encouragement and education on regulatory requirements, and the process to come into compliance.

NOC Referral Procedure

1. The program unit manager sends a case referral email to:
 - the Outreach Unit Manager and
 - the CL Program Assistance Project Manager.
2. The e-mail has the following information:
 - The Case Number.
 - Link to the program's case folder where the NOC and Inspection Report reside or attach the NOC and Inspection Report to the referral email
 - Contact information, if different than in AZURITE ICE, for the operator, facility representative, or consultant (phone, mailing address and e-mail) if different than RP
 - Any other pertinent information relevant to the case (i.e. additional contact people's information for the case).
3. The program unit manager will change the case manager to the Outreach Unit Manager and enter the case action, "Referred to Liaison", in AZURITE ICE upon referral.
4. The Outreach UM will receive and assign to a specific CL
5. The assigned CL will send an email acknowledgement to the program unit manager and inspector that they received the case referral.

Community Liaison Program Assistance

1. The assigned CL will review the referral and case notes in AZURITE ICE and may contact the Inspector or program unit manager as needed to confirm understanding of what action is required of the facility to resolve the deficiency.
2. Within seven calendar days of the referral, the CL will contact the RP to offer program assistance.
3. Contact includes:
 - Calling, emailing, or meeting with the RP or Facility operator/representative
 - Sending Action Update letters
4. Program assistance provides encouragement and education to the RP on applicable regulatory requirements and requirements to come into compliance. Assistance may include:
 - Provide copies of statutes, rules, guidance, permit requirements and forms.
 - Explain or clarify the requirements needed for case closure.

Program assistance does not involve performing the actions for the RP or recommending technical solutions at a facility.

The CL is the case manager and is responsible for all aspects of pursuing the NOC case but may ask the originating program to review any compliance documentation for adequacy as needed.

CL Follow-Up Documentation

1. The CL decides when to close the case, and under what reason (with or without compliance achieved)
2. CLs will enter compliance achieved dates in AZURITE ICE.
Compliance condition achieved date is the date ADEQ receives the document (CL will date stamp or handwrite date with initials on document).
3. CLs will close the NOC case in AZURITE ICE and send the appropriate closure letter to the RP.
Closure letter templates are located in Microsoft Word (New -> My templates -> CEC Templates -> NOC Closure Letter or No Compliance NOC Closure Letter).

4. The CL will notify the inspector and program unit manager via email when program assistance is terminated.

If inspector has contact and/or receives case documentation from the RP, the inspector should enter the action in AZURITE ICE and send an e-mail to CL or ask the CL to enter the action.

5. The CL will maintain the following information on the case:

a. Electronic copies of documents on the CL shared drive of the following:

- PDFs of the NOC and the inspection report
- Signed CL AULs
- Electronic documents sent to/from the inspector, RP and CL
- Telephone Contact forms (phone logs)

b. Hardcopy documents for the permanent facility file will contain, at a minimum, in chronological order, from oldest to newest :

- Signed CL AULs
- Signed Closure Letter
- All documents sent to/from the inspector, RP and CL (i.e. correspondence, emails, photos, etc.)
- Telephone Contact forms (phone logs)
- Do not include copies of documents generated prior to the referral.

6. The CL will provide the records received and created during program assistance within 30 days to the designated program contact (see program specific standard work) for the permanent facility file.

7. Documents for the permanent facility file shall be hand-delivered to Phoenix.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Action Updates

1. The case manager is responsible for providing agency action update letters to the facility. As defined under A.R.S. § 41-1009(I): a state agency must provide the regulated party an update on the status of any action resulting from an inspection at least once every 30 days.

2. Under A.R.S. § 41-1009(I), ADEQ continues to send action updates until “the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.”

WHY IS THIS IMPORTANT?

ADEQ achieves the mission to do more environmental good by helping facilities return to compliance as soon as possible. However, it doesn't make sense to give a facility a short deadline if a longer deadline is truly what it will take. To determine a reasonable deadline for a facility to come into compliance, inspectors should ask the facility contact how quickly the facility can reasonably correct any potential deficiencies. As always, the inspectors must use good professional judgment when working with the facility to set an appropriate deadline for each potential compliance condition.

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Escalated Enforcement Tools

ADEQ is able to resolve the majority of violations through informal compliance assurance tools such as the previously discussed NOCs or NOVs. However, ADEQ has a variety of escalated or "formal" enforcement tools where informal enforcement has not or cannot achieve the desired results. ADEQ will only use formal enforcement tools as the first level of an initial enforcement response under the most egregious or time-sensitive situations. In most other cases, ADEQ's formal enforcement tools are used when the RP is unwilling or unable to resolve a violation in a timely manner after receiving an informal compliance assurance response from ADEQ.

A CONSENT ORDER IS A COLLABORATIVE TOOL

A consent order is a formal agreement mutually negotiated by the ADEQ and the RP. ADEQ and the RP cooperate to set reasonable expectations and timelines. The RP can negotiate the terms of the compliance schedule or strategy; however, the recitals, jurisdiction, and agency's findings have been designed to be fair, but non-negotiable.

Consent Order

1. A collaborative agreement between the RP and ADEQ. The RP has an opportunity to provide input but waives its right to appeal the order. Issued when:

- a) The RP fails to meet an NOV deadline, within 15 days after any missed deadline.
- b) The circumstances of the violation do not warrant seeking civil penalties through the Arizona Attorney General's Office.
- c) Civil penalties may be warranted, but a more immediate resolution of the injunctive relief is needed rather than waiting until civil penalty negotiations are finished.

2. Once the first deadline for a compliance condition is missed, the consent order process begins:

- a) The Case Manager sends the RP the missed deadline letter and information on the consent order process including a consent order template
- b) The Case Manager reviews the case information of the notice and drafts a consent order. All compliance conditions with missed deadlines, NOV or NOC, should be included in the consent order.

c) The Case manager schedules a consent order meeting with an authorized representative of the RP.

d) At the consent order meeting, all appropriate parties should be represented for the RP, and ADEQ. ADEQ staff includes the person with authority to make decisions on the order.

e) The RP is provided a copy of the consent order and must return the signed copy within seven days from the date of the consent order meeting or the case will get escalated in accordance with programmatic authorities.

f) When the signed consent order is returned, the section manager signs it. The order is docketed and the facility is sent a copy of the effective order.

g) Until the consent order is effective, the case manager must continue to send action update letters at least once every 30 days.

h) Once signed by both parties, the case manager routes the document to the Office of Administrative Counsel who will docket the consent order within 1 business day and send a copy of the effective order to the facility.

Compliance or Abatement Order

1. An administrative order is issued unilaterally by ADEQ without input from the RP. The RP has the right to request a meeting with ADEQ and/or ask for an appeal to the Office of Administrative Hearings (OAH) within 30 days of issuance of the order. A compliance order is issued when:

a) The RP fails to meet a deadline within an NOV and the consent order negotiation was unsuccessful, or it will not be finalized within 15 days of initial negotiation.

b) There is imminent danger to public health.

2. Once the determination has been made that a bilateral agreement is not appropriate, the compliance order process begins:

a) The case manager reviews the case information and drafts a compliance order.

b) The unit manager and the section manager review the compliance order.

c) The division director signs the compliance order.

d) The case manager routes the document to the Office of Administrative Counsel who will docket the compliance order within 1 business day and send a copy of the effective order to the facility.

Compliance or Abatement Order

1. Once all conditions have been met, the ADEQ Case manager must provide documentation for management review that demonstrates that all conditions have been met and appropriately documented in the facility file.

2. Termination of an Order must be approved by the same level of management that approved issuance of the Order

3. The termination letter must be sent to the authorized representative for the RP

Program Specific Standard Work, as developed, is included in Appendix A.

Additional Documents for this standard operating procedure is listed in Appendix B.

Other Enforcement Tools

Please contact your unit manager for guidance when considering any of the following enforcement tools. Your unit manager, in consultation with program and agency management, will provide you with instructions on how to proceed.

Civil Referral

1. Additional Documents for this standard operating procedure:

Case Referral Memorandum template

2. Referrals can be made to the Arizona Attorney General's Office requesting that an Assistant Attorney General (AAG) be assigned to the case. This is usually done for the following types of cases or situations:

- a) The violation is considered Penalty Non-compliance (PNC)
- b) ADEQ is seeking a civil penalty
- c) The RP has violated a consent order.
- d) The RP has violated a compliance order.
- e) The violation is unlikely to be resolved through an NOV or administrative order.
- f) The violation poses an immediate and substantial threat to human health or the environment.

3. Temporary Restraining Order/Preliminary Injunction - filed with a civil complaint.

4. Permanent Injunction - filed with a civil complaint.

5. Consent Judgment/Consent Decree (negotiated court settlement of a civil complaint).

License Suspension Or Revocation

A suspension or revocation of a license due to non-compliance is an option for the following select programs and a violation of the license is not resolved through an NOV:

- Vehicle Emissions Inspections
- Operator Certification
- Solid Waste Registrations

Criminal Referral

ADEQ may refer potential criminal acts to the Attorney General's Office (AGO) or the federal Environmental Protection Agency (EPA) for review. Referrals to the AGO must be accompanied by a recommendation for a permanent injunction/civil penalty in accordance with the procedures described above (unless there is no underlying civil violation). The following acts potentially constitute a crime:

- Performance of a prohibited act with criminal negligence.
- Knowing performance of a prohibited act.
- Reckless performance of a prohibited act.
- Knowing or reckless manifestation of an extreme indifference for human life in performance of a prohibited act.
- Fraud against ADEQ.

Penalties

ADEQ has authority to seek monetary penalties via a referral to the Attorney General's Office, or in the case of drinking water or hazardous waste violations, through the issuance of a Compliance Order with Civil Administrative Penalty. Determining when to seek penalties is made on a case-by-case basis in consultation with the Director and Division Directors. Please refer to the ADEQ Penalty Policy.



APPENDIX



APPENDIX A

Please contact your unit manager for guidance when considering any of the following enforcement tools. Your unit manager, in consultation with program and agency management, will provide you with instructions on how to proceed.

APPENDIX B

- 1) ACTION UPDATE LETTER(S)
http://www.azdeq.gov/function/laws/download/appendix_b_files/action_update_letter_new.dotx
- 2) CONSENT ORDER TEMPLATE
http://www.azdeq.gov/function/laws/download/appendix_b_files/consent_order_template.dotm
- 3) COMPLIANCE ORDER TEMPLATE
http://www.azdeq.gov/function/laws/download/appendix_b_files/compliance_order_template.dotm
- 4) ENFORCEMENT ACTION MATRICES
http://www.azdeq.gov/function/laws/download/appendix_b_files/enforcement_action_matrices.pdf
- 5) EXIT DEBRIEF FORM
http://www.azdeq.gov/function/laws/download/appendix_b_files/exit_debrief_form.docx
- 6) NOTICE OF OPPORTUNITY TO CORRECT DEFICIENCIES TEMPLATE (OFFICE GENERATED)
http://www.azdeq.gov/function/laws/download/appendix_b_files/noc_correct_deficiencies_template.dotx
- 7) NOTICE OF VIOLATION TEMPLATE
http://www.azdeq.gov/function/laws/download/appendix_b_files/notice_of_violation_template.dotm
- 8) COMPLAINT RECEIPT FORM
http://static.azdeq.gov/forms/complaint_receipt_form.pdf
- 9) INSPECTION RIGHTS FORM
http://www.azdeq.gov/function/laws/download/appendix_b_files/inspection_rights_form.pdf
- 10) SMALL BUSINESS BILL OF RIGHTS
http://www.azdeq.gov/function/laws/download/appendix_b_files/small_business.docx
- 11) INSPECTION AUTHORITY RIGHTS TABLE
http://www.azdeq.gov/function/laws/download/appendix_b_files/inspection_authorities_rights_table.docx
- 12) MISSED DEADLINE LETTERS
http://www.azdeq.gov/function/laws/download/appendix_b_files/misled_deadline_letter.dotx
CLOSURE LETTERS:
No Compliance – Notice of Opportunity to Correct (NOC)
http://www.azdeq.gov/function/laws/download/appendix_b_files/no_compliance_noc_letter.docx
Notice of Violation (NOV)
http://www.azdeq.gov/function/laws/download/appendix_b_files/notice_of_violation_template.dotm
- 13) Notice of Opportunity to Correct (NOC)
http://www.azdeq.gov/function/laws/download/appendix_b_files/noc_closure_letter.docx
- 14) TELEPHONE CONTACT
http://www.azdeq.gov/function/laws/download/appendix_b_files/telephone_contact.pdf
- 15) GUIDELINES FOR COMMUNITY LIAISONS CASE CLOSURE
http://www.azdeq.gov/function/laws/download/appendix_b_files/guidelines_for_community_liaisons_case_closure.pdf
- 16) CONSENT ORDER NEGOTIATION GUIDELINES
http://www.azdeq.gov/function/laws/download/appendix_b_files/consent_order_negotiation_guidelines.docx
- 17) CONSENT ORDER AMENDMENT
http://www.azdeq.gov/function/laws/download/appendix_b_files/consent_order_amendment.dotx
- 18) CASE REFERRAL MEMORANDUM
http://www.azdeq.gov/function/laws/download/appendix_b_files/case_referral_memorandum.dotx

