

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.

0057.000 COMPLIANCE AND ENFORCEMENT PRESS POLICY

Level One **Arizona Department of Environmental Quality**

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

Issue Date: **October 12, 1995**

Next Scheduled Review Date: **October 12, 1996**

PURPOSE

This policy is intended to guide ADEQ on enforcement publicity to cast favorable attention upon successful enforcement action. Communicating ADEQ's enforcement activities to the regulated community and the general public is a necessary part of an effective enforcement program.

The criteria for determining how and whether to publicize a particular enforcement action and the procedures to coordinate publicity between internal and external parties are set forth. Attachments to this document include an information sheet for program staff to submit to the public information officer (PIO), if the PIO drafts the release, and an example press release. This policy provides guidance to ADEQ personnel and is not intended to create or recognize any legally enforceable right in any person.

DEFINITION

"Formal" enforcement actions means consent orders, unilateral administrative orders and, civil lawsuits initiated by ADEQ, and criminal actions initiated by prosecutors in which ADEQ has an investigative or supporting role.

POLICY

ADEQ will publicize all judicial enforcement actions and selective administrative enforcement actions (at the division director's discretion) to deter violations and communicate ADEQ's efforts to protect public health and the environment.

ADEQ will not negotiate the use or wording of press materials as part of an agreement to settle or conclude an enforcement action.

ADEQ may issue an individual press release, schedule a press conference, or periodically release summary enforcement activities.

RESPONSIBILITY

All ADEQ compliance, enforcement and press-liaison personnel are responsible for knowing, understanding and following this policy. Ultimate decisions regarding enforcement publicity rest with affected division directors with the advice and concurrence of the PIO. Implementation of this policy is responsibility of the PIO.

PROCEDURES

1. General Considerations for All Enforcement Publicity:

Enforcement communications may be made to the press (e.g., print media, radio or television) including the trade press (e.g., professional or trade, magazines or newsletters). ADEQ may use the following publicity forms: press releases, press conferences, video recordings, published statistical compliance studies, routine enforcement activity reports, newsletters, computer bulletin boards, public workshop and seminar presentations, interviews, notices in the Arizona Administrative Register, and feature articles. Press materials should contain as many of the following six elements as feasible:

- (1) A statement about the potential or actual environmental degradation or public health threat caused by noncompliance (i.e., the environmental or public health problem ADEQ is trying to correct).
- (2) A statement about how the regulatory program prevents or corrects harm to public health and the environment.
- (3) A statement acknowledging the commitment made by facilities that comply with the regulatory program to encourage voluntary compliance.
- (4) A statement indicating that ADEQ is vigilant in addressing (through enforcement actions where warranted) violations to ensure a "level playing field" among compliant facilities and those who disregard the law.
- (5) A statement about potential sanctions against violators for deterrence of future noncompliance.
- (6) A statement about the history of the compliance action including prior ADEQ notices and opportunities to correct the violations.

2. Publicity Specific to Judicial Enforcement:

A. Criminal and civil judicial enforcement actions should be publicized using at least a press release. Materials prepared on a specific case should not contain opinions or statements. Only all or part of the following information may be given to the press:

- (1) Statements on the general nature of the alleged violation(s).
- (2) Facts which are a matter of public record.
- (3) Anticipated next steps in the litigation process.

- B. **Civil Enforcement:** In conjunction with the Attorney General's Office, press materials should be released when the lawsuit is filed, and again when the case either settles or concludes with a judgment favorable to ADEQ. ADEQ's civil enforcement press activities should be coordinated with the Attorney General's Office to ensure that a strong, consistent deterrence message is released to the media.
- C. **Criminal Enforcement:** The Attorney General's Office has the lead and should issue press materials following an indictment, issuing arrest warrants, guilty verdicts, and sentencing. ADEQ should assist the Attorney General's press activities.

To protect the defendants right to a fair trial, the Assistant Attorney Generals and ADEQ attorneys are bound by the Arizona Rules of Professional Conduct, ethical rules 3.6 and 3.8 (found in the Rules of the Supreme Court). These rules are intended to protect this right with respect to pretrial and trial publicity.

3. **Publicity Specific to Administrative Enforcement:**

- A. Administrative enforcement may be in the form of penalties and orders, both unilateral and consent orders; therefore, press materials will be released at the discretion of the division director upon recommendation by the section manager.
- B. Press releases may also be prepared for more routine enforcement actions at the discretion of each section manager or division director. Generally, press materials should NOT be prepared to coincide with the issuance of a notice of violation.

4. **Press Conferences**

Cases which involve immediate, actual or potential public health or environmental threats, large or record cash penalties, significant imprisonment terms, innovative compliance measures, significant supplemental environmental projects (undertaken as a partial offset to a cash penalty), or targeted initiatives should be publicized in a press conference.

5. **Responsibilities and Timeline for Release of Press Materials**

- A. Release press materials on the same date as the enforcement action is filed, issued, settled or decided to maximize effectiveness. If a later release date is necessary, release it as close to the enforcement action date as feasible. Notify the recipient of the enforcement action prior to the release of the press materials.

- B. Involve the PIO in publicity determinations as early as possible in the enforcement process.
- C. Do not release press materials until approved by at least the division director and the PIO.
- D. Generally, ADEQ should refer contacts from the press to the division director or the PIO unless specifically directed otherwise.
- E. Generally, the PIO will draft press materials. Development of press materials may be made by submitting the information for Attachment A to the PIO. Program staff may also draft materials and submit them to the PIO for review.
- F. The PIO is responsible for distribution of press materials, and unless agreed otherwise, is also responsible for an initial response to members of the press. Enforcement actions establishing state-wide precedence should be distributed on a state-wide basis while other more routine matters need only be distributed to media sources local to the person or facility in noncompliance. Copies of press releases should also be sent to relevant trade and professional associations and when possible, individual members of the regulated community subject to the same requirements.
- G. The PIO is responsible for coordinating press conferences, including joint press conferences and other similar events.
- H. The PIO should raise inaccurate or misleading media statements concerning ADEQ's enforcement program to the attention of the director, division director, and section managers for possible rebuttal.

6. Involvement of External Parties

- A. When appropriate (e.g., ADEQ enforcement occasionally includes other federal, state or local agencies), ADEQ should consider inviting these other entities to participate in the development, distribution and presentation of these materials to ensure a coordinated approach. Civil and criminal enforcement press activities should be conducted jointly, or coordinated with the Attorney General's office. Where press activities are not joint but coordinated, they should be released simultaneously whenever feasible.
- B. ADEQ may, after consulting with the PIO, invite a professional or trade association to participate where it is in the mutual interest of all parties to present a consistent compliance message. This statement should in

no way be read to create a right on the part of violators to participate in ADEQ press activities.

7. Implementation

ADEQ employees are requested to do the following by the date indicated:

- (1) Within 30 days after the adoption of this policy, each program section shall create a mailing list of all known organizations and entities who expressed an interest in the section's program. This list should include a contact name, mailing list, phone and facsimile number for each identified constituent. This list shall be transmitted to the PIO and kept updated.
- (2) Within 90 days after the adoption of this policy, the PIO shall sponsor and present employee training on filling out the attached information sheets, drafting press materials, appropriate circumstances for press conferences and responding to press inquiries. This training should be offered to all ADEQ employees and repeated as often as may be needed to ensure a consistent understanding and approach.

8. Press Release of the Annual Enforcement Report

ADEQ's Annual Enforcement Report to the Legislature prepared pursuant to A.R.S. § 49-105, requires a report of enforcement actions for water quality control and hazardous waste disposal. For press release purposes, each program shall also include the following information:

- (1) A list of all completed formal enforcement activities, including penalties assessed and collected, and unsafe environmental conditions corrected.
- (2) If possible; a comparison with the previous year's activities.

It is recommended that the ADEQ management team release this information on a program-by-program basis or for all of ADEQ. This allows the management and the public to observe ADEQ's enforcement performance and should rebut assertions that its enforcement program is too harsh or too lenient.

ATTACHMENT A: Request for Development of Press Materials
ATTACHMENT B: Example Press Release

ATTACHMENT A

REQUEST FOR DEVELOPMENT OF PRESS MATERIALS

This is for ADEQ enforcement actions. Fill out only applicable portions of this form.

I. Press materials are needed for the following event:

Enforcement Order Issued Law Suit filed
 Law Suit Settled/Judgment
 Other: _____

II. Factual Background: Program taking action: _____
Brief description of the objectives of the program: _____

Identity of Facility (name/address): _____

Type of Noncompliance: _____

Potential Effects on Public Health/Environment (if any): _____

Mitigation Measures Taken by Facility/Person (if any): _____

Previous Enforcement Actions Taken Against Facility (if any): _____

Timetable for Achieving Compliance (if known): _____

Proposed/Assessed Penalty (if any): _____

Innovative Compliance Techniques (if any): _____

Attach Copy of Action, Lawsuit or Court Decision/Order

ATTACHMENT A

REQUEST FOR DEVELOPMENT OF PRESS MATERIALS

This is for ADEQ enforcement actions. Fill out only applicable portions of this form.

I. Press materials are needed for the following event:

<input type="checkbox"/>	Enforcement Order Issued	<input type="checkbox"/>	Law Suit filed
<input type="checkbox"/>	Law Suit Settled/Judgment		
<input type="checkbox"/>	Other:	_____	

II. Factual Background: Program taking action: _____
Brief description of the objectives of the program: _____

Identity of Facility (name/address): _____

Type of Noncompliance: _____

Potential Effects on Public Health/Environment (if any): _____

Mitigation Measures Taken by Facility/Person (if any): _____

Previous Enforcement Actions Taken Against Facility (if any): _____

Timetable for Achieving Compliance (if known): _____

Proposed/Assessed Penalty (if any): _____

Innovative Compliance Techniques (if any): _____

Attach Copy of Action, Lawsuit or Court Decision/Order

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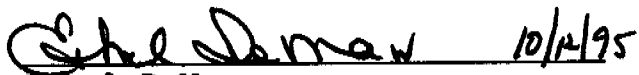
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APPROVED BY:

Arizona Department of Environmental
Quality:


Karen J. Heidel, Ph.D.
Acting Director, ADEQ Date

 FOR NEW
Nancy C. Wrona
Director,
Air Quality Division Date


Ethel DeMarr
Director,
Waste Programs Division Date


Kimberly W. MacEachern
Director,
Water Quality Division Date