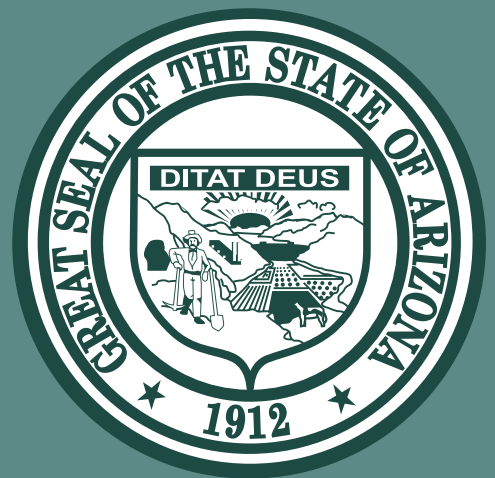


**Appendix 6 – 2023 ADEQ Compliance & Enforcement  
Handbook**



ARIZONA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**COMPLIANCE  
HANDBOOK**



**Statement required pursuant to Arizona Revised Statutes (A.R.S.) § 41-1091**

*“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 A.R.S. § 41-1033 for a review of the statement.”*

**Statement from the Arizona Department of Environmental Quality**

*This Compliance Handbook is considered a substantive policy because it explains the agency’s current practice and approach to requirements of particular Arizona laws, consistent with the definition of "substantive policy statement" in A.R.S. § 41-1001(24). References to internal standard work, forms, metrics, and other references within this Compliance Handbook are not part of this substantive policy statement and may be changed without changing this substantive policy, at the discretion of ADEQ.*

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## Definitions

**AGO:** Arizona's Attorney General's Office.

**Alleged Deficiency:** An assessment by ADEQ that there is a failure to meet a legal requirement. Alleged deficiencies may also be called potential deficiencies, violations, or potential violations because laws and rules inconsistently use these terms.

**AZURITE:** The Arizona Unified Repository for Informational Tracking of the Environment (AZURITE) database stores ADEQ's information, including:

- Places (i.e., the facilities, sites, or objects that ADEQ regulates)
- Customers (i.e., the businesses and people with whom ADEQ interacts)
- Permit issuance and actions
- Compliance and enforcement actions

**Action Update:** A written notice to a regulated party concerning the status of any action resulting from an inspection. The notice is provided at least once every month, in accordance with A.R.S. § [41-1009\(J\)](#), until the regulated person is notified that no agency action will result from the inspection or after the completion of an agency action resulting from the agency inspection. The completion of an agency action is when a formal enforcement tool is effective or an NOC or NOV has been closed, dismissed, or rescinded without reserving further action.

**Administrative Order:** An order issued by ADEQ, such as a consent order, compliance order, abatement order, or stop use order.

**Case Manager:** ADEQ employee responsible for working with the regulated community to resolve compliance issues.

**Consent Order:** A formal enforcement bilateral administrative order issued with the written agreement of the RP and ADEQ. ADEQ has authority within individual programs to issue orders, and an RP has the ability to negotiate, consent to the order, and waive their right to appeal the order pursuant to A.R.S. §§ [41-1004](#) and [41-1092.07\(F\)\(5\)](#).

**Compliance/Abatement Order:** A formal enforcement unilateral administrative order issued by ADEQ. ADEQ has authority within individual programs to issue orders.

**Electronic Signature Tool:** A web-based software application used by the agency to route any and all documents (i.e., orders, letters, agreements, templates, etc.) through the internal and/or external signatory process. The agency's electronic signature tool eliminates the need to print and physically sign documents and provides a more efficient way to route documents for signature. It also tracks when recipients receive, open, and sign a document.

**Environmental Complaint:** Reporting and feedback received by ADEQ about a possible violation of environmental law or rule, through any reporting mechanism, including complaints from the general



public, the media, businesses, and government representatives, as well as internal complaint referrals between staff. Inquiries, requests for information, and complaints about issues that are not environmental in nature are not processed as environmental complaints.

**Exit Debrief Form:** A form provided to facility personnel on inspection day when an inspection report cannot be provided either prior to leaving a field inspection site or on the same day of an inspection.

**Field-Issued Document:** A document prepared by the Inspector that is issued to facility personnel on-site prior to the Inspector leaving the facility site. These include field-issued NOCs, NOVs, inspection reports, and exit debrief forms. In order to support inspector safety, the document is also considered field-issued if it is issued to the facility the same day but off-site and an exit debriefing form is provided to the facility prior to the Inspector leaving the site.

**File Review:** A review of ADEQ records for a facility, site, or responsible party that is separate from an on-site or virtual inspection.

**ICE Database:** Inspections, Compliance, and Enforcement (ICE) module of the AZURITE database that tracks and documents facility inspections and compliance.

**Inspection Report:** A report that documents the Inspector's observations of compliance and/or potential noncompliance during an inspection of the facility, pursuant to A.R.S. § [41-1009\(D\)](#) and [\(E\)](#).

**Inspector:** ADEQ employee or contractor who conducts inspections of the regulated community. In some programs, Inspectors are also Case Managers.

**Media:** Environmental media (or medium) refers to the affected component of the natural environment, including air, water, soil, or any other parts of the environment that can contain contamination.

**NOC:** A Notice of Opportunity to Correct Deficiencies (NOC) is an informal compliance assurance tool issued by ADEQ in accordance with A.R.S. § [41-1009\(E\)](#) and [\(K\)](#) that provides a responsible party an opportunity to correct a deficiency.

**NOIR:** The Notice of Inspection Rights Form (NOIR) is the written notice provided at the time of an inspection to inform the responsible party of its statutory rights pursuant to A.R.S. §§ [41-1009\(A\)](#) and [\(B\)](#) and [41-1001.01\(C\)](#).

**NOV:** A Notice of Violation (NOV) is an informal compliance assurance tool issued by ADEQ in accordance with A.R.S. §§ [41-1009\(E\)](#) and [\(K\)](#) and [41-1092.12\(F\)\(4\)](#). An NOV provides a responsible party notice that ADEQ believes a significant violation of environmental law has occurred. An NOV may be issued in response to an inspection when ADEQ documents in writing as part of the inspection report that the deficiency meets one or more of the criteria in A.R.S. § [41-1009\(E\)](#).

**OAC:** ADEQ's Office of Administrative Counsel.

**On-Site Inspection:** An inspection conducted by ADEQ staff who are physically within the property boundary of the location being inspected. Observations from outside of the property boundary are not considered an on-site inspection.

**RP or PRP:** A responsible party (RP) or potentially responsible party (PRP) is any person or entity that is or may be regulated by an environmental law, statute, rule, or permit.

**Shall/Should:** When “shall” is used, it references a requirement in law. When “should” is used, it references internal agency requirements.

**SW:** Standard work (SW) is the documented current single best way to perform a process, which is always subject to review and revision.

**Unit/Value Stream/Division:** Hierarchy of ADEQ management that implements the regulatory requirements for a particular media. Units are within Value Streams, and Value Streams are within the Air, Water, and Waste Divisions.

**Virtual Inspection:** An inspection conducted by ADEQ staff from an off-site location, using electronic devices to communicate with facility personnel who are on-site.



## Introduction

This handbook provides direction for appropriate, consistent, and timely evaluations of compliance and escalations of enforcement by the Arizona Department of Environmental Quality (ADEQ). The primary audience of this handbook is ADEQ employees who implement compliance management. The secondary audience is the regulated community that must maintain compliance. Local authorities who have compliance and enforcement responsibilities through delegation agreements with ADEQ may choose to use this handbook. This handbook supersedes and nullifies the previous version issued in 2015.

To make the handbook easier for staff to use, contents include links to other documents including standard work, templates, and other guidance. Linked documents are not incorporated herein as part of this substantive policy and are subject to revision without notice or amendment of this handbook.

Links to internal documents are in orange text and cannot be viewed by external parties through the handbook. Copies of internal documents may be obtained by submitting a [Public Records Request to ADEQ](#).

ADEQ is required by law to implement A.R.S. [Title 49](#) to protect the environment. ADEQ's mission is to protect and enhance public health and the environment in Arizona. ADEQ's core functions are: planning, permitting, compliance management, monitoring, assessment, cleanups, and outreach. This handbook addresses compliance management.

See the [Compliance Flowchart](#) for a general overview of the compliance process from beginning to end.

ADEQ's compliance management focuses on three performance measures to evaluate environmental compliance in the regulated community:

- The number of inspections completed.
- Facility compliance at the time of inspection.
- The time it takes for a facility to return to compliance.

Compliance management starts with an inspection, a file review, or a complaint. ADEQ will issue an inspection report for any field or virtual inspection. ADEQ also conducts file reviews based on monitoring and reporting data. ADEQ can take informal or formal enforcement action against a facility when appropriate.

ADEQ prefers to resolve any deficiencies using its informal action tools: Notice of Opportunity to Correct Deficiencies (NOC) and Notice of Violation (NOV). When issues cannot be resolved in the short-term, or the violations are severe, ADEQ may require the use of formal enforcement tools, such as an administrative consent order, an administrative compliance order, and civil enforcement. When there is a possible intent to deceive or violate the law, ADEQ may refer cases for criminal prosecution. The primary

goal for any compliance action is to assist the facility to return to compliance as quickly as possible. The secondary goals are to maintain compliance and deter noncompliance in the future. ADEQ's decision whether to use informal or formal tools is discretionary and fact-specific, based on observations during the inspection and file review.

ADEQ staff should follow the agency [Escalation Matrix](#) that prescribes how to escalate issues in a timely manner, and staff should utilize the agency's daily huddle escalation process.

**Imminent dangers to public health should be escalated immediately.**

ADEQ strives to help the regulated community understand and comply with regulatory requirements and to promote positive environmental practices. ADEQ appreciates the work done by businesses, facilities, and the people of Arizona, to protect public health and the environment. Please reach out to ADEQ for questions about regulatory concerns. For compliance assistance resources, visit [azdeq.gov/compliance\\_assistance](https://azdeq.gov/compliance_assistance).

ADEQ also recognizes and awards incentives to Arizona businesses, municipalities, and other organizations that demonstrate a willingness to go above and beyond what is legally required to protect public health and the environment. Participants in the Voluntary Environmental Stewardship Program (VESP) receive public recognition of the organization's stewardship commitment, get advanced notification of inspections and enforcement, and may have reduced reporting requirements. For more information, visit [azdeq.gov/VESP](https://azdeq.gov/VESP).

This handbook is intended solely as guidance to provide consistency and does not create any rights enforceable by any party. Timeframes noted in the handbook that are not in law or rule are agency goals and do not create additional rights, and the listed agency goals are designed to be met for 80 percent of the cases. Nothing in this handbook is intended to limit the enforcement discretion of ADEQ. Case-specific deviations from this handbook are permitted with management approval. Failure to follow this handbook will not prevent ADEQ from bringing an enforcement action that is otherwise appropriate for the violation.

Lastly, the handbook provides guidance on the number of days a particular action or event should take to complete. **All references to days contained in the handbook are calendar days.** If the last day falls on a Saturday, Sunday, or Arizona recognized holiday, the compliance date is the next business day. The agency's internal complaint response timeframes will always begin and continue to be counted starting on the calendar day a complaint is received.

Thank you for your efforts to protect and enhance public health and the environment in Arizona.

## Chapter 1: Complaints & Responses

ADEQ staff should use the following complaint receipt and response procedures, along with the referenced standard work, when receiving and processing complaint information about potential violations of environmental laws, statutes, rules, permits, or other environmental concerns.

Acute risks should be mitigated as soon as possible (see [Table 1](#)).

Complaint intake and response is an important part of protecting public health and the environment. Arizonans have the ability to identify potential concerns quickly, and ADEQ's prompt response is the best way to minimize risk and solve problems fast. Every ADEQ employee is responsible for assisting the public to accurately and promptly file complaints.

This chapter begins by providing complaint and feedback resources, explains the [environmental complaint](#) intake and response procedures, and highlights important standard work for closing complaints.

### COMPLAINT & FEEDBACK RESOURCES:

- Dial 911 for immediate health and safety concerns. ADEQ employees who need to report an ADEQ employee safety issue should complete the [Incident Tracker](#).
- Visit the ADEQ [Environmental Complaints webpage](#) for a complete and up-to-date list of environmental complaint tools and phone numbers. The online Environmental Complaint Form is the best way for members of the public to file a complaint about a possible violation of environmental law or rule.
- Visit the [Facility Reporting webpage](#) for industrial emergency spills.
- Use the online [Vehicle Emissions Complaint Form](#) to file a vehicle emissions complaint.
- Visit the [Civil Rights webpage](#) for information about filing a Civil Rights complaint.
- Complete the [online Feedback Tracker](#) to comment on ADEQ's performance and customer service.
- Visit the [Arizona Ombudsman-Citizens' Aide website](#) for information about contacting the Arizona Ombudsperson who helps citizens resolve ongoing issues with state agencies.

### AGENCY GOALS:

- Mitigate acute risks as soon as possible (see [Table 1](#)).
- Three days to initially respond to the complainant from receipt of complaint.
- Seven days to inspect a complaint (when determined necessary) that is not a known acute risk to public health and the environment.
- 15 days from complaint received to close and, if necessary, recommend a case.

Table 1: Acute Risks and Corresponding Mitigation

*At the time of discovery ADEQ employees should escalate these acute risks through management to their Division Director and follow the corresponding initial mitigation.*

ACUTE RISK	INITIAL MITIGATION ASAP
<p><b>Air Quality:</b></p> <ul style="list-style-type: none"> <li>● Discharge of pollutants that pose a potential imminent threat to public safety</li> <li>● Windblown dust or smoke with potential for significant public health &amp; safety concerns (e.g., highway &amp; road visibility)</li> <li>● Monitored ambient data that represents a significant National Ambient Air Quality Standards (NAAQS) exceedance</li> </ul>	<p><b>Mitigation:</b></p> <ul style="list-style-type: none"> <li>● For discharges that pose an imminent threat during business hours: contact the Air Quality Facility Emissions Control (FEC) Unit, which will assess &amp; refer ongoing threats to the Emergency Response Unit (ERU)</li> <li>● For discharges that pose an imminent threat during non-business hours: contact the ERU hotline</li> <li>● For windblown dust or smoke: contact FEC during business hours, or ERU during non-business hours</li> <li>● Notify AZ Department of Public Safety &amp; Department of Transportation (for sheltering in place or road safety)</li> <li>● Conduct an inspection, if necessary</li> <li>● Contact the property or facility owner to stop the discharge of pollutants</li> <li>● Notify impacted residents</li> </ul>
<p><b>Drinking Water:</b></p> <ul style="list-style-type: none"> <li>● <i>E. coli</i> Maximum Contaminant Level (MCL) exceedance</li> <li>● Nitrate MCL exceedance</li> <li>● Other MCL exceedances requiring immediate action</li> <li>● Water outage greater than four (4) hours</li> </ul>	<p><b>Mitigation:</b></p> <ul style="list-style-type: none"> <li>● For <i>E. coli</i>: ensure Boil Water Notice is sent to customers</li> <li>● For other MCL exceedances: work with management to determine what other actions must be taken, e.g., Exceedance Notice sent to customers</li> <li>● Require alternative drinking water sources, if necessary</li> <li>● For water outages: deploy <a href="#">Water Emergency Team Standard Work*</a></li> </ul>
<p><b>Waste/Water:</b></p> <ul style="list-style-type: none"> <li>● Discharge of a hazardous substance that poses an imminent threat to a drinking water source or public safety</li> <li>● Sanitary sewer overflows (SSOs)</li> <li>● Impacted Surface Water</li> </ul>	<p><b>Mitigation:</b></p> <ul style="list-style-type: none"> <li>● For hazardous substances: contact ERU</li> <li>● For SSOs: contact the property or facility owner to stop the discharge of pollutants</li> <li>● Follow <a href="#">SSO Response Standard Work*</a></li> <li>● Notify impacted residents when there is an ongoing threat</li> <li>● For an impacted surface water: escalate immediately to stop &amp; contain any discharge</li> <li>● Notify AZ Departments of Public Safety, Transportation, &amp; Health Services, if necessary</li> </ul>

**STANDARD WORK:**

- [Environmental Complaint Process Flow Chart\\*](#)
- [AZURITE Reference Guide — Complaints](#)
- [Multimedia Inspections](#)
- [ADEQ Information List](#)
- [Complaint Media Definitions](#)
- [SSO Response\\*](#)
- [Water Emergency Team\\*](#)
- [Compliance Handbook Metrics — Complaints](#)

**FORMS:**

- [Online Environmental Complaint Form](#)

## Receipt Procedures for Phone, In-Person, or Emailed Environmental Complaints

Upon becoming aware at any time that a complaint involves an acute risk to public health and the environment (see [Table 1](#)), **escalate to management as soon as possible**.

### STEP 1 — INTRODUCE YOURSELF TO COMPLAINANT

If a person wishes to make a complaint by **phone or in person**: an ADEQ employee should state their name, job title, and Value Stream so the complainant has a contact reference for the conversation.

If the complaint is received via **email or voicemail** and does not contain sufficient information to enter the complaint: the employee will contact the complainant; state their name, job title, and Value Stream; and request necessary information (see [Step 3](#)).

*Every employee is responsible for assisting with complaints.*

### STEP 2 — IDENTIFY AFFECTED MEDIA & IMMEDIATELY RECORD COMPLAINT INFORMATION

The ADEQ employee intaking the complaint will identify the affected media to determine which of the following methods of documenting the complaint is appropriate:

- **If the complaint concerns media addressed by the employee's unit:**  
The employee will immediately enter the required complaint information into the AZURITE Complaint module during the conversation, and assign the complaint to an employee in accordance with the employee's unit standard work. *A Complaint ID will be generated and an email sent to the assigned employee.* Communicate about the complaint at the next standup and always before a weekend or holiday. If an employee is unfamiliar with the AZURITE Complaint module, enter the complaint in the [online Environmental Complaint Form](#) (see [Steps 3 – 10](#)).
- **If the complaint involves media best addressed by a different ADEQ Unit or the ADEQ employee is unsure of the media involved:**  
The employee will enter the information into the [online Environmental Complaint Form](#) during the conversation instead of entering the complaint into AZURITE, which eliminates the need to assign a specific employee from a different unit to a complaint. AZURITE Complaint Staging is populated

when the online complaint is entered. *A Complaint ID is not generated until the complaint is reviewed and assigned in AZURITE Complaint Staging.* Once a complaint is in Complaint Staging, a Complaint ID must be generated. An email notice is automatically sent to the corresponding Unit email based on the media selected, and to the Office of Administrative Counsel (OAC) when there is no media selected. See [AZURITE Reference Guide — Complaints](#).

- **If there is no complaint about a possible violation of environmental law or rule:**

Provide additional relevant information, if possible, communicate that this is not an environmental complaint, and then do not proceed to process an environmental complaint. Inquiries, requests for information, and complaints about issues that are not environmental in nature are not processed as environmental complaints. Review the [ADEQ Information List](#) to provide a person with other appropriate referrals and contact either OAC or the Front Desk for further assistance.

Once a matter has a Staging ID or Complaint ID created, as a result of being entered into the AZURITE system, follow [AZURITE Reference Guide — Complaints](#) to properly close that complaint in the complaint module.

**Complaint Intake:** When a complaint is being made in any fashion and at any time, an ADEQ employee should assist the complainant by entering the complaint into AZURITE Complaint or the [online Environmental Complaint Form](#). When using the online Environmental Complaint Form, offer the option of entering the complaint for the complainant or assisting them while they enter the complaint.

### STEP 3 — OBTAIN COMPLAINT INFORMATION

The ADEQ employee should obtain as much information as possible, including, but not limited to:

- Detailed location information, such as street address, nearest cross streets, city, and county.
- Time and date of occurrence.
- Substance and quantity involved.
- A list of the evidence verifying the complaint, including photographs, documents, and witnesses.

Because AZURITE Complaint Staging, Complaints, and the online Environmental Complaint Form do not accept attachments at this time, the employee entering the complaint should make a note of available evidence and then the assigned employee should follow-up with the complainant to receive that evidence by email. Inspectors or Case Managers may always contact the complainant to obtain evidence, if not previously provided.

Electronic and hard copies of information should be placed in the facility file according to program standard work.



If there is not enough specific information to follow up on the complaint, a complaint may be “closed without an inspection,” if “contact with complainant” is first selected and a comment added about why the complainant could not be contacted.

#### **STEP 4 — ENTER THE MEDIA AFFECTED**

If using AZURITE Complaints, enter the Media or Medium Affected.

If using the online Environmental Complaint Form, enter the Type of Pollutant.

#### **STEP 5 — INFORM COMPLAINANT OF CONFIDENTIALITY PROCEDURE**

After obtaining the complaint information, the ADEQ employee shall read the disclaimer based upon A.R.S. § [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.”

The disclaimer is at the bottom of the online complaint form in bold or a pop-up when the complaint is entered in AZURITE Complaints. See [AZURITE Reference Guide — Complaints](#).

The ADEQ employee receiving a complaint directly by email should respond by email or phone with the disclaimer, ask for any potential harm posed to the complainant, and request any missing contact or complaint information. Enter the complaint into AZURITE Complaints.

#### **STEP 6 — ASK FOR COMPLAINANT'S NAME**

Ask for the complainant’s contact information, including name, address, phone number, and email. *If the complainant wishes to remain anonymous, explain they will receive no follow-up information.*

#### **STEP 7 — IF CONFIDENTIALITY IS REQUESTED, DOCUMENT THE CLAIMED HARM**

If a complainant provides a name and wishes to remain confidential, document the specific potential harm posed to the complainant. *ADEQ cannot guarantee confidentiality but will make every reasonable attempt to protect the complainant’s contact information if there is a potential for harm to the complainant.* An ADEQ employee intaking the complaint should document the request for confidentiality by checking the confidentiality box in AZURITE, checking the potential harm statement box, and adding text supporting the claim of potential harm. See [AZURITE Reference Guide — Complaints](#).

**Request for Complainant Information:** Contact OAC if there is a specific request for information about a complainant.

### STEP 8 — EXPLAIN COMPLAINT FOLLOW-UP PROCEDURES

Explain that ADEQ will evaluate the complaint, conduct an inspection if warranted, and engage in compliance management if necessary.

Explain that by entering this complaint, an ADEQ employee will be assigned to be the point of contact, and the ADEQ staff member will contact the complainant to discuss the resolution of the complaint, unless the complainant has declined to be contacted.

Explain that ADEQ may be able to provide ongoing status updates to the complainant.

### STEP 9 — COMPLETE THE COMPLAINT ENTRY

If using AZURITE Complaints, click the “save” button after completing the form to create the complaint.

If using the online Environmental Complaint Form, “Submit.”

## Receiving Environmental Complaints via the Online Environmental Complaint Form

When a complaint is entered into the online Environmental Complaint Form by a complainant or ADEQ employee, an email will be automatically sent to the corresponding Unit’s email based upon the media that is selected on the form.

Complaints that do not have a selected media will be automatically sent to the OAC for review and distribution to the appropriate program Unit Manager; in some cases OAC will manage the complaint until closure.

See the [Environmental Complaint Process Flow Chart](#).\*

## Environmental Complaint Response

### STEP 1 — REVIEW FOR ACUTE RISK & ASSIGN CASE MANAGER OR INSPECTOR

**Within one day of receipt**, the Unit Manager or other employee reviewing an email containing the online environmental complaint should assign a Case Manager or Inspector.

Upon reviewing the complaint for assignment, if the complaint involves an acute risk to public health and the environment (see [Table 1](#)), escalate through management to the Division Director as soon as possible.

If a Unit Manager or other employee determines that the complaint was received by the incorrect program, the Unit Manager should consult with another program Unit Manager and assign the complaint to the Unit Manager. The new Unit Manager should then assign an appropriate Case Manager or Inspector. Use the [ADEQ Information List](#) to locate the correct program contact.

*All complaints should have a Complaint ID generated in AZURITE. See [AZURITE Reference Guide — Complaints](#).* No complaints should be left in AZURITE Complaint Staging.

Contact [oac@azdeg.gov](mailto:oac@azdeg.gov) for assistance handling large volumes of complaints.

## STEP 2 — CONTACT COMPLAINANT &/OR POTENTIALLY RESPONSIBLE PARTY (PRP)

Within **two days** of the assignment or reassignment, the Inspector or Case Manager should make contact with the complainant, if known, and the PRP, if appropriate.

If the complaint lacks sufficient information to determine appropriate follow-up for the case (i.e., referral, inspection, closure without inspection), the Inspector or Case Manager should attempt to obtain this information from the complainant.

The Inspector or Case Manager should update the AZURITE Complaints screen with the appropriate database actions throughout each step of the complaints process.

See [AZURITE Reference Guide — Complaints](#).

As a reminder, ADEQ should obtain as much information as possible, including, but not limited to:

- Detailed location information, such as street address, nearest cross streets, city and county.
- Time and date of occurrence.
- Substance and quantity involved.
- Documentation verifying the complaint, including photographs, documents, and witnesses.

Inspectors or Case Managers may contact the complainant to obtain documentation, if not previously provided. Electronic and hard copies of information should be placed in the facility file according to program standard work. A complaint may be “closed without an inspection” and a comment added if there is not enough specific information to follow up on the complaint.

**Contact with Complainant:** Contact with complainant is considered achieved whether or not contact has been made if at least two attempts have been made by phone or email, if no phone is provided, and a voicemail and email are sent if possible. Enter “Contact with Complainant” as an action in AZURITE when contact has been achieved. At the conclusion of an inspection or other complaint resolution, Inspectors and Case Managers should make additional contact with the complainant to explain the next steps and then enter a second “Contact with Complainant” into AZURITE.

**Repeat Complaints:** In general, when an Inspector or Case Manager receives a complaint that is similar to previous complaints and the complaint has already been investigated, the Inspector or Case Manager should notify the complainant that ADEQ has investigated the complaint and should inform the complainant of the outcome of the investigation. The complaint should be managed as an independent complaint.

**Duplicate Complaints:** Occasionally, AZURITE may produce two identical records for the same complaint. In those situations, create separate Complaints and then enter “Duplicate Complaint” for one of the Complaint IDs to close that complaint.

Contact [oad@azdeq.gov](mailto:oad@azdeq.gov) for questions about handling large volumes of similar complaints or frequently repeating complaints.

### STEP 3 — DETERMINE & EXECUTE APPROPRIATE COMPLAINT FOLLOW-UP

Generally, all complaints will result in one of the following actions:

- **Inspection:** The Inspector should conduct the inspection as soon as practicable, but **no later than 10 days** from the date the complaint was received, with consideration given to the potential risk to public health and the environment.

An inspection is warranted if ADEQ has jurisdiction and ADEQ believes there may be a violation of an environmental law, statute, rule, permit, or another environmental community concern. See [Chapter 2: Inspections](#).

The Inspector or Case Manager should select the “Inspection Recommended” action in AZURITE Complaints in order to create an Inspection ID number.

After the inspection, enter “Inspection Completed” in AZURITE Inspections.

Enter “Case Recommended” in AZURITE Inspections if there are potential violations, in order to begin tracking the resolution of those potential violations in AZURITE.

Contact the complainant to discuss findings and next steps.

Close the complaint by selecting “Closed After Inspection” and entering a comment.

- **Referral to an Outside Agency:** Within **two days** of the complaint assignment, the Inspector or Case Manager should refer the case to the appropriate agency using the Inspector or Case Manager’s program standard work and inform the complainant of the referral. For any referral not addressed by standard work, the Inspector or Case Manager should email the complaint to the appropriate agency.

ADEQ should provide the complainant the referred agency’s contact information after confirming that the referred agency will be addressing the complaint concerns.

When referring a complaint where the complainant wishes to remain confidential, verify that the confidential box is checked in AZURITE and that potential harms are entered, and then generate a complaint form to send as a PDF in the referral; verify this form hides the complainant’s identity.

Work with the referred-to agency and the complainant to provide the complainant’s contact information if necessary.

Close the complaint by selecting “Complaint referred to other agency” and entering a comment with details of the referral.

- **Case Closure Without Inspection:** Complaints can be closed without an inspection for the following situations:
  - Not enough specific information exists to follow up on the complaint.
  - The complaint is resolved without a site visit.
  - The complaint is not within our jurisdiction and ADEQ does not have a formal referral process for the situation or does not know the proper referral.

The Inspector or Case Manager should make reasonable attempts to obtain the necessary information before making the decision to close the complaint; if the complainant does not include a name or contact information, however, obtaining the necessary information may not be possible.

Close the complaint by selecting “Closed with No Inspection.”

See [AZURITE Reference Guide — Complaints](#).

**Delegated Programs:** ADEQ delegates some regulatory programs to counties and cities. The current Delegation Agreements can be found by visiting [azdeq.gov/final-delegation-agreements](http://azdeq.gov/final-delegation-agreements). The Inspector or Case Manager should work with the Unit Manager on the appropriate follow-up action based on the protocol in the delegation agreement and should coordinate with the delegated authority, if necessary, to encourage compliance management consistency.

**Multimedia Inspection:** If a complaint requires the response of more than one ADEQ unit, a multimedia inspection may be required. Multimedia inspections take place when the regulatory authority for an environmental or public health concern is present in multiple media types. An inspection from two or more units may be required. See [Multimedia Inspections](#).

#### STEP 4 — FOLLOW UP WITH COMPLAINANT

**Within 5 days** after the completion of the inspection report, follow up with the complainant for:

- any subsequent resolution of compliance conditions directly related to the complaint, and
- any other important update to the complainant’s issue.

If a complainant is not satisfied with ADEQ’s response, provide them with the contact information for the [Arizona Ombudsman-Citizens’ Aide](#).

Inform the ADEQ Records Center if any records are provided to the complainant by emailing [recordscenter@azdeq.gov](mailto:recordscenter@azdeq.gov) and contact [oac@azdeq.gov](mailto:oac@azdeq.gov) for any questions regarding records disclosure.

**Complaint Closure & Case Follow-Up:** ADEQ recognizes that a complainant values having a complaint fully resolved as fast as possible and receiving updates about the complaint. If a complaint results in a violation, the complaint will be closed in AZURITE Complaints and the violations tracked for resolution through the AZURITE Informal and/or Enforcement screens. The public may request information on the status of the violation(s).

**Customer Service:** ADEQ is here to serve the public. Providing great customer service not only helps us solve problems, it instills confidence in the public that ADEQ is fulfilling its missions to protect public health and the environment. When you are interacting with customers, treat them with respect, listen to their issues, and do whatever you can to help resolve their concerns.

**Potential Criminal Activity:** If the Inspector or Case Manager determines, at any time during the complaint process, that the complaint involves potential criminal activity, the Inspector or Case Manager should notify OAC as soon as possible. OAC will refer the case to the AGO, if appropriate after consulting with the agency Director and Division Directors. See [Chapter 4, Criminal Referral](#).

**The Importance of Accurate Data Management:** Update AZURITE and other databases within **two days** of an event. Data are essential to fact-based decisions. ADEQ mission decisions rely on accurate and reliable data. Correct names, accurate Place IDs, and updated public records files are examples of essential data. Please follow standard work for managing data, including agency and other specific SW for public records, directives in this handbook, and the [AZURITE Reference Guide](#).



## Chapter 2: Inspections

The primary purpose of an inspection is to evaluate compliance with environmental laws, rules, and permits. Conducting an adequate number of inspections is therefore essential for the evaluation of compliance. An inspection also provides an opportunity for ADEQ to provide compliance assistance to facilities. ADEQ strives not only to identify all instances of noncompliance, but also to provide education through compliance assistance in order to avoid future noncompliance. This chapter explains how to prepare for and conduct an inspection, issue an inspection report, and use Case Recommended in AZURITE to identify any violations for informal or formal enforcement.

### INSPECTOR ROLES & RESPONSIBILITIES:

- Represent ADEQ professionally.
- Determine compliance with regulations.
- Document compliance issues.
- Provide technical and compliance assistance.

### AGENCY GOALS:

- Inspector Safety First
- Number of inspections conducted meets agency goals.
- 80 percent of inspection reports field-issued when practical.
- Seven days to office-issue inspection reports.
- Quality Inspection Reports
- Exit debrief form issued same day if not issuing an inspection report.
- Closing conference conducted for all inspections when an RP representative is present.

### STANDARD WORK:

- [AZURITE Reference Guide — Inspections and File Reviews](#)
- [Program Specific Inspection\\*](#)
- [Multimedia Inspection](#)
- [Site Access\\*](#)
- [Virtual Inspection](#)
- [Compliance Documents Notice and Receipt Requirements](#)
- [Compliance Handbook Metrics — Inspections](#)

### FORMS:

- [Notice of Inspections Rights](#)
- [Inspection Report Templates\\*](#)
- [Facility Inspection Checklists\\*](#)
- [Exit Debriefing Form](#)
- [Action Update Letter](#)
- [Compliance Assistance Form](#)
- [Compliance Forms\\*](#)

## What is an Inspection

### An inspection occurs when:

- ADEQ or its contractor is entering the premises for the purpose of collecting evidence for compliance.

Inspections must follow the procedures of A.R.S. § [41-1009](#), including using a [Notice of Inspections Rights](#) from the CEC Templates.

### The following is NOT an inspection:

- A file review where there is no entry to the premises.
- Observations from off-site that are not part of an on-site inspection.
- A facility tour where both parties agree that compliance will not be formally reviewed.
- A compliance assistance visit (log into the AZURITE Compliance Assistance Module).
- A meeting at the facility that does not collect additional evidence.

Contact management if significant violations may exist to determine if an inspection is necessary.

## Number of Inspections Conducted

Conducting an adequate number of inspections is essential for the evaluation of compliance.

Determine the number of inspections necessary each year by considering:

- United States Environmental Protection Agency (EPA) programmatic requirements.
- The total number of known regulated facilities and the potential for new regulated facilities.
- The frequency of inspection necessary and reasonable based on risk, capacity, and other priorities.
- Complaint Inspections.

Prioritize inspections to inspect facilities that pose the greatest risk to public health and the environment.

## Inspection Process

The following procedures should be followed to promote consistent and thorough inspections.

Case-specific deviations from these procedures may be necessary in certain circumstances. Compliance assistance visits that are not part of an official inspection should follow the [compliance assistance visit procedure](#) at the end of this chapter.

## STEP 1 — PREPARE FOR INSPECTION

Pre-inspection research should include **all** of the following:

- Review of all relevant information, including AZURITE, myDEQ, electronic and hard copy facility files, and previous inspection reports.
- Review of past inspections and enforcement actions to determine compliance history. The Inspector should recommend an NOV if there is evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.

Obtain facility and RP contact information. Contact OAC for assistance in identifying the RP if needed.

Use the facility-specific inspection checklist if one has been developed.

ADEQ Permitting Units should provide at least a general inspection checklist when each permit is issued.

Determine whether an on-site or virtual inspection will be conducted:

- On-site inspections are the preferred method for compliance inspections.
- Conduct an on-site inspection if required by regulations or programmatic agreements, or if a virtual inspection will not be effective for completely evaluating compliance (e.g., in the case of an investigation of a complaint where no other reporting data have been received by ADEQ).
- Conduct a virtual inspection if it will allow for a review of compliance that would otherwise not be possible because of capacity.
- If a virtual inspection will be conducted, follow unit SW and the agency [Virtual Inspection](#).

Schedule an inspection with the RP unless an unannounced inspection is warranted:

- Offer the RP the opportunity to be present at the time of inspection.
- Follow Unit standard work when scheduling.
- Providing a specific date and time is not necessary; you may provide a reasonably near-term time period (e.g., the next 30 days).
- Get permission to enter the property and inquire about any property access restrictions.
- **Do not enter private property without receiving specific authorization from the RP or obtaining a search warrant with the AGO.**

Develop a sampling plan and seek guidance from the laboratory regarding sampling methodologies and chain of custody if necessary.

Review the site layout on AZMapper, Google Maps or Google Earth.

Request documents from the RP for review **prior to** the inspection:

- ADEQ employees should request and review documents prior to the inspection in order to enhance the efficiency of the inspection.
- ADEQ employees should ask relevant questions about documents prior to the on-site or virtual inspection, if appropriate, and should use the on-site or virtual inspection to confirm and further clarify an RP's information.

Review and practice the virtual inspection technology with the RP, if necessary, including confirming internet connectivity.

Prepare documents and materials required for the inspection:

- Prepare the Survey123 application.
- Prepare the [NOIR](#).
- For virtual inspections, review the NOIR with the facility prior to the virtual inspection to provide sufficient time for receiving the facility representative's signature of acknowledgment. The signature can be provided to ADEQ electronically prior to conducting the inspection.
- Begin preparing the inspection report to help with field-issuing the report, including documenting findings during the file review and developing questions for the inspection report.

Coordinate with other programs when the issue affects more than one media and follow the standard work for [Multimedia Inspections](#).

**Announced vs. Unannounced Inspections:** ADEQ has authority to perform both announced and unannounced inspections. Unannounced inspections comply with requirements in A.R.S. § [41-1009](#). Utilize an unannounced inspection if announcing an inspection may frustrate the purpose of the inspection, i.e., if there is a concern that evidence will no longer be available or that an announced inspection will not allow the agency to accurately assess compliance. In all cases, access must be granted by the property owner or a search warrant secured.

**Complaint Inspections:** Consider whether identifying information about a complainant should remain confidential prior to inspecting a facility or site. In some cases it may be helpful to bring a copy of the complaint form to show the facility. Complaint inspections may be narrow in focus but consider whether additional information warrants a more comprehensive inspection or a follow-up inspection. Repeat complaints may be best addressed by a Community Liaison or the ADEQ Ombudsperson. Escalate when complaints have unique circumstances, such as complaints that involve the media, other government entities, or the legislature, or when complaints indicate a significant risk to public health and the environment.

## Pre-Inspection Safety Requirements

- Consider if law enforcement personnel are necessary to accompany an Inspector to ensure the safety of the Inspector or if you believe access will be denied. If so, utilize the standard work for [Site Access](#).
- Ensure your manager is aware of where you are going prior to conducting the inspection.
- Seek approval from your manager to have a second Inspector accompany you if you believe it would be beneficial for documenting site conditions or if you have safety concerns.
- Review each relevant Job Hazard Analysis (JHA). See [JHA Matrix](#).
- Obtain necessary Personal Protective Equipment (PPE) and ensure PPE is in good working condition. See [PPE Webpage](#).
- Ensure completion of the ADEQ Field Safety and Inspector Safety training within the past 12 months.
- Verify all job-specific required training is current.
- Check the weather conditions for the location of the inspection and the route to the inspection. Dress and pack appropriately based on the potential weather conditions for the time of year and forecasted weather. Hydrate well with fluids.
- Verify medical surveillance and respirator fit test is current if required for your field activity.
- Review the site layout using aerial views from AZMapper, Google Maps, or Google Earth.
- Contact the facility personnel to determine if additional safety equipment or training is needed if it is an announced inspection, or discuss safety requirements with ADEQ staff if it is an unannounced inspection.
- Review the facility's safety policies and protocols if available.
- Carry the "Reporting an Injury or Illness Card" along with your badge at all times.
- Review routes and plan to use the appropriate vehicle with necessary equipment, including four-wheel drive.

For more information, see [ADEQ Safety Resources Center](#).

### STEP 2 — IDENTIFY YOURSELF AT THE SITE

Present your ADEQ photo identification.

Identify your name, job title, and ADEQ Value Stream.

Explain the reason for your visit, the scope of your inspection, and statutory authority as listed in the NOIR to conduct the inspection.

### STEP 3 — GAIN SITE ACCESS

If the on-site representative refuses entry, the Inspector should vacate to a public right-of-way and immediately contact the Unit Manager. The Unit Manager should escalate and contact OAC for assistance in determining how to proceed, including obtaining a search warrant, if necessary. See [Site Access](#).

Upon initiating the inspection, the Inspector shall afford an opportunity for the RP to have an authorized on-site representative accompany the Inspector on the premises.

If a decision to inspect is made outside of the normal notice period established by the program, if possible and unless an unannounced inspection is appropriate, the Inspector should contact the RP a reasonable amount of time before the inspection to allow for the RP to be present. Allowing the RP to be present for the inspection ensures an opportunity for the Inspector to provide more effective compliance assistance if needed.

If no one is available on-site, the Inspector may proceed with the inspection if it is determined to be safe and the property owner has granted access. Contact your management if you have concerns.

If “No Trespassing” signs are present, the Inspector may enter the property only to obtain consent but should leave the property if consent cannot be obtained. The Inspector should note the “No Trespassing” on the NOIR and sign the NOIR.

An Inspector should not enter a gated and locked property without consent.

If an Inspector does not feel safe, leave the premises and contact the Unit Manager.

#### **STEP 4 — EXPLAIN INSPECTION RIGHTS**

Review and complete the NOIR with the on-site representative.

Obtain the on-site representative’s signature on the NOIR.

If the on-site representative refuses to sign the NOIR but will allow the inspection to continue, note the decision on the NOIR, sign the NOIR as the ADEQ representative, and proceed with the inspection.

If the on-site representative is not present, the Inspector may proceed with the inspection if access has been granted; note in the NOIR that access has been granted and that the on-site representative is not present and then sign the NOIR and proceed with the inspection.

The completed NOIR shall be provided to the facility regardless of whether there was a facility representative on-site.

If conducting a virtual inspection, prior to the inspection, explain the NOIR to the facility, obtain their electronic or scanned signature, and email the document to the facility.

See the [Compliance Documents Notice and Receipt Requirements](#) for more information about sending, confirming, and filing the NOI.



**When to Use the Notice of Inspection Rights (NOIR) Form:** A.R.S. § [41-1009](#) establishes the requirements for an agency to conduct an inspection. A NOIR is used to document permission from the facility to inspect and to document that ADEQ followed inspection requirements. An RP's signature is not required on the NOIR. Utilize the Notice of Inspection Rights Form in the CEC Templates for the most up-to-date form. The NOIR does not need to be completed if there is no on-site or virtual inspection, such as when observations are made off-site during a file review or without entry onto the facility property, or when ADEQ is accompanying another authority without also conducting an ADEQ inspection. Contact [oad@azdeq.gov](mailto:oad@azdeq.gov) with any NOIR questions.

## STEP 5 — CONDUCT INSPECTION

Always use the current versions of the NOIR, facility-specific inspection checklist, inspection report, and exit debrief form. Current versions are located in the CEC Templates folder and in Unit SW.

Conduct the site inspection professionally and efficiently.

- Respect operating hours and be mindful of the impact on business operations.
- Allow for break periods.
- End the inspection on-time.

Be relatable and non-confrontational.

Conduct the opening conference.

- Reiterate the purpose and focus of the inspection and list documents that you will need to review.
- Review the facility's health and safety plan (HASP) if you have safety concerns.

If possible, conduct the inspection with an on-site representative to provide compliance assistance when appropriate.

Leave the site immediately if you believe it is unsafe, and call your Unit Manager or 911 if necessary. After resolving safety issues, make arrangements to ensure the site is properly secured, e.g., lids and doors are closed.

Visually inspect the facility. Areas that may be inspected include, but are not limited to, permitted facility locations, facility processes, waste or material storage areas, sampling locations, or areas of concern from a previous inspection.

Conduct necessary interviews with facility personnel. Document the person's name, title, any required license information, and other pertinent information that was obtained from the interview.

Document violations, deficiencies, and/or compliance issues with photographs and create a photo log containing all relevant photos to accompany the inspection report. Photos that will help facilitate

compliance should be included in the inspection report. Maintain identifying metadata for photographs, including GPS coordinates and time stamps.

Ensure all observations are factually documented without supposition, either in the inspection report or field notes. Use professional language.

Complete relevant facility document review, if applicable, and not previously conducted.

Request supporting documentation, required by law or rule, that is necessary to form a complete record.

If the facility requests that documents remain confidential, contact OAC to discuss next steps.

Conduct a closing conference as required by A.R.S. § [41-1009\(A\)\(8\)](#):

- Give the facility an opportunity to discuss the findings of the inspection and provide additional information if necessary.
- The Inspector should make revisions to the inspection report prior to issuing the report if additional information is relevant.
- **If the inspection report is not field-issued, provide an exit debrief form prior to leaving the site detailing any compliance issues for the facility representative.** Providing the RP with an understanding of the violations and/or deficiencies prior to leaving the site allows for a quicker return to compliance.

If conducting a virtual inspection, also conduct a closing conference at the conclusion of the inspection, and provide an exit debrief form if an inspection report will not be provided during the same day.

**Temporary Restraining Order:** If there is imminent and substantial harm to public health and the environment, ADEQ should seek a temporary restraining order requiring a facility to cease a harmful operation immediately. Contact OAC immediately for assistance. See [Temporary Restraining Order](#).<sup>\*</sup>  
**Escalate imminent and substantial harms to public health and the environment immediately.**

**Think KOUI:** ADEQ is committed to identifying, prioritizing, and addressing sites with Known, Ongoing, Unauthorized, Impacts (KOUI) in order to further our mission to protect and enhance public health and the environment. KOUI sites are often identified during the inspection process. All Inspectors should be familiar with the KOUI definition. An introduction to the KOUI definition may be found on the [Office of Environmental Excellence page](#).

During an inspection, if you discover evidence of a release or obtain data indicating a possible exceedance of a regulatory standard, consider whether the site is a KOUI. Inspectors should use the KOUI Assessment and Reporting Tool ([KART](#)) in order to determine if the site is a potential or actual KOUI.

## STEP 6 — ISSUE INSPECTION REPORT

Document the scope of the inspection and alleged deficiencies in the inspection report.

- **If there are no alleged deficiencies found during the course of the inspection:**

The report should include a statement that no ADEQ action will result from the inspection. *Action Update Letters (AULs) are NOT required if the inspection report notes that no action will result from the inspection.*

- **If there are alleged deficiencies that are corrected before ADEQ leaves the facility:**

Document the alleged deficiencies in the inspection report. Issue an Open and Closed NOV when NOV violations exist. See CEC Templates — Open and Closed Cover Letter. If ADEQ does not initiate informal or formal enforcement and the same violation or deficiency is discovered at the next inspection of the facility, an NOC or NOV should be issued or formal enforcement utilized.

- **If alleged deficiencies are found:**

Document the alleged deficiencies in the inspection report. Identify the alleged deficiencies in the Results of Inspection section. An NOC or NOV may be field-issued (preferred) or office-issued. See [Chapter 3: Informal Enforcement](#). AULs are required until the deficiencies are closed with no further action.

The report may include ADEQ recommendations and shall clearly differentiate between recommendations and alleged deficiencies.

Use a photograph log to document alleged deficiencies, including areas of compliance that may not have been in compliance at the last inspection, areas of concern, or photos of alleged deficiencies regulated by other ADEQ programs.

- In addition, the Inspector should include a narrative describing what is portrayed in the photograph.
- The inspection report will note that photographs were collected, relevant photos are included in the inspection report and photo log, and all photos will be made available upon request, if not already included in the report.

An inspection report is not required if photographs are taken off-site of the property and not during the course of an inspection.

Reference any documents reviewed that indicate alleged deficiencies.

Include a narrative section that describes pertinent facts, including who was there, what was said by whom, a description of important sights, sounds, and smells, and any other details that will be helpful in supporting compliance assistance and enforcement.

Transfer all relevant inspection notes to the inspection report.

Draft notes need not be retained if all of the information is transferred to the inspection report and records destruction protocol is followed.

**Inspection reports should be field-issued, if possible.** If an inspection report cannot be issued in the field, conduct a closing conference and provide an exit debrief form to the on-site contact before leaving the site. For virtual inspections, if an inspection report cannot be issued the same day, provide an exit debrief form the same day as the virtual inspection.

A copy of the inspection report should be sent to the RP, if different than the on-site contact.

**Within seven days or less**, send office-issued inspection reports to the RP by email with a read receipt, by standard mail if no email exists, or through the agency's electronic signature tool.

Inspection reports must be issued **no later than 30 working days** pursuant to A.R.S. § [41-1009\(D\)](#). If an inspection report cannot be issued within 30 days of the inspection, an action update letter must be sent to the RP advising them that the report is still pending and will be issued.

An Inspector may issue an inspection report from the office for any of the following reasons:

- Inspector safety concerns, including driving long distances and at night.
- Customer or Inspector time constraints (i.e., facility business hours are approaching the end of the day).
- Additional research is needed.
- Management review is needed.
- No ability to send the report electronically.

**Within two days of the Inspector identifying alleged deficiencies associated with another ADEQ program**, the Inspector should complete the [online Environmental Complaint Form](#) for internal referral.

**Within two days of amending a previously issued inspection report**, the Inspector should issue the revised report to the RP. If the revision contains previously undisclosed alleged deficiencies, the Inspector should call the RP to inform them of the change.

**Using the Term "Alleged Deficiencies":** ADEQ will generally refer to noncompliance as "alleged deficiencies" consistent with A.R.S. § [41-1009](#). Deficiencies that are confirmed by a court can formally be referred to as violations, although ADEQ may also informally refer to alleged deficiencies as violations or potential violations.

**AZURITE Entry:** Update the AZURITE ICE Inspection screen module with the appropriate action events **within two days** of the inspection or any other case action. See [AZURITE Reference Manual - Inspections](#).

## Results of Inspection Documentation

A.R.S. § [41-1009\(E\)](#) requires that a regulated person be provided an opportunity to correct alleged deficiencies unless the agency makes one of four specific findings in the inspection report.

ADEQ provides an opportunity to correct through the issuance of an NOC, and has the option to issue an NOV when one of four specific findings has been documented in the inspection report.

To justify a decision to issue an NOC or NOV, Inspectors should document the specific findings in the “Results of Inspection” section of the inspection report, in addition to specific observations contained elsewhere in the report.

Each inspection report should contain the following section:

### Results of Inspection:

- No alleged deficiencies were noted during the course of the inspection. No ADEQ action will result from this inspection.
- Alleged deficiencies were noted during the course of the inspection and all deficiencies were corrected by the close of business on the final day of inspection. No ADEQ action will result from this inspection.
- Alleged deficiencies were noted during the course of the inspection. Additional correspondence regarding this inspection may be forthcoming.

If applicable, ADEQ documents its initial determination that the alleged deficiencies are:

- Committed intentionally.
- Not correctable within a reasonable period of time as determined by the agency.
- Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
- A significant risk to any person, the public health, safety or welfare or the environment.

### Directions for Determining the Results of Inspection:

1. Select one of the three main checkboxes:

- No alleged deficiencies were noted during the course of the inspection. No ADEQ action will result from this inspection.
  - Checking this box indicates the agency will not pursue informal or formal enforcement.
  - Checking this box will complete the compliance and communication requirements between ADEQ and the facility.
- Alleged deficiencies were noted during the course of the inspection and all deficiencies were corrected by the close of the inspection. No ADEQ action will result from this inspection.
  - Checking this box indicates the agency will not pursue informal or formal enforcement for these deficiencies.

- Do not check this box if the agency may take further action even though the alleged deficiencies were corrected.
  - Do not check this box if the alleged deficiencies have been determined to be one of the four types in the boxes below.
  - Checking this box will complete the compliance and communication requirements between ADEQ and the facility.
  - Alleged deficiencies were noted during the course of the inspection. Additional correspondence regarding this inspection may be forthcoming.
    - Checking this box indicates the agency may pursue informal or formal enforcement.
    - Checking this box indicates ADEQ will continue to provide communication until it indicates no further ADEQ action will result from this inspection.
2. Select any of the four specific findings if alleged deficiencies are found, to provide the agency the option to issue an NOV if appropriate:
- Committed intentionally.
    - Checking this box indicates there is evidence that the violation was committed intentionally. Intentional determinations can also be made at a later date. Intentional determinations may be considered for criminal referral. Also check the “Intentional” box in AZURITE Case.
  - Not correctable within a reasonable period of time as determined by the agency.
    - Checking this box indicates return to compliance will generally take more than 120 days.
  - Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
    - Checking this box indicates the alleged deficiencies were previously identified in an inspection report or other written notice at the same premises at the most recent past inspection. The pre-inspection file review should provide this information.
  - A significant risk to any person, the public health, safety, or welfare, or the environment.
    - Checking this box indicates ADEQ has categorized the alleged deficiencies in AZURITE as “Major” or “Major Discretionary” or there is other supporting evidence that the alleged deficiencies could be a “significant risk.”
    - For example, intentional noncompliance, a pattern of noncompliance, or a lack of cooperation from a facility may elevate a deficiency to being a significant risk.
    - Supporting evidence includes utilizing the program’s Enforcement Matrix.
3. Regardless of any determinations made under this section, ADEQ may take lawful agency actions necessary to abate an imminent and substantial endangerment to public health and the environment. A.R.S. § [41-1009\(L\)](#).



### STEP 7 — UPDATE AZURITE WITH CASE RECOMMENDED IF APPLICABLE

Select the “Case Recommended” action in the AZURITE inspections screen **as soon as possible** if an NOC or NOV is recommended.

- This begins the process of tracking alleged deficiencies to ensure they will be resolved and creates a case ID.
- **If there is an acute risk to public health or the environment (see [Table 1](#)), escalate immediately.** Do not wait to complete AZURITE actions or to issue an NOC or NOV.

Input any relevant AZURITE actions (e.g., Inspection Completed, File Review Completed, Report Received, Air Quality Test Report Received).

### STEP 8 — POST-INSPECTION SAFETY REVIEW

**Within 24 hours**, the Inspector should report any employee safety incidents to the ADEQ Safety Officer and report incidents in the [ADEQ Incident Tracker](#). Report any new hazards or issues encountered at the site that are not represented in the current Job Hazard Analysis to the ADEQ Safety Office.

## File & Report Reviews

- A file review can be an excellent tool to identify compliance problems while saving field inspection resources. Utilize existing data and information.
- Utilize file reviews to review monitoring and reporting submittals for compliance.
- A file or report review is not an inspection covered by A.R.S. § [41-1009](#), and therefore an NOIR and inspection report are not provided to the facility.
- Consider discussing the results of the file or report review with the customer for faster return to compliance.
- If a file or report review reveals alleged deficiencies, the Inspector or Case Manager should also enter the “Case Recommended” event in AZURITE.

**Importance of Selecting Case Recommended:** Select “Case Recommended” in the AZURITE inspections screen **as soon as possible** if an NOC or NOV is recommended, if an order will be necessary because return to compliance timeframes will be longer than 120 days, or if other formal enforcement is necessary. Selecting Case Recommended begins the process of tracking violations and deficiencies to ensure they will be resolved after the inspection or file review.

## Compliance Assistance Visits

A site visit may be conducted to provide compliance assistance only, and is not conducted as part of an official inspection.

- Coordinate the compliance assistance visit with the facility.
- Review the hard copy and electronic facility file, myDEQ, and AZURITE prior to going on site to learn about facility processes and any relevant history.
- Upon arrival at the site, verbally inform the facility personnel that this site visit is not an inspection or audit and that ADEQ is here to provide education and compliance assistance.
- **No NOIR should be provided or signed because this is not an inspection.**
- Inform the facility that if alleged deficiencies are found, ADEQ may return to conduct a full follow-up inspection.
- **If alleged deficiencies that warrant an NOV are found during the compliance assistance visit, take note of the issue and escalate it with your management after the visit to determine next steps.**
- **All alleged deficiencies that warrant an NOV that are found during a compliance assistance visit should result in ADEQ follow-up to ensure the alleged deficiencies are resolved.**
- It may be necessary to officially inspect the facility at a later date if the compliance assistance visit reveals alleged deficiencies that warrant an NOV.
- Consider a virtual follow-up inspection to ensure the problem is resolved.
- Document the compliance assistance using the [Compliance Assistance Form](#).
- Compliance assistance visits and follow-up should be logged in the AZURITE Assistance Module; describe the scope of the visit and any alleged deficiencies that are observed.
- All official inspections should be logged in AZURITE Inspections; compliance assistance visits do not count as required or official inspections and are not logged in AZURITE Inspections.

## Chapter 3: Informal Enforcement

The majority of alleged deficiencies ADEQ discovers are resolved through the use of informal compliance tools such as an NOC and an NOV. The goal of using informal compliance tools is to provide timely notice of alleged deficiencies so that a facility can return to compliance as soon as possible. Generally, an NOV rather than an NOC is issued when the alleged deficiencies are deemed a significant risk to public health and/or the environment. Programs should utilize SW when determining which notice is appropriate. Inspection reports should always note whether alleged deficiencies are a significant risk. See [Chapter 2: Inspections — Results of Inspection Documentation section](#).

This chapter provides guidance on when and how to issue NOCs and NOVs, how to provide case management after notices are issued, and how to close notices or escalate to formal enforcement. The term [alleged deficiency](#) is synonymous with “deficiency,” “violation,” or “potential violation.”

These informal compliance tools are not typical appealable agency actions, however, a new law passed in 2022 [allows an NOV to be appealed under certain circumstances](#). ADEQ also has formal enforcement tools and reserves the right to use them at any time, if appropriate. ADEQ has the discretion to use formal tools instead of informal tools when necessary. See [Chapter 4: Formal Enforcement](#).

ADEQ strives to issue NOCs and, if appropriate, NOVs in the field to provide timely notice to a facility so the facility can act quickly to return to compliance. All NOCs should be field-issued unless there are additional alleged deficiencies that are not approved for field-issuance. ADEQ’s daily escalation process should be used to escalate decisions regarding NOCs and NOVs in order to meet agency goals for timely issuance.

**All significant risks to public health or the environment should result in an NOV, regardless of whether an order will be issued or whether the timeframe for compliance will exceed 120 days.** The Division Director may approve exceptions allowing Value Streams to enter into [consent orders](#) without issuing an NOV when compliance timeframes exceed 120 days. Exception approval from a Division Director must be provided to OAC.

### AGENCY GOALS:

- Determine the appropriate RP.
- Field Issue 80 percent of NOCs when inspections are field-issued.
- Field Issue 80 percent of NOVs that are approved for field issuance.
- Significant alleged deficiencies should result in an NOV or formal enforcement.
- 10 days to office-issue NOCs and NOVs from inspection.
- Five days to send closure letters from return to compliance documentation.

### STANDARD WORK:

- [AZURITE Reference Guide — Informal Enforcement Cases](#)
- [Enforcement Action Matrices](#)
- [Legal Review and Representation](#)

- [High Priority Violation Designation](#)
- [Adding Violations](#)
- [Compliance Documents Notice and Receipt Requirements](#)
- [Compliance Handbook Metrics — Informal Enforcement](#)

**FORMS:**

- Compliance and Enforcement Community (CEC) Templates — K:Drive
- [Consent Order Negotiation Guidelines](#)
- [Action Update Letter](#)

**Compliance Enforcement Templates:** ADEQ compliance staff should use the compliance and enforcement templates located in the CEC Templates folder of the K:Drive for Microsoft Word. These templates are frequently updated and include missed deadline letters, closure letters, consent orders, compliance orders, termination letters, and the case referral memorandum template. If templates need to be added or revised, please contact OAC.

## Legal Representation

When subject to an informal enforcement tool, some RPs may choose to be represented by legal counsel. If an RP notifies ADEQ that they are represented by legal counsel at any point in the case management process or if ADEQ is contacted by an outside attorney, the Inspector or Case Manager should engage OAC or the AGO prior to any additional communication. See standard work for [Legal Review and Representation](#).

## Determining the Appropriate Tool – NOC or NOV

- **An NOV should be issued if there are alleged deficiencies that are a significant risk to any person, the public health, safety, or welfare, or the environment.**
- An NOC should be issued if there are no alleged deficiencies that are a significant risk, unless the deficiencies have been elevated based on standard work like an enforcement matrix, such as when they are repetitive or intentional.
- An alleged deficiency is a significant risk if:
  - It has been categorized in AZURITE as “Major”;
  - It has been categorized in AZURITE as “Major Discretionary” and management review confirms it is significant; or
  - The violation is deemed significant after review with management, which should include review of the program’s enforcement matrix and of the Results of Inspection, if applicable.
- Violations categorized in AZURITE as “Minor” are not a significant risk unless other findings have been made.

- Pursuant to A.R.S. §§ [41-1009\(E\)](#) and [41-1092.12\(F\)\(4\)](#), when an inspection is conducted, an NOV may only be issued if the inspection report Results of Inspection section contains one of four specific findings about the alleged deficiencies, as discussed in [Chapter 2: Inspections — Results of Inspection Documentation](#):
  - Committed intentionally.
  - Not correctable within a reasonable period of time as determined by the agency.
  - Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
  - A significant risk to any person, the public health, safety, or welfare, or the environment.
- Amend an inspection report if necessary if an NOV should be issued but the inspection report does not contain the appropriate finding in the Results of Inspection section.
- If at least one significant alleged deficiency is identified, an NOV should be issued.
- Review any questions with your manager or OAC.
- Change the designation of violations in AZURITE when necessary to align the violations with a different risk level after management review.
- For new alleged deficiencies or major discretionary deficiencies, programs should utilize SW, such as enforcement matrices, to determine which type of notice is appropriate, an NOC or NOV.
- Uncheck “significant” in AZURITE to designate a major discretionary violation as **NOT** significant
- Add new alleged deficiencies to AZURITE using the standard work for [Adding Violations](#).
- Permit conditions entered into AZURITE as violations are **NOT** labeled “significant” by default. Significant must be checked if the alleged deficiency is significant.
- An NOV will be generated if AZURITE has labeled a violation “significant,” “intentional,” or “repeat.”
- The Division Director may approve certain NOC and NOV alleged deficiencies to be field-issued, and that written approval must be kept by each program and provided to OAC.
- If there are alleged deficiencies in multiple program areas or divisions, contact [oac@azdeq.gov](mailto:oac@azdeq.gov) to coordinate case development prior to issuing any notices.
- If case recommended action has been entered into AZURITE and the agency determines that an NOC or NOV is not warranted, the Case Manager should update AZURITE to reflect case dismissed and add a comment explaining the decision.
- Approval from OAC is not required to close a recommended case.

**Sending & Serving Documents:** Providing actual notice to an affected party is essential in order for a fast return to compliance. NOCs, NOVs, AULS, and consent orders should be sent by email read receipt or using standard mail if email is not possible. The date of receipt is the earliest date of either an email receipt or another confirmation of receipt. Compliance orders and other appealable agency actions should be sent by mail certified return receipt if email delivery cannot be confirmed. For more information, see [Compliance Documents Notice and Receipt Requirements](#).

## NOCs

An NOC provides an RP the opportunity to correct a deficiency that is not significant prior to ADEQ taking action on the deficiency. See A.R.S. §§ [41-1009\(E\)](#) and [\(K\)](#). **NOCs are not appealable agency actions.**

### The NOC:

- Cites the laws, rules, or permit that ADEQ believes may have been violated.
- Identifies any documents that ADEQ relied on when determining noncompliance.
- Describes the facts known to ADEQ at the time the NOC is issued.
- Provides an opportunity to discuss the alleged violation with the agency.
- Provides the RP an opportunity to resolve the deficiency in a reasonable period of time, not to exceed 120 days.
- Should be resolved **within 120 days**, and if not, an NOV or formal enforcement may be appropriate.

### Procedure for Field-Issued NOCs & NOVs

- The Inspector should issue a field-generated NOC for any deficiencies that are approved to be issued in the field. All other deficiencies should be issued from the office.
- Field-issued NOCs are preferred because the Inspector has the opportunity to discuss the deficiencies with the RP and facilitate a quicker return to compliance.
- If the case contains at least one deficiency that is not approved for field-issuance, the Inspector or Case Manager will issue the NOC from the office.
- If the case contains at least one NOV violation, the Inspector or Case Manager will issue an NOV and include the NOC deficiencies therein. The NOV should be field-issued if the violation is approved for field-issuance.
- A copy of a field-issued NOC or NOV should also be emailed to the RP's designated contact if that person was not on-site at the time of inspection.

**Responsible Party:** It is important to issue an inspection report, NOC, or NOV to the correct RP to provide adequate notice. Failure to do so may delay ADEQ's enforcement action. An RP should be a high-ranking person at a company, such as the President, CEO, or manager. Before issuing, review myDEQ, AZURITE, or the Arizona Corporation Commission website to determine who is the RP. If questions arise about the RP, contact OAC. Provide copies of documents to the RP, in addition to any on-site representative.

**Procedure for Office-Issued NOCs:**

- **Within five days after the inspection**, the Inspector or Case Manager should consult with the Unit Manager on the deficiency and evaluate the deficiency using the program's enforcement action matrix as a guide for consistent and equitable decisions, and draft the NOC if appropriate.
- **Within four days after the inspection**, the Inspector or Case Manager should obtain manager approval (if necessary).
- **Within one day after management approval**, issue the NOC from the ADEQ office (along with the inspection report if it was not issued on-site) by email, standard mail, or through the agency's electronic signature tool; certified mail is not necessary. Update AZURITE when the NOC is issued.

**Determining Deadlines:** The Inspector or Case Manager should work with the RP to establish deadlines to return the facility to compliance as quickly as practicable. Multiple deadlines may be appropriate. To determine a reasonable deadline for a facility to come into compliance, Inspectors or Case Managers should ask the facility contact how quickly the facility can reasonably correct any deficiencies, discuss with internal staff and management, and then **set a compliance deadline that is reasonable**.

As always, good professional judgment should be used when working with the facility to recommend an appropriate deadline for each compliance condition. Deadlines should be timely, achievable, and generally consistent with agency practice. When available for the program, standard language should be used to describe the return to compliance conditions. Utilize peer and management review when necessary.

**Recommendations:** The NOC may include recommendations designed to assist the RP in correcting the deficiencies. All recommendations should be clearly designated as such in the compliance conditions section and should not include deadlines. ADEQ may not escalate enforcement based on an RP's failure to implement a recommendation.

**Outreach/Follow-Up:** The Inspector or Case Manager is responsible for following up with the facility on compliance conditions described in the NOC until the NOC is closed. **Within 10 days of issuing the NOC or sooner if it has been received**, the Inspector or Case Manager should call the appropriate responsible person for the facility to discuss the deficiency and ensure that the RP received the NOC and understands the compliance conditions.

While the RP is wholly responsible for meeting each deadline without ADEQ assistance, it is good case management practice to call the RP prior to each deadline.

**Action Updates:** The Inspector or Case Manager is responsible for providing action update letters (AUL) to the facility. See [Action Update Letters](#) section.

**Closure:** **Within five days of all deficiencies being corrected**, the Inspector or Case Manager should issue a letter by mail or email (certified mail is not necessary) to the RP acknowledging that the deficiencies have been corrected and that ADEQ will take no further action. Action events are entered into the ICE Case Module as appropriate. The closure may also be emailed with a read receipt to the RP as a courtesy or sent through the agency's electronic signature tool.



If deficiencies or violations have been resolved before an NOC or NOV can be issued, an Inspector and manager may still choose to issue and close an NOC or NOV to document non-compliance, and should include the open-close cover letter in the CEC Templates.

**Rescinding an NOC:** If an NOC is issued in error, such as an NOC sent to the wrong RP, dismiss the NOC in AZURITE and add a comment and send the RP an “NOC Rescinding Letter” from the CEC Templates. The AZURITE action for rescinding is the same as for dismissing an NOC: “Case Dismissed.”

**Missed Deadline:** Within one day after the first missed NOC deadline, the Inspector or Case Manager should call the RP to notify them of the missed deadline, and may follow up with an email. The Case Manager may send a missed deadline letter but the letter is not required. The Inspector or Case Manager should make reasonable attempts to speak with the RP or otherwise communicate through email.

**Failure to Comply with NOC or Dismissing Without Compliance:** An NOC may be escalated if it has been determined that there is a significant risk to public health and the environment. Escalate to an NOV by conducting a file review to create a new Inspection ID and Case ID, creating an NOV, and then merging the NOC case with the NOV case.

An NOC may be closed without compliance in the rare circumstance when compliance is no longer necessary or possible given the facility operations, or a determination has been made that the deficiency is not a risk to public health and the environment and pursuing compliance is not appropriate at this time. The Unit Manager should obtain approval from OAC to close an NOC without compliance and should demonstrate that a record of the deficiency has been created. If the same deficiency is discovered at the next inspection of the facility, an NOV may be issued or formal enforcement may be utilized. Program SW will be used to make this determination. The Inspector or Case Manager should consider the length of time before the next inspection and whether an inspection should be scheduled sooner to verify the RP has resolved the deficiency.

**Case Management Works!** Active case management works to achieve the goal of returning the facility to compliance as soon as possible. It means helping the facility understand the deficiencies and compliance conditions, and reminding the facility of deadlines in a professional manner. It also means quickly escalating unresolved issues internally using the agency’s daily escalation process.

## NOVs

Pursuant to A.R.S. §§ [41-1009\(E\) and \(K\)](#) and [41-1092.12\(F\)\(4\)](#), an NOV is an informal compliance assurance tool used by ADEQ to put an RP on notice when ADEQ believes a significant alleged deficiency has occurred. **NOVs are not appealable agency actions unless contested.** See [NOV Appeals process](#). ADEQ's goal is to issue all NOVs **within 10 days of identifying a violation**.

### The NOV:

- Cites the laws, rules, or permit that ADEQ believes may have been violated.
- Identifies any documents that ADEQ relied on when determining noncompliance.
- Describes the facts known to ADEQ at the time the NOV is issued.
- Provides an opportunity to discuss the alleged violation with the agency.
- Provides the RP an opportunity to resolve the violation(s) in a reasonable period of time, **not to exceed 120 days**.
- Provides the RP an opportunity to do any of the following before ADEQ takes formal enforcement action:
  - Meet with ADEQ to discuss the facts surrounding the violation.
  - Demonstrate to ADEQ that no violation has occurred.
  - Document that the violation has been corrected.

All NOVs are office-issued unless the violation is pre-approved for field issuance by the Division Director. NOVs issued in the field should follow the [field-issued guidance](#).

### Procedure for Office-Issued NOVs:

- After an inspection, the Inspector or Case Manager and Unit Manager decide whether an NOV is appropriate.
- The Inspector or Case Manager drafts the NOV and reviews it with the Unit Manager.
- If the violation results in an imminent and substantial endangerment to public health or the environment, the Division Director should call the RP to determine how quickly the violation can be corrected. If the RP does not indicate that the violation will be corrected in an expedited manner, the matter may be escalated for formal enforcement. See [Chapter 4](#).
- All violations are listed in one case document. If the case contains at least one violation identified as a significant violation, an NOV will be issued. The NOV should differentiate between NOC and NOV violations.
- If there are violations in multiple programs, contact OAC to determine the best way to issue the NOV, including combining violations into one NOV.
- **Within three days of the inspection**, the NOV should be drafted.
- **Within three days of receiving the draft NOV**, the NOV should be approved by the Value Stream Manager and Division Director unless otherwise delegated.
- **Within one day of Division Director approval**, the NOV should be issued to the facility. The Value Stream Manager directs the Unit Manager and Inspector or Case Manager to issue the NOV.

- The NOV should be issued to the RP by email with read receipt, standard mail if email is not available or through the agency's electronic signature tool. If no receipt is confirmed within three days, send the NOV by mail.
- **The Case Manager or Inspector should call the RP to ensure the notice was received and understood.**
- **An NOV is considered received and can be entered as received in AZURITE upon the earliest date of any of the following:**
  - Date of field-issuance.
  - Certified mail receipt signed.
  - Date email confirmation receipt is received.
  - Date RP opens the document sent through the electronic signature tool.
  - Verbal confirmation of receipt.

## Determining Compliance Conditions & Deadlines

NOV deadlines should require the facility to return to compliance as quickly as practicable. Multiple deadlines may be appropriate.

To establish a reasonable deadline for a facility to come into compliance, Inspectors and Case Managers should ask the facility contact how quickly the facility can reasonably correct any violations. If an NOV is issued as a result of a file review, the Inspector or Case Manager should call the facility to discuss reasonable deadlines. As always, good professional judgment should be used when working with the facility to recommend an appropriate deadline for each compliance condition. Deadlines should be timely, achievable, and generally consistent with agency practice. Utilize peer and management review when necessary.

The time allowed for a facility's return to compliance **should not exceed 120 days** from the date of issuance of the NOV. An NOV should be issued for all situations, even when compliance may take longer than 120 days.

### **When compliance with an NOV will likely take longer than 120 days:**

- Issue the NOV using up to 120 days for return to compliance with the understanding that additional time may be negotiated in a consent order.
- Follow-up with the facility **within 10 days** to explain the NOV and before the first NOV deadline to understand if the deadline will be met.
- If the facility cannot meet the NOV deadlines and ADEQ agrees that other timeframes are reasonable, enter into a [consent order within 60 days](#) of the date of the inspection.
- If a deadline is missed, a facility is not signing the consent order, or there is not sufficient evidence provided to ADEQ that the facility will meet the deadline, issue a [compliance order](#).

NOV conditions remain open until resolved, regardless of whether formal enforcement is effective. NOV's should request that a facility contact ADEQ within 30 days to discuss the status of returning to

compliance. Inspectors and Case Managers should escalate the case if a facility has not contacted ADEQ to consider whether additional actions are necessary.

An NOV should contain compliance conditions that result in the facility completely returning to compliance. An NOV should not list “enter a consent order” as a compliance condition. The notice should state that ADEQ will agree to extend the time frames for achieving and documenting compliance for the violation(s) alleged in this Notice only in a compliance schedule negotiated in the context of an administrative consent order or civil consent judgment.

**Recommendations:** The NOV may include recommendations designed to assist the RP in correcting the violations. All recommendations should be clearly designated as such and should not include deadlines. ADEQ may not escalate enforcement based on an RP's failure to implement a recommendation.

**EPA Designated Violations:** EPA tracks certain significant noncompliance violations. ADEQ may have a responsibility to note those violations in AZURITE to ensure they are reported appropriately to EPA. For Air Quality, a violation that is designated as a “Federally Reportable Violation” (FRV) and/or “High Priority Violation” (HPV) should be marked as such in AZURITE. For information on what constitutes an FRV and HPV see [High Priority Violation Designation](#).

ADEQ may also report “Significant Noncompliance” (SNC) for the Clean Water Act and Resource Conservation and Recovery Act, and “Serious Violators” for the Safe Drinking Water Act program.

**NOV Outreach/Follow-Up:** The Inspector or Case Manager is responsible for following up with the facility on compliance conditions described in the NOV until the NOV is closed. **Within 10 days of issuing the NOV**, or sooner if it has been received, the Inspector or Case Manager should call the appropriate responsible person for the facility to discuss the violation(s) and ensure that the RP received the NOV and understands the compliance conditions. If the RP states that the NOV has not yet been received, the Inspector or Case Manager should explain what is contained in the NOV and verify that the NOV was mailed and emailed to the correct address.

If the Inspector or Case Manager has not received evidence of compliance before each deadline listed in the NOV, the Inspector or Case Manager should call the RP to remind the RP of the upcoming deadline. If there is evidence that the RP is not working in good faith to comply, immediate escalation to formal enforcement may be appropriate. It is not necessary to wait until the last compliance date is missed before escalating.

## Action Update Letters

The Inspector or Case Manager is responsible for providing Action Update Letters (AULs) to the facility. As defined under A.R.S. § [41-1009\(J\)](#) a state agency shall provide the regulated party an update on the status of any action resulting from an inspection **at least once a month**. ADEQ shall continue 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.” AULs may be

sent via email or through the agency's electronic signature tool if there is a valid and confirmed email address, or by standard mail.

AULs **do not need to be sent** after any of the following notifications or actions have occurred:

- Issuing an NOC or NOV closure letter that states no further action will be taken (the agency will not seek penalties).
- Dismissing or rescinding the NOC or NOV.
- An effective compliance or consent order.
- A civil complaint has been filed in Superior Court.

If an AUL is being sent because an NOV closure letter reserving further action was sent, decisions should be made about further action, including seeking civil penalties, within one year or after the next inspection shows the facility in compliance.

Utilize the AUL Generator or email templates to more easily generate AULs for each active case that is not in formal enforcement. See AUL Generator.

Failure to issue an AUL does not prevent ADEQ from pursuing an action to address noncompliance.

**Missed Deadline or NOV Extensions:** Within one day after the first missed NOV deadline, the Inspector or Case Manager should call the RP to notify them of the missed deadline and may send a missed deadline letter along with the consent order Negotiation Guidelines. The missed deadline letter may be issued by email with read receipt or through the agency's electronic signature tool or by standard mail if email is not available. If no read receipt is received, the letter should be mailed to the RP the next day. The Inspector or Case Manager should make reasonable attempts to speak with the RP or otherwise communicate through email. Await return to compliance if reasonably expected (15 days or less).

**Proceed with formal enforcement (consent order) within 15 days if return to compliance is not reasonably expected.** The Inspector or Case Manager should obtain approval from ADEQ management on initiating formal enforcement.

**Documenting Compliance:** The Inspector or Case Manager reviews any response from the facility and documents the response in AZURITE. The Inspector or Case Manager consults with the Unit Manager about whether a facility's response adequately demonstrates compliance and if the NOV can be closed. If so, an NOV closure letter is drafted and forwarded to the Unit Manager or Value Stream Manager for NOV closure.

If a facility disputes a violation but has not provided evidence to support the dispute, communicate ADEQ's continued expectation that the violations be resolved within the time periods listed on the NOV.

If an NOV was issued incorrectly, refer to the Amending an NOC/NOV section or Rescinding an NOC/NOV section.

**Change of Ownership:** In most cases, a new owner will be responsible for a continuing discharge. Issue a new NOV to a new owner and then close the existing NOV without compliance with a comment

referencing the new ownership and new case, after consulting OAC. If the new owner enters into a consent order, close the outstanding NOV conditions without compliance after consulting OAC.

**NOV Closure:** If the violation is resolved within the time allowed by the NOV or within the reasonable extension timeframe of 15 days or less, ADEQ should issue a closure letter to the RP either:

- Stating no further action (including seeking civil penalties) will be taken, or
- Reserving further action (the right to seek a civil penalty regardless of whether the RP achieves or demonstrates compliance).

To determine whether ADEQ should reserve the right to seek civil penalties, the Inspector or Case Manager should consider the factors set forth in [Chapter 5: Penalties](#). If the Inspector or Case Manager believes ADEQ should reserve the right to seek penalties, approval should be obtained from the Unit Manager.

For cases where an NOV was issued and then closed, reserving further action, decisions should be made about further action, including seeking civil penalties, within one year or after the next inspection shows the facility in compliance.

**Within five days from ADEQ confirming compliance**, the NOV closure letter should be issued to the RP by email with read receipt or through the agency's electronic signature tool. If sent by email, request confirmation of receipt. If no receipt is received within **two business days**, send the letter by standard mail.

An NOV may be closed without compliance and with approval by OAC and program management if compliance with the violation can no longer be achieved based on a change in the facility conditions making compliance impractical or impossible.

**Rescinding an NOV:** An NOV may be rescinded if any of the following apply:

- The NOV was issued to an incorrect party.
- The RP demonstrates that the violation never occurred and ADEQ agrees with the demonstration.

If an NOV is issued in error, such as an NOV sent to the wrong RP, dismiss the NOV in AZURITE, add a comment, and send the recipient of the NOV an "NOV Rescinding Letter" from the CEC Templates. The AZURITE action for rescinding is the same as for dismissing an NOV: "Case Dismissed."

The Inspector or Case Manager should prepare the NOV rescinding letter for the Value Stream Manager to approve, sign, and issue through mail and/or email with read receipt, or through the agency's electronic signature tool. Call to confirm receipt of the NOV letter if no read receipt is received. Save the letter in the facility file.

See [Compliance Document Notice and Receipt Requirements](#) for more information about what is required for sending, confirming and saving compliance documents.

**Amending an NOV or NOC:** Contact your management and OAC if an NOV or NOC is issued with an error(s). OAC will work with the program and the Business Intelligence Team to correct the notice in the

database based on the particular case circumstance, which may include making clarifying comments, deleting or adding certain violations, and contacting U.S. EPA if necessary to correct their databases.

The Inspector or Case Manager should prepare an NOV amendment letter for the Value Stream Manager to approve, sign, and issue through mail and/or email with read receipt, or through the agency's electronic signature tool. Call to confirm receipt of the NOV amendment letter if no read receipt is received. Save the NOV amendment letter in the facility file.

**NOV Appeals:** Issuance of an NOV is not an appealable agency action and appealable agency action language does not need to be included with the issuance of an NOV.

However, pursuant to A.R.S. § [41-1092.12](#), issuance of an NOV may be appealed as an appealable agency action if:

- A party notifies ADEQ in writing of its intent to file a claim pursuant to this statute **within 10 days** of receiving the NOV;
- Describes why the NOV issuance is arbitrary, capricious or not in accordance with law; and
- ADEQ does not amend or rescind the NOV **within 10 days**.

Escalate to management and OAC immediately upon receiving notice pursuant to A.R.S. § [41-1092.12](#)

**Failure to Comply with NOV or Dismissing without Compliance:** If the violation is not corrected within the timeframe stated in the NOV or the reasonable extension of 15 days or less, the program should initiate formal enforcement after approval by an ADEQ Division Director. A formal enforcement tool such as a [consent order](#) can provide for reasonable extensions of NOV timeframes. **Within seven days of the missed NOV compliance condition**, an escalation decision should be made to determine the appropriate formal enforcement action. After the decision is made, “formal enforcement recommended” should be selected in AZURITE and the corresponding timeframes for formal enforcement should be followed. See [Chapter 4: Formal Enforcement](#).

**Attorney General’s Office:** Inspectors and Case Managers may utilize the AGO in certain circumstances when engagement by the AGO may be helpful to facilitate compliance with NOV compliance conditions.



## Chapter 4: Formal Enforcement

ADEQ is able to resolve the majority of violations through informal compliance assurance tools such as the previously discussed NOCs or NOV, and with the willing cooperation of the RP. ADEQ has a variety of escalated or “formal” enforcement tools that are used when informal actions are inappropriate because informal action has not achieved the desired results, compliance will take longer than 120 days, or it is necessary to abate an imminent and substantial endangerment to public health or the environment. This chapter provides information about working with the AGO, guidance on when and how to issue consent or compliance orders, and guidance on how to initiate and manage civil and criminal court enforcement.

Although most ADEQ programs share a common set of formal enforcement tools, there are a few minor differences. For example, some programs have the ability to assess civil administrative penalties or issue stop use orders, while others do not. This chapter describes the various formal enforcement tools available to ADEQ along with how and when they may be used. Refer to the Formal Enforcement Statutory Authority List for specific program authority.

### AGENCY GOALS:

- Consent orders should be used when return to compliance will take longer than 120 days.
- Enter into an effective consent order within 60 days of the first missed NOV deadline or when it is determined that a consent order is warranted.
- Consent orders are the agency's preferred formal enforcement tool.

### STANDARD WORK:

- [AZURITE Reference Guide — Formal Enforcement Cases](#)
- [Case Referral Memorandum](#)
- [Service of Process](#)
- [Appeals](#)
- [How to Execute a Consent Order](#)
- [Docketing](#)
- [Temporary Restraining Order\\*](#)
- [Criminal Referral](#)
- [Consent Order Involvement Matrix\\*](#)
- [Legal Review and Representation](#)
- [Compliance Handbook Metrics — Formal Enforcement](#)

### FORMS:

- CEC Templates — K:Drive
- [Appealable Agency Action Language](#)
- [Consent Order Negotiation Guidelines](#)
- [Formal Enforcement Statutory Authority List](#)
- [Confidentiality Log](#)

## Legal Representation

When subject to a formal enforcement tool, some RPs may choose to be represented by legal counsel. If an RP notifies ADEQ that they are represented by legal counsel at any point in the case management process or if contacted by an outside attorney, the Inspector or Case Manager should engage OAC or the AGO prior to any conversation. See [Legal Review and Representation](#).

## Litigation Holds

A litigation hold is a notice received from an authorized Arizona State Department (AGO, Risk Management, or another unit which is involved in responses to complaints or lawsuits) advising custodians of certain documents and electronically-stored information (“ESI”) to preserve potentially relevant evidence in anticipation of future litigation. These notices may be received verbally, or by letter or email. When a litigation hold is in place, OAC and the ADEQ Information Technology department will coordinate and direct the identified ADEQ staff members to identify and locate the records pertaining to the matter described. In addition, when a litigation hold is in effect, staff shall not delete, remove, or destroy records pertaining to the matter and routine document retention/destruction policies related to the identified records shall be suspended. ADEQ and/or the identified staff may be subject to potential liability and sanctions if these obligations are not met.

## Confidential Documents, Attorney-Client Privilege, & Drafts

Facility and case files should have an accompanying confidential file if necessary and a confidentiality log that notes what is contained in the confidential file. Also ensure that the naming convention of any confidential records stored electronically includes the word “CONFIDENTIAL” at the beginning of the title. Documents prepared by ADEQ for case development, like a Case Referral Memorandum (CRM), should be retained in the confidential file until the case has concluded. A confidentiality log should be provided upon request.

Generally, all communication between ADEQ and the AGO is Attorney-Client Privileged, including when that information is passed along to other ADEQ employees. Privileged information should always be kept in the confidential file and marked confidential.

Drafts of orders or other internal documents may be deleted when a final has been created unless ADEQ believes civil or criminal litigation may occur, in which case all documents must be maintained.

## Facility Environmental Audit Privilege

A.R.S. § [49-1401, et. seq.](#) provides a mechanism for organizations to conduct an environmental audit to evaluate compliance with environmental laws and incentivize organizations to identify, correct, and/or report violations. When an environmental audit is conducted pursuant to law, a privilege attaches to the environmental audit report. The privilege is limited as described in A.R.S. § [49-1401, et. seq.](#) Consult OAC or the AGO when you encounter an environmental audit or the assertion of such privilege.

## Personal Service of Documents

On occasion, ADEQ may need to personally serve documents on an RP instead of sending certified mail. If personal service is necessary, the Inspector or Case Manager should follow standard work. Apart from a consent order, formal enforcement documents and appealable agency actions should be sent using email read receipt and then by certified mail with a return receipt if a read receipt is not returned. See [Compliance Document Notice and Receipt Requirements](#). If necessary, a process server may be used. See [Service of Process](#).

## Appealable Agency Actions

As defined in A.R.S. § [41-1092\(4\)](#), an appealable agency action means an action that determines or affects the legal rights, duties, or privileges of an individual party. In the context of enforcement, unilateral administrative orders are appealable agency actions and may be appealed pursuant to A.R.S. § [41-1092.03](#). Appealable agency actions must include language providing a right to appeal. See [Appealable Agency Action Language](#).

A Notice of Appeal shall be sent to ADEQ in writing **within 30 days** of receiving the order. Upon receipt of a timely appeal, ADEQ will notify the Office of Administrative Hearings (OAH). OAH will schedule a hearing to be held within 60 days after the notice of appeal is filed. If not initially requested by the RP, ADEQ may reach out to the RP to determine whether they would like to participate in an informal settlement conference with ADEQ. **The informal settlement conference shall be held within 15 days** unless the RP requests a different date. ADEQ and the RP may stipulate to extending or temporarily deferring any OAH dates by filing a notice with OAH. See the standard work for [Appeals](#).

Following the hearing, ADEQ will issue a Final Decision of the Director accepting, rejecting, or modifying the recommended decision from OAH. The Final Decision of the Director may be appealed to the Superior Court. If not appealed to the Superior Court within 30 days of receipt by the RP, the Final Decision of the Agency Director becomes effective and enforceable. A.R.S. §§ [41-1092.08\(B\) and \(H\)](#), [41-1092.09](#). In some cases, the Agency Director may not issue the Final Decision. For example, the Water Quality Appeals Board issues Final Decisions on many water quality appeals. See A.R.S. § [49-323](#).

## Voluntary Remediation Program

Prior to initiating the consent order process, the Inspector or Case Manager should consider whether the site may be eligible to participate in the [Voluntary Remediation Program \(VRP\)](#). In general, VRP is available to property owners who commit to work with ADEQ to clean up a contaminated site in an expedited manner. VRP participants may receive a determination of no further action by ADEQ if all requirements in the approved remediation work plan are met. The following sites are generally not eligible for VRP: sites listed on the [Water Quality Assurance Revolving Fund \(WQARF\)](#) registry, permitted

hazardous waste facilities, sites utilizing underground storage tank revolving fund monies, and sites already under a court or administrative order. Contact VRP to discuss eligibility.

## Consent Orders

A consent order is a formal enforcement action that is mutually agreed upon by ADEQ and the RP, rather than unilaterally issued by ADEQ. An RP has statutory authority to waive its appeals rights and enter into an order with ADEQ by consent. See A.R.S. §§ [41-1004](#) and [41-1092.07\(F\)\(5\)](#). As part of the consent order process, ADEQ and the RP negotiate to determine reasonable expectations and timelines. The RP can negotiate the terms of the compliance schedule or strategy. The recitals, jurisdiction, and agency's findings are designed to be fair but are generally non-negotiable. Contact OAC if questions arise about the template. See [Consent Order Negotiation Guidelines](#).

A consent order is appropriate when:

- The RP fails to meet an NOV deadline and is willing to resolve the problem and work with ADEQ to establish a reasonable compliance schedule.
- The violation cannot be resolved within 120 calendar days.
- The circumstances of the violation do not warrant seeking civil penalties, or ADEQ determines that civil penalties should be addressed at a later date. See [Chapter 5: Penalties](#).

**Consent Order Involvement Matrix\*:** Consent orders allow a facility to return to compliance over a period of time. Value Stream Managers normally approve consent orders. In certain circumstances, it may be necessary for additional ADEQ leadership to review and approve a consent order. Case Managers and Value Stream Managers should refer to the Consent Order Involvement Matrix to determine who should be consulted prior to executing any consent order.

## Consent Order Process

ADEQ's goal is to have an effective consent order, signed by both parties, **within 60 days** of either:

- The first missed NOV deadline.
- The date of inspection if an NOV has been issued and compliance will take longer than 120 days.
- The date of inspection or file review if no informal enforcement was issued.

When developing the compliance conditions and deadlines, ADEQ strives for a comprehensive order. However, if in the process of developing the compliance conditions some remedies are unknown, ADEQ and the RP should use available information to determine compliance conditions and deadlines with the understanding that the consent order may need to be amended in the future as more information is known. Timeframes for compliance should be reasonable.

All consent orders should require return to compliance as expeditiously as practicable. The Case Manager should understand any statutory limitations on the duration of the consent order applicable to the program. Consent order conditions should be specific, operationally practical, and require return to compliance with environmental laws and permits by a specified date. See [How to Execute a Consent Order](#) and Consent Order Template.

#### **STEP 1 — DRAFT CONSENT ORDER**

**Within 15 days** of the first missed NOV deadline or after a decision to pursue a consent order, the Case Manager should escalate to management for approval to draft a consent order and should complete a consent order draft. If a consent order is being used instead of an NOC or NOV, the Case Manager should begin drafting **within seven days** of the selection of “Case Recommended” in AZURITE. **Within seven days** of drafting the consent order, the VSM should approve the draft.

Reference the [Consent Order Involvement Matrix\\*](#) to determine who should review and approve the consent order prior to its execution.

All remaining compliance conditions, whether NOV or NOC, should be included in the consent order.

**The NOV or NOC compliance conditions should remain open until the compliance conditions are resolved.**

See Chapter 3: Formal Enforcement section [Determining Compliance Conditions & Deadlines](#) for determining appropriate deadlines in the consent order.

Peer review of an order can be a valuable tool to ensure a quality order is written. Contact [oac@azdeq.gov](mailto:oac@azdeq.gov) for assistance drafting consent orders. See [How to Execute a Consent Order](#).

#### **STEP 2 — NEGOTIATE CONSENT ORDER**

Upon approval of the draft consent order, the Case Manager should provide the RP with the approved draft consent order with a proposed compliance schedule. A follow-up meeting should be scheduled with the RP to discuss the compliance conditions in the draft order.

ADEQ should meet with the RP **no later than 30 days after the first missed NOV deadline, or within 30 days of issuing an NOV for compliance conditions longer than 120 days**. Proposed edits to the consent order may be made in this meeting with the goal of both parties signing the order at the meeting. ADEQ may also negotiate the compliance schedule and conditions with the RP through emails, phone calls, or other communications as necessary.

**A person with authority to bind the RP and sign the consent order should be in attendance. ADEQ attendees should also include the ADEQ person with authority to make decisions about the order.**

Check the [Arizona Corporation Commission website](#) to determine who can bind the RP:

- If the person’s name appears in the information for the entity, that person can negotiate and sign for the RP unless you have been provided with other information.
- If the person’s name does not appear in the information for the entity, that person cannot bind the agency unless ADEQ receives additional information that is confirmed by OAC or AGO.

- Refer any questions about who can negotiate and sign for an RP to [oac@azdeg.gov](mailto:oac@azdeg.gov).

Prior to execution of the order, ADEQ staff should obtain the appropriate review and approval of the order pursuant to the [Consent Order Involvement Matrix](#).\*

**Who Can Sign a Consent Order for an RP?** ADEQ should always verify with the RP that the individual signing the Consent Order has the authority to bind the entity. In general the following have authority, however, bylaws may designate someone different:

Member-managed LLC – Member (only one required unless bylaws state otherwise)

Manager-managed LLC – Manager (only one required unless bylaws state otherwise)

Corporation – Officer

Municipal Corporation (i.e., towns and cities) – Mayor or City/Town Manager

Sole proprietorships or DBA businesses – Individual owner

Statutory agents can not bind an entity unless he or she is also the authorized signatory.

### STEP 3 — EXECUTE CONSENT ORDER

If the final version of the consent order is not provided in the meeting, the order should be sent to the RP **within three days** through the agency's electronic signature tool. See standard work for [Electronic Signature](#). After the RP receives the consent order, the consent order should be signed and returned to ADEQ **within seven days**. Follow up with the RP, as necessary, to ensure they meet this timeframe. Utilize electronic signature tools to create a deadline for the RP to sign.

Upon receipt of the consent order signed by the RP, the consent order should be signed by the Value Stream Manager **within three days**.

It is not necessary to have original signatures. Scanned signatures may be sent by either party.

### STEP 4 — DOCKET CONSENT ORDER

If not routed through the electronic signature tool, once signed by both parties, the Case Manager should route the original document to OAC. OAC will docket the order **within two days**, send a copy of the effective order to the RP, return the original to the Case Manager, and ensure the order documents are saved in the K:Drive. The final executed consent order should be sent by email read receipt or by standard mail if email is not available. See standard work for [Docketing](#).

### STEP 5 — PROVIDE ACTION UPDATE LETTERS, AS NEEDED

Until the consent order is effective, the Case Manager should continue to send action update letters **at least once a month**. See [Action Update Letters](#) section.

## STEP 6 — CASE MANAGEMENT

Although not legally required, it is helpful for the Case Manager to remind the RP of upcoming compliance due dates by phone or email and to assist the RP with any questions and determine if the deadline(s) will be met. Case management works!

## STEP 7 — NOTIFY RP OF MISSED DEADLINES

**Within one day after the first missed deadline**, the Case Manager should call the RP to notify them of the missed deadline and send a missed deadline letter. The missed deadline letter may be issued by email with read receipt or sent through the agency's electronic signature tool. If no read receipt is received, the letter should be mailed to the RP. The Case Manager should make reasonable attempts to speak with the RP, or otherwise communicate through email. See the Consent Order Missed Deadline Letter Template.

## STEP 8 — TERMINATE CONSENT ORDER

**Within 10 days of all conditions being achieved**, the Case Manager should provide documentation for management review that demonstrates all conditions have been met and the case is appropriately documented in the facility file. See the Termination of Administrative Order Template.

Termination of a consent order should be approved and signed by the same level of management that approved issuance of the order and should be routed for signature through the agency's electronic signature tool. See standard work for [Electronic Signature](#).

If not routed through the electronic signature tool, once approved, the Case Manager should route the termination through OAC who will docket the termination **within two days**, send a copy to the RP, and return the original to the Case Manager. See standard work for [Docketing](#).

**When the order is terminated, close any applicable NOV or NOC conditions in AZURITE that are also resolved. Conditions that cannot be resolved should be closed without compliance after contacting OAC.**

## Violation of a Consent Order

Appropriate responses may include one or more of the following:

- A phone call with the RP, with a follow-up email, to determine if they can reasonably return to compliance **within 15 days** and therefore no amendment is necessary.
- Amendment of the consent order may be appropriate when the RP requires more than 15 days to come into compliance with the consent order, the RP has made a good faith effort to comply with the compliance schedule, and ADEQ and the RP agree to new compliance deadlines. The Case Manager should follow the same procedures and timeframes for an amendment as discussed above for consent orders. See the Amended Consent Order Template.
- If an amendment is not appropriate because the RP is not making a good faith effort to comply, consult with the OAC for escalation options, which may include referring the case to the AGO. See



Civil Referral section. The path forward will be determined by the particulars of the RP and the case.

- **When there is an imminent and substantial risk to public health and/or the environment, immediately escalate through ADEQ management.**

**Amending Consent Orders to Provide for Extensions:** Ideally the Case Manager should be checking with the RP and amending the consent order as soon as it is determined that the RP will miss the compliance date by more than 15 days. The Case Manager should also verify that the RP made a good faith attempt to meet the consent order deadline and that additional time is warranted due to unforeseen circumstances. The Case Manager should work with the RP to determine a reasonable amount of additional time necessary to meet the compliance condition.

## Compliance, Abatement, and Stop Use Orders

ADEQ has statutory authority within specific programs to issue compliance, abatement, and stop use orders. A compliance order is issued unilaterally by ADEQ without input from the RP and is an appealable agency action. The order must only contain compliance conditions that are required by law. ADEQ's Air Quality Division issues abatement orders, which are generally the equivalent of a compliance order except that an abatement order shall inform the RP of the right to an expedited hearing at OAH. ADEQ's UST program has the authority to issue a stop use order that becomes effective immediately and prohibits the use of the UST until the violations are resolved. The Air Quality abatement and UST stop use orders follow the compliance order process and are also appealable agency actions.

The Case Manager should consider whether a compliance order or civil action is appropriate when an RP fails to meet a deadline within an NOV and the consent order negotiation is unsuccessful or not finalized within 60 days of the missed deadline letter. Consult with OAC when the 60-day timeline is approaching and no progress has been made. The Case Manager should consider whether the RP is likely to comply with a compliance order, and the risk to public health and the environment.

A compliance order may not be appropriate when the violation is creating an immediate and substantial risk to public health and/or the environment. In such cases, referral to the AGO for a temporary restraining order or preliminary injunction may be appropriate. Further, a compliance order may not be appropriate if the RP is unlikely to comply with a compliance order. In such cases, referral to the AGO for a civil judgment or criminal enforcement may be appropriate.

## Compliance Order Process

### STEP 1 — DRAFT COMPLIANCE ORDER

**Within seven days** of ADEQ determining that the RP is not willing to enter into a consent order, or if the RP fails to sign a consent order within 60 days, the Case Manager should seek approval from the Value Stream Manager and draft a compliance order. Only the remaining compliance conditions that are specifically required by law, rule, or permit, whether in an NOV or NOC, should be included in the compliance order. The compliance order should contain compliance deadlines that are reasonably calculated to allow for the RP to return to compliance within the least amount of time. See the Compliance Order Template.

### STEP 2 — OBTAIN COMPLIANCE ORDER APPROVAL

The Unit Manager and the Value Stream Manager should review the compliance order and the Division Director should approve and sign the compliance order **within two days through the agency's electronic signature tool**.

### STEP 3 — DOCKET COMPLIANCE ORDER

The Case Manager routes the compliance order to OAC where it should be docketed **within one business day**. A copy of the order should be sent to the RP by email read receipt or by certified mail with a return receipt if email receipt confirmation is not received. A copy should also be sent to the RP's statutory agent. The original should be returned to the Case Manager. See standard work for [Docketing](#). The email read receipt or certified mail return receipt should be added to the docketed order after it is received. It is important to confirm that the compliance order has been received.

### STEP 4 — EFFECTIVE DATE AND APPEAL

The RP has the right to appeal the compliance order. See [Appealable Agency Actions section](#). NOV and NOC conditions remain open until they are satisfied.

**Compliance Order Effective Date:** If an appeal of the compliance order is not requested, the compliance order becomes effective **30 days** after it is received by the RP. Where provided for by law, some orders may be effective upon issuance (e.g., an abatement order issued by the Air Quality Division and a stop use order issued by the Waste Division).

### STEP 5 — CASE MANAGEMENT

The Case Manager should call the RP to discuss the order immediately after it is issued, regardless of any confirmation of receipt. The Case Manager should also remind the RP of upcoming compliance due dates by phone or email to assist the RP with any questions and determine if the deadline will be met.

#### STEP 6 — NOTIFY RP OF MISSED DEADLINES

Within **one day** after the first missed deadline, the Case Manager will call the RP to notify them of the missed deadline and will send a missed deadline letter. The missed deadline letter may be issued by email with read receipt or through the agency's electronic signature tool. If no read receipt is received, the letter should be mailed to the RP. The Case Manager should make reasonable attempts to speak with the RP, or otherwise communicate through email. See the Compliance Order Missed Deadline Letter Template.

Within **15 days** of noncompliance with a compliance order, the Case Manager should refer the case to the AGO following the [civil referral process](#).

#### STEP 7 — TERMINATE COMPLIANCE ORDER

Within **five days** of all conditions having been met, the Case Manager should provide documentation for management review that demonstrates that all conditions have been met and appropriately documented in the facility file. A termination should be sent to the RP. See the Termination of Compliance Order Template.

Termination of a compliance order should be approved and signed by the Division Director through the agency's electronic signature tool.

The Case Manager should route the termination order to OAC where it should be docketed **within two days** with a copy sent to the RP and the original returned to the Case Manager. See standard works for [Docketing](#) and [Electronic Signature](#).

**Close any applicable NOC or NOV conditions after terminating the Compliance Order.**

## Compliance and Consent Orders with Civil Administrative Penalties: Drinking Water and Hazardous Waste

### Drinking Water

Pursuant to A.R.S. § [49-354\(C\)](#), ADEQ may issue a compliance order or negotiate a consent order imposing a civil administrative penalty for drinking water violations, using the same procedures previously described. See templates for Consent Order with Civil Admin Penalties and Compliance Order with Civil Administrative Penalty. A consent order may also contain agreed-upon stipulated penalties to be imposed in the event of noncompliance. In the event an RP fails to pay the penalty or stipulated penalties in accordance with the consent order, the matter will be referred to the AGO for collection.

In determining the amount of a civil administrative penalty, ADEQ shall consider the factors set forth in A.R.S. § [49-354\(D\)](#). ADEQ shall not seek a civil penalty and administrative penalty for the same violation pursuant to A.R.S. § [49-354\(H\)](#).

### Hazardous Waste

ADEQ's Hazardous Waste program may issue a consent or compliance order for a violation of statute, rule, or permit pursuant to A.R.S. § [49-923\(A\)](#). The order may include stipulated penalties to be imposed

in the event of noncompliance with the order. Upon violation of the order, ADEQ may issue a subsequent administrative order assessing a civil penalty of not more than \$1,000 per day, or the agreed-upon stipulated penalty amount, for each day of continued noncompliance with the compliance or consent order. A.R.S. § [49-923\(B\)](#). Before assessing a civil penalty, ADEQ shall give reasonable notice of its intent to issue the order and the circumstances of the case to the AGO. A.R.S. § [49-923\(C\)](#). See templates for Consent Order with Civil Admin Penalties and Compliance Order with Civil Administrative Penalty.

Hazardous Waste Compliance Orders assessing civil penalties for violated administrative orders shall be issued as follows:

- **If there is a prior agreement with the RP (i.e., a consent order with stipulated penalties):**

The penalties to be assessed for noncompliance with a consent order will be equal to the stipulated penalty provisions within the consent order. Because these penalties have already been negotiated and agreed upon by the RP, ADEQ will not engage in further negotiations before issuing a compliance order assessing a civil penalty. If an appeal is not requested, the compliance order assessing a civil administrative penalty becomes effective **30 days** after received by the RP.

- **If there is no prior agreement with the RP (i.e., ADEQ has issued a compliance order or entered into a consent order without stipulated penalties):**

ADEQ should issue a compliance order assessing a civil penalty for an amount based upon the seriousness of the violation, good faith efforts, economic benefit, and ability to pay. If an appeal is not requested, the compliance order assessing a civil penalty becomes effective **30 days** after received by the RP.

## Environmental Nuisance Abatement Order

Pursuant to A.R.S. § [49-142](#), the agency Director may issue an abatement order requiring a person to abate the maintenance of an environmental nuisance. An environmental nuisance is defined in A.R.S. § [49-141](#) to be a condition in the soil, air, or water that causes or threatens to cause harm to public health or the environment and that is not otherwise subject to regulation by ADEQ under Title 49. Contact OAC to initiate an abatement order in response to an environmental nuisance. See the Environmental Nuisance Order Template.

## Civil Referral

ADEQ may refer a matter to the AGO for the following types of cases or situations:

- The RP has violated a consent order or compliance order.
- The violation is unlikely to be resolved through an NOV or administrative order.
- ADEQ is seeking a civil penalty.
- The violation poses an imminent and substantial threat to public health or the environment.

## Civil Referral Process

Generally, if ADEQ would like to file a civil action in superior court, ADEQ should formally request the assignment of an Assistant Attorney General (AAG) via a CRM, which describes the facts and violations in detail. See standard work for [CRM](#).

The Case Referral Process applies when ADEQ is seeking one or more of the following:

- Preliminary or permanent injunction.
- Civil Penalties.
- Cost Recovery.

The Case Referral Process does **NOT** apply for the following matters listed. For these matters, the Case Manager should immediately contact OAC, who will contact the AGO.

- Temporary restraining order (i.e., the violation poses an immediate and substantial threat to public health or the environment).
- Search warrant (i.e., access issues).
- Potential criminal activity.
- Any other matter requiring immediate assistance.

### STEP 1 — SEEK DIVISION DIRECTOR APPROVAL TO REFER

In most cases, the need to refer the matter to the AGO will arise from a violated consent order or a violated compliance order. **After 15 days of a missed consent order deadline**, the Case Manager should seek approval from the Division Director to refer the matter to the AGO, amend the order, or issue a compliance order. Case Managers seeking approval to go straight to civil enforcement should also obtain approval from the Division Director prior to starting the referral process. Division Directors should consider calling the RP prior to drafting the CRM to determine if the RP is willing to amend the consent order. Approval to draft the CRM should be obtained **within 15 days**.

### STEP 2 — SCHEDULE MEETING FOR AGENCY DIRECTOR APPROVAL

Upon receiving approval to refer the case to the AGO, and before drafting the CRM, the Case Manager should schedule a meeting with the agency Director, Division Director, OAC, and others as needed, to be held as soon as practicable, and **no later than 30 days**. The meeting will brief the agency Director (or his or her designee) in order to obtain approval to send the CRM to the AGO. Case Managers should schedule but not conduct this meeting before drafting the CRM in order to ensure the agency Director can meet when the CRM draft is complete.

### STEP 3 — DRAFT THE CRM

**Within seven days of receiving Division Director approval** to refer the case to the AGO and before meeting with the agency Director, the Case Manager should draft the CRM.

#### STEP 4 — CRM APPROVAL

The Case Manager should route the CRM to the Unit Manager, Value Stream Manager, Division Director and OAC for approval of the CRM. See standard work for [CRM](#).

The Case Manager should obtain final approval from the agency Director at the prescheduled meeting.

#### STEP 5 — CRM TRANSMITTAL

**Within one day of agency Director approval**, the Case Manager should email the CRM to the AGO Environmental Enforcement Section Chief and a copy to OAC. The Case Manager should work with the AGO Environmental Enforcement Section Chief or assigned AG to provide any additional hard copy or electronic files.

### Possible Civil Remedies

Depending on the regulatory program involved, the AGO may pursue a variety of civil and criminal enforcement remedies on behalf of ADEQ or under its own independent authority such as:

- **Temporary Restraining Order:** ADEQ may seek a temporary restraining order requiring a facility to cease a harmful operation immediately. Contact OAC for assistance. See standard work for [Temporary Restraining Order](#).
- **Preliminary and Permanent Injunction:** ADEQ may file a civil complaint seeking an injunction to require a facility to take certain action to return to compliance. The relief may also include penalties. See standard work for [CRM](#).
- **Consent Judgment:** A Consent Judgment is a negotiated settlement of a civil complaint. When ADEQ and an RP can work cooperatively to establish civil penalties and/or injunctive relief, ADEQ files a compliant and consent judgment simultaneously. A consent judgment contains a mutually agreed-upon compliance schedule and/or penalties. See standard work for [CRM](#).
- **Cost Recovery:** ADEQ may recover costs incurred from remediating environmental issues pursuant to program-specific statutes.
- **Civil Penalties:** ADEQ may determine that civil penalties are appropriate. See [Chapter 5: Penalties](#).

**Notice of Complaint:** For a drinking water system, wastewater treatment or disposal facility, or solid waste disposal facility, notice of the filing of a civil complaint should be sent to the appropriate county official(s) and if deemed appropriate, to any affected environmental justice community. Notice should also be provided to the ACC for any regulated utilities.

**Docketing Judgments and Recording Penalties:** All judgments must be provided to OAC for docketing and added to AZURITE Formal Enforcement Module. Penalties should be recorded as compliance conditions that must be fulfilled.

**Violations of Civil Judgments:** If an RP is subject to a civil judgment and has violated the judgment, ADEQ may, as applicable, seek the following:

- **Modification of Consent Judgment without Court Approval:** If the terms of the consent judgment allow for its modification by agreement of the parties, ADEQ should consult with the AGO prior to negotiating a new compliance schedule. The new schedule should be documented in writing.
- **Modification of Consent Judgment with Court Approval:** ADEQ should contact and consult the AAG assigned to the matter for assistance.
- **Stipulated Penalties/Liquidated Damages:** ADEQ may contact the AAG assigned to the matter for collection of stipulated penalties or liquidated damages.
- **Motion for Order to Show Cause:** ADEQ may contact the AAG assigned to the matter for filing a Motion for Order to Show Cause to compel a party to act in accordance with the judgment.

**Satisfaction of Consent Judgment or Consent Decree:** Upon verification by ADEQ that all terms of the Consent Judgment or Consent Decree have been fulfilled, the Case Manager should draft a memorandum to the AGO confirming that all requirements of the Consent Judgment have been fulfilled. The memorandum should be approved by the Division Director. Upon receipt, the AGO should file a Satisfaction of Judgment and send the stamped copy to the Case Manager and OAC, as well as the RP. OAC will save the Judgment or Decree in the K:Drive. See standard work for [Docketing](#).

**Collections for Unpaid Judgments:** When Judgments are not paid, consult the AAG assigned to the case or OAC and enter the appropriate action in AZURITE.

## Criminal Referral

ADEQ may refer potential criminal acts to the Criminal Division of the AGO or the Environmental Protection Agency (EPA) for review. See standard work for [Criminal Referral](#). Criminal enforcement may result in the defendant being ordered to pay penalties and/or serve prison time. Criminal referrals to the AGO are made as separate proceedings unrelated to civil referrals. A parallel civil referral is necessary when injunctive relief is sought. The specific elements for criminal liability are delineated in the different criminal statutes that are applicable to each regulatory program and the specific acts of the defendant. 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.



## License Suspension or Revocation

ADEQ may amend, revoke, or suspend a license for the following programs:

- Vehicle Emission Fleet Inspections
- Drinking water and Wastewater Operator Certification
- UST Service Provider
- Solid Waste Registrations

ADEQ will normally attempt to negotiate a permit revocation/suspension with the consent of the RP using the same procedures described previously (see [Consent Orders section](#)). If these attempts are unsuccessful or unwarranted given the circumstances, ADEQ may issue a suspension or revocation unilaterally. An RP may request an administrative appeal of ADEQ's decision. If an appeal is not requested, the suspension or revocation becomes effective **30 days** after it is received by the RP. See templates for License Revocation and License Suspension.

## Board of Technical Registration Referral

ADEQ reviews reports and other documents from engineers and geologists submitted on behalf of an RP to demonstrate compliance with environmental regulations. These engineers and geologists are required to be licensed by the Board of Technical Registration (BTR) and adhere to BTR regulations. If ADEQ has reason to believe that a person has violated a BTR requirement when dealing with ADEQ (i.e., when submitting an engineering or geological plan, report, or license application) ADEQ may refer the matter to the BTR.

As a general rule, ADEQ will only refer matters to the BTR for clear breaches of professional conduct, which may include any of the following:

- Submittal of false or misleading certifications
- Attempting to defraud the State
- Attempting to commit bribery
- Clearly practicing without a registration

ADEQ may refer the public to [BTR for complaints](#) that do not directly involve or impact ADEQ.

## Chapter 5: Penalties

ADEQ may seek civil penalties when a facility has received an economic benefit from noncompliance which provides a facility an economic advantage over other facilities. ADEQ may also seek a civil penalty to recover State costs from a violation or to provide a deterrent for future noncompliance. The environmental statutes administered by ADEQ generally contain penalty assessment criteria that a court should consider in determining an appropriate penalty at trial. The penalty amount sought in a civil complaint may be the statutory maximum penalty. ADEQ will determine what constitutes an appropriate settlement penalty on a case-by-case basis. At a minimum, the penalty amount in any settlement should be equal to any identifiable economic gain and any costs incurred by the State due to the violation. The penalty should also have a deterrent effect on the RP and for the regulated community at large. An appropriate settlement may include penalty mitigation for good-faith actions taken by the facility to return to compliance, the implementation of a Supplemental Environmental Project, or stipulated penalties to deter further noncompliance. This chapter provides guidance on when to seek a penalty, how to develop a penalty amount, and how to include a supplemental environmental project in a judgment.

### STANDARD WORK:

- [Case Referral Memorandum](#)

## Determining if a Penalty is Appropriate

### ADEQ will strongly consider penalties when a facility:

1. Intentionally misrepresents information or intentionally acts unlawfully;
2. Causes harm to human health; or
3. Has repetitive violations from consecutive inspections.

Any violation of statute, rule, order, or permit may be subject to a penalty. All decisions will be made on a case-by-case basis.

In addition to the criteria above, a decision to seek civil penalties may also use the following criteria:

- The violation was intended to result in, or actually resulted in, significant cost savings or a competitive advantage to the RP.
- The RP engaged in willful or negligent conduct leading to the violation (e.g., inadequate systems in place for detecting or preventing the violation).
- The RP previously received an NOV or administrative order for the same violation.
- ADEQ previously filed a civil complaint against the RP.
- The violation resulted in actual harm, or substantial risk of harm, to public health or the environment as determined using the following factors:
  - An actual release.
  - Violation of a water quality standard.
  - Exceedance of a soil remediation standard.

- Severe mismanagement of a pollutant.
- The amount of the pollutant involved.
- The toxicity of the pollutant involved.
- The proximity of biological or human receptors or sensitive environmental media such as a drinking water supply, populated area or surface water.
- Lack of notifying persons potentially affected by the violation if required by law.

## Settlement Adjustment Factors

Although the statutory penalty adjustment factors vary by program, the following factors are generally considered by ADEQ in assessing the appropriate penalty amount.

### Aggravating Factors

- **Seriousness of Violation:** Includes threat or actual harm to public health and/or the environment.
- **History of Repeated Violations:** A history of repeated violations of the same rules or statutes or payment of previous penalties for the same or similar violations.
- **Record of Noncompliance:** A history of violation of other environmental laws and regulations whether federal, state, or local.
- **Recalcitrance:** Refusal to comply with ADEQ requirements, including deliberate attempts to delay the settlement process by unnecessarily extending negotiations.
- **Duration of Violation:** The violation has continued over a period of time, with the RP's knowledge, and no or minimal attempts have been made to correct the violation.
- **Other Evidence of Bad Faith:** Unique bad faith factors such as ignoring past efforts to engage the RP and provide compliance assistance or acts of willful or gross negligence.
- **Other Aggravating Factors:** ADEQ may consider other factors that may indicate the need for an aggravated penalty.

### Mitigating Factors

- **Good Faith Efforts:** Timely corrective action or other evidence of good faith that results in progress towards compliance.
- **Multiple Responsible Parties:** If more than one RP is responsible for the violation, the penalty may be apportioned based on ADEQ's knowledge of the facts and professional judgment.
- **Other Mitigating Factors:** ADEQ will consider other factors which may indicate the need for a reduction in the penalty.

### Deterrence Factors

- **Economic Impact of the Penalty:** At a minimum, the penalty should deter the RP from repeated violations and recapture any identifiable economic gain.
- **Deterrence Value to Other PRPs:** Consideration should be given as to whether the penalty will deter other PRPs from similar acts.

## Ability to Pay

The ability to pay should be considered if the penalty would result in the RP's inability to remain solvent. The inability to pay should be established by the RP through clear and convincing evidence. Additionally, payment schedules are preferred over a reduction in penalties. A penalty payment schedule generally should not exceed three years and should include an interest of 10 percent per annum. ADEQ may use the following EPA financial models to analyze the financial aspects of enforcement actions: ABEL (corporations and partnerships), MUNIPAY (municipalities and utilities), and INDIPAY (individuals).

## Penalty Development Process

In developing a proposed penalty amount, the Case Manager should follow ADEQ's Penalty Standard Work. *Contact OAC to review the Penalty Standard Work.* The Case Manager begins by identifying the program's authority and calculating the statutory maximum. Next, the Case Manager should calculate the economic benefit to the RP and the additional costs incurred by the State due to the violation. Use the U.S. EPA BEN model as a starting point for calculating economic benefit. The Case Manager should also identify appropriate statutory adjustment factors applicable to that case. Applying the adjustment factors, the recommended penalty should fall somewhere in between the statutory maximum and the sum of the facility's economic benefit and additional costs incurred by the State due to the violation.

**Judgements should always recover State and agency costs and attorney fees when possible, which are costs unnecessarily paid by Arizona taxpayers for the RPs noncompliance.** Ensure that any judgment includes payment of costs and attorney fees when allowed by statutory authority, for example, under A.R.S. § [49-262\(D\)](#).

## Stipulated/Deferred/Liquidated Damages

**In general, all consent judgments should include stipulated or deferred penalties, which are also called liquidated damages.** If the RP violates a requirement of the consent judgment, the party should be required to pay an amount negotiated in the settlement. The appropriate amount of the stipulated or deferred penalty should be determined on a case-by-case basis and may differ depending on the specific requirements within the settlement agreement. The penalty should be set such that it motivates the RP to maintain compliance.

## Supplemental Environmental Projects

To further ADEQ's goal to protect and enhance public health and the environment, a Supplemental Environmental Project (SEP) may be included in a civil settlement to mitigate a portion of the civil penalty. SEPs are authorized by A.R.S. § [49-117](#). This section sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for an SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of an SEP is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by the use of SEPs.

When evaluating a proposed project to determine if it qualifies as an SEP and determining how much penalty mitigation is appropriate, ADEQ will use the following five-step process:

#### **STEP 1 — ENSURE THAT THE PROJECT MEETS THE BASIC DEFINITION OF AN SEP**

SEPs are environmentally beneficial projects an RP agrees to undertake in settlement of a penalty action, which the RP is not otherwise legally required to perform. When proposing an SEP, the RP should demonstrate to ADEQ that the SEP improves, protects, or reduces a risk to public health, or the environment at large. While in some cases an SEP may provide the RP with certain benefits, there should be no doubt that the project primarily benefits public health or the environment. As a result, the project or activity must have been initiated after identification of the violation by ADEQ, and should not otherwise be required by any federal, state, or local law or regulation. Furthermore, SEPs cannot include corrective actions that the RP should perform to resolve the violations at issue.

#### **STEP 2 — ENSURE THAT THE FOLLOWING GUIDELINES ARE SATISFIED**

- An SEP shall be consistent with the provisions of the statutes that are the basis of the enforcement action.
- Pursuant to A.R.S. § [49-117](#), all SEPs shall advance at least one of the objectives of the environmental statutes that are the basis of the enforcement action and shall have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if any of the following is true:
  - The project is designed to reduce the likelihood that similar violations will occur in the future; or
  - The project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or
  - The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.
- ADEQ should not play any role in managing or controlling funds that may be set aside or escrowed for the performance of an SEP. In addition, ADEQ should not retain authority to manage or administer the SEP. ADEQ may perform oversight to ensure that a project is implemented pursuant to the provisions of the settlement and should have legal recourse if the SEP is not adequately performed.
- The type and scope of each project should be explicitly defined in the signed settlement agreement. The agreement should describe the specific actions to be performed by the RP and provide for a reliable and objective means to verify that the RP has completed the project in a timely manner. This may require the RP to submit periodic reports to ADEQ. A final report certified by an appropriate corporate official and evidencing completion of the SEP and documenting SEP expenditures should be required. To the extent feasible, the RP should be required to quantify the benefits associated with the project and provide ADEQ with a report setting forth how the benefits were measured or estimated. The RP should agree that whenever it publicizes an SEP or the results of an SEP, it should state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action. SEPs that require ADEQ review and comment on interim

milestone activities and other complex SEPs may not be appropriate because of the time commitment that should be made on behalf of ADEQ.

- A project cannot be used to satisfy ADEQ's statutory obligation or another state agency's obligation to perform a particular activity. Furthermore, if a state statute prohibits the expenditure of state resources on a particular activity, ADEQ cannot consider projects that would appear to circumvent that prohibition.
- A project should not provide additional resources to support specific activities performed by ADEQ employees or ADEQ contractors.

### STEP 3 — ENSURE THAT THE PROJECT FITS WITHIN ONE OR MORE DESIGNATED SEP CATEGORIES

ADEQ has identified seven specific categories of projects that may qualify as SEPs. In order for a proposed project to be accepted as an SEP, it should satisfy the requirements of at least one category.

- **Public Health:** A public health project provides diagnostic, preventative, and/or remedial components of human health care which is related to the actual or potential damage to health caused by the violation. Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.  
*Examples:* Epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment, and rehabilitation therapy.
- **Pollution Prevention:** A pollution prevention project is one that reduces the generation of pollution through "source reduction," including any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.) In all cases, for a project to meet the definition of pollution prevention, there should be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.  
*Examples:* Equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project that protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. "In-process recycling" – waste materials produced during a manufacturing process are returned directly to production as raw materials on site – is considered a pollution prevention project.
- **Pollution Reduction:** If the pollutant or waste stream has already been generated or released, a pollution reduction approach, which employs recycling, treatment, containment, or disposal techniques, may be appropriate. A pollution reduction project is one that results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any

waste stream or otherwise being released into the environment by an operating business or facility by a means, which does not qualify as “pollution prevention.”

**Examples:** Installation of more effective end-of-process control or treatment technology, improved containment, safer disposal of an existing pollutant source, or out-of-process recycling (i.e., industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site).

- **Environmental Restoration:** An environmental restoration project is one that enhances the condition of the ecosystem or immediate geographic area adversely affected. These projects may be used to restore natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. This category also includes any project that improves the overall condition of the ecosystem.

**Examples:** Restoration of a wetland in the same ecosystem along the same avian flyway in which the facility is located, the protection of endangered species ( e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation), remediation of facilities and buildings, (provided such activities are not otherwise legally required), or removal/mitigation of contaminated materials (such as soils, asbestos and lead paint, which are a continuing source of releases and/or threat to individuals).

- **Assessments and Audits:** The following descriptions of assessments and audits are potential SEPs under this category if they are not otherwise available as injunctive relief and the RP agrees to provide ADEQ with a copy of the report documenting the assessment or audit:
  - **Pollution prevention assessments** are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments shall be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations. Pollution prevention assessments are acceptable as SEPs with or without an implementation commitment by the RP.
  - **Environmental quality assessments** are investigations of the condition of the environment at a site regardless of whether the site or facility is owned or operated by the RP. To be eligible as SEPs, such assessments shall be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

**Examples:** Investigations of levels or sources of contamination in any environmental media at a site, or monitoring of the air, soil, or water quality surrounding a site or facility.
  - **Environmental compliance audits** are independent evaluations of the RP's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business or small community.



- **Environmental Compliance Promotion/Research:** An environmental compliance promotion or research project provides training, technical support, or information to other members of the regulated community to identify, achieve or maintain compliance with applicable statutory and regulatory requirements, or go beyond compliance by reducing the generation, release, or disposal of pollutants beyond legal requirements. Environmental compliance promotion/research SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements that were violated and where ADEQ has reason to believe that compliance in the sector would be significantly advanced by the proposed project.

**Examples:** Producing a seminar directly related to correcting widespread or prevalent violations within the RP's economic sector. Collection of baseline environmental data to be used in research improving, protecting, or reducing risks to public health and the environment. Development of new treatment technologies that could be used to reduce the generation, release, or disposal of pollutants beyond legal requirements.

- **Emergency Planning and Preparedness:** An emergency planning and preparedness project provides assistance to a responsible local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

**Examples:** Providing computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training to a responsible local emergency response or planning entity.

#### **STEP 4 — DETERMINE THE APPROPRIATE AMOUNT OF PENALTY MITIGATION**

An SEP may be substituted for a portion of the calculated penalty or settlement amount. However, the SEP may not offset the entire calculated penalty. Generally, the net present after-tax cost of the SEP should be the equivalent of twice the remaining unpaid balance of the calculated penalty or settlement amount. Other ratios can be imposed based upon the facts and the type of SEP imposed, but should be approved in advance by OAC.

#### **STEP 5 — ENSURE THAT THE PROJECT SATISFIES ALL OF THE IMPLEMENTATION & OTHER CRITERIA**

Whether ADEQ decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP is purely within ADEQ's discretion. Even though a project appears to satisfy all of the provisions of this section, ADEQ may decide, for one or more reasons, that an SEP is not appropriate (e.g., the cost of reviewing an SEP proposal is excessive, the oversight costs of the SEP may be too high, the RP may not have the ability or reliability to complete the proposed SEP, or the deterrent value of the higher penalty amount outweighs the benefits of the proposed SEP).

## Community Input During SEP Development

In appropriate cases and at the sole discretion of the agency, ADEQ may make special efforts to seek input on project proposals from the local community that may have been adversely impacted by the violations. The purpose of seeking input from the impacted community is to ensure that a SEP proposed by the RP meets the criteria for an acceptable SEP and to determine whether the community would benefit from the SEP. The seeking of input is not intended to solicit new SEPs or to entertain alternative SEP proposals from the community. Community involvement in SEPs may be most appropriate in cases where the range of possible SEPs is broad and/or multiple SEPs may be negotiated. When soliciting community input, ADEQ should follow these guidelines:

- Community input should be sought only after
  - The RP has expressed an interest in performing an SEP;
  - The RP has expressed a willingness to seek community input;
  - ADEQ knows approximately how much money will be available for an SEP; and
  - Settlement of the enforcement action is likely.
- To solicit input, ADEQ may contact local community organizations, local elected leaders, local chambers of commerce, or other groups.
- To ensure that communities have a meaningful opportunity to participate, ADEQ should provide information about what SEPs are, the opportunities and limits of such projects, the confidential nature of settlement negotiations, and the reasonable possibilities and limitations in the current enforcement action.
- When possible, the name of the RP and the status of the action should remain confidential.
- Representatives of community groups should not participate directly in the settlement negotiations due to the confidential nature of settlement negotiations.