

40 CFR 145.22(a)(4) – Memorandum of Agreement

MEMORANDUM OF AGREEMENT

BETWEEN

**THE ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AND

**THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9**



This **AGREEMENT** is entered into by the **STATE OF ARIZONA – DEPARTMENT OF ENVIRONMENTAL QUALITY** (“ADEQ”) and signed by the Director of ADEQ, (“Director”) with the **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9** (“EPA”), and signed by the Regional Administrator (“Regional Administrator”). This Agreement shall become effective when approved by the Regional Administrator. ADEQ is authorized to contract and enter into agreements pursuant to Arizona Revised Statutes (A.R.S.) §§ 49-104 and 49-203. EPA authority to undertake the activities described in this Agreement is derived from Part C of the Safe Drinking Water Act (“SDWA”) (P.L. 93-523 as amended; 42 U.S.C §§ 300f *et seq.*).

The purpose of this Agreement is to establish policies, responsibilities and procedures for the State of Arizona’s Underground Injection Control Program (“State Program” or “UIC Program”) for Class I, II, III, IV, V and VI injection wells, pursuant to 40 C.F.R. Parts 124, 144, 145, 146, and Section 1421 of the SDWA (42 U.S.C § 300h).

This written Agreement, including Agreement Terms, Attachments, Amendments, and any modifications approved in accordance herewith, shall constitute the entire Agreement between the parties and supersedes all other understandings, oral or written.

IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Agreement.

**ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Signature

Printed Name

**Director
Title**

Date

Signature

Printed Name

**Regional Administrator
Title**

The above referenced Agreement is hereby executed this _____
Day of _____, 20____.

1 **I. GENERAL**

2

3 **a. Review and Modifications**

4 This Agreement shall be reviewed annually as part of the annual UIC program grant agreement.
5 The annual program grant agreement shall be consistent with this Agreement and may not
6 override this Agreement.

7 This Agreement may be modified upon the initiative of ADEQ or EPA. Modifications must be in
8 writing and must be signed by the Director and the Regional Administrator. Modifications
9 become effective when signed by both parties. Modifications may be made by revision prior to
10 the effective date of this Agreement or subsequently by addenda attached to this Agreement and
11 consecutively numbered, signed, and dated.

12 **b. Conformance with Laws and Regulations**

13 ADEQ shall administer the Underground Injection Control (UIC) Program consistent with
14 ADEQ's submission for program approval, this Memorandum of Agreement (MOA), the SDWA,
15 current federal policies, regulations, promulgated minimum requirements, priorities established
16 as part of the annually approved UIC program grant, state and federal law, and any separate
17 working agreements which are entered into with the Regional Administrator as necessary for the
18 full administration of the UIC Program. Additionally, EPA policy or guidance related to the
19 implementation of the UIC program is relevant to ADEQ's administration of the program, yet
20 constrained to the boundaries of the law.

21 **c. Responsibilities of Parties**

22 Each of the parties has responsibilities to assure that the UIC requirements are met. The parties
23 agree to maintain a high level of cooperation and coordination between ADEQ and EPA staffs in
24 a partnership to assure successful and effective administration of the UIC Program. In this
25 partnership, the Regional Administrator will provide to ADEQ necessary technical and policy
26 assistance on UIC Program matters.

27 The Regional Administrator is responsible for keeping ADEQ apprised, in a timely manner, of
28 the meaning and content of the federal guidelines, technical standards, regulations, policy
29 decisions, directives, and any other factors which affect the UIC Program.

30 The strategies and priorities for issuance, compliance, monitoring and enforcement of permits,
31 and implementation of technical requirements shall be established in ADEQ's Program
32 Description and in subsequent working agreements. If requested by either party, meetings will be
33 scheduled at reasonable intervals between ADEQ and EPA to review specific operating
34 procedures, resolve problems, or discuss mutual concerns involving the administration of the
35 UIC Program.

36 **d. Sharing of Information**

37 ADEQ shall promptly inform EPA of any proposed, pending, or enacted modifications to laws,
38 regulations, or guidelines, and any judicial decisions or administrative actions, which might

affect the State Program and the ADEQ's authority to administer the UIC Program. ADEQ shall promptly inform EPA of any resource allocation changes (for example, personnel budget, equipment, etc.) which might affect ADEQ's ability to administer the UIC Program.

ADEQ shall make any information obtained or used by ADEQ under its UIC Program available to EPA upon request without restriction. If the information has been submitted to ADEQ under a claim of confidentiality, ADEQ must submit that claim to EPA when providing EPA such information. EPA agrees to treat any information obtained from ADEQ and subject to a claim of confidentiality in accordance with 40 C.F.R. Part 2. If EPA obtains information from ADEQ that is not claimed to be confidential, EPA may make that information available to the public without further notice.

EPA shall furnish ADEQ the information in its files not submitted under a claim of confidentiality which ADEQ needs to implement its approved UIC Program. EPA shall also furnish to ADEQ information submitted to EPA under a claim of confidentiality which ADEQ needs to implement its approved UIC Program, subject to conditions in 40 C.F.R. Part 2.

e. Duty to Revise Program

Within 270 days of an amendment to a relevant regulation promulgated at 40 C.F.R. Parts 124, 144, 145 or 146 revising or adding requirements with respect to state UIC programs, ADEQ shall submit a modified Program Description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances to demonstrate that the State Program meets the revised or added requirement, as required by 40 C.F.R. § 145.32(e).

f. Definition and Exemptions of USDW

For purposes of the UIC Program, ADEQ defines an "underground source of drinking water" (USDW) in a manner consistent with 40 C.F.R. §§ 144.3 and 146.3 of the UIC regulations. ADEQ further agrees to exempt "underground sources of drinking water" only in conformance with 40 C.F.R. §§ 146.4 and 144.7 of the UIC regulations.

A USDW, for purposes of the State Program under this Agreement, means an aquifer(s) or its portion that:

- i. Supplies any public water system; or
- ii. Contains a sufficient quantity of ground water to supply a public water system; and
 - a. Currently supplies drinking water for human consumption; or
 - b. Contains fewer than 10,000 mg/L total dissolved solids; and
- iii. Is not an exempted aquifer.

An aquifer, or portion thereof, may be exempted from protection by the Director after public notice and opportunity for public hearing and upon final approval by EPA. An aquifer, or portion thereof, may be exempted if it does not currently serve as a source of drinking water and it cannot now and will not in the future serve as a source of drinking water (as specified in 40 C.F.R. § 146.4). Aquifer exemptions (AEs) made subsequent to program approval are to be treated as program modifications as specified in 40 C.F.R. § 145.32.

ADEQ may propose AEs in accordance with the criteria in 40 C.F.R. § 146.4. After notice and opportunity for a public hearing, ADEQ may submit the proposed AE in writing to EPA for approval. In accordance with 40 C.F.R. § 144.7(b), an AE identified under 40 C.F.R. § 146.4(b) is treated as a program revision under 40 C.F.R. § 145.32. EPA will review AE approval requests and either approve or deny in accordance with federal requirements. An AE identified under 40 C.F.R. § 146.4(c) becomes final if EPA has not disapproved the designation within 45 days of submittal, unless ADEQ and EPA agree that additional information is necessary for EPA's consideration of the proposed AE. All other AEs become final upon approval by EPA. EPA will review AE approval requests and either approve or deny in accordance with federal requirements.

Other than EPA approved AE expansions that meet the criteria for exempted aquifers, new AEs shall not be issued for Class VI injection well activities.

The issuance of a UIC permit and the denial or approval of an AE are separate regulatory actions. If the injection activity is dependent on an AE approval by EPA, ADEQ may issue the permit but the permit will not be effective unless and until EPA approves the AE. Therefore, injection, well construction, and any other activities requiring authorization will not be authorized unless and until EPA approves the AE.

g. Duration of Agreement

This Agreement will remain in effect as long as primary enforcement responsibility is vested in ADEQ through program approval, according to the provisions of 40 C.F.R. §§ 145.31, 145.33, 145.34.

h. General Provisions

Nothing in this Agreement is intended to affect any UIC or State Program requirement, including any standards or prohibitions, established by state or local law, so long as the state or local requirements are not less stringent than:

- (1) any set forth in the UIC regulations; or
- (2) other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to restrict EPA's statutory oversight responsibility or limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431 or other Sections of the SDWA.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against ADEQ or EPA, their officers or employees, or any other person. This MOA does not direct, or apply to, any person outside of ADEQ and EPA.

i. Notices, Correspondence, Reports

- i. All notices, correspondence, and reports, from ADEQ should be sent to:

116
117 Manager, Groundwater Protection Section
118 Water Division
119 U.S. EPA, Region 9
120 75 Hawthorne Street
121 San Francisco, CA 94105
122

- 123 ii. All enforcement related notices and correspondence from ADEQ should be
124 sent to:

125
126 Enforcement and Compliance Division
127 Water Section 1, ENF 3-1
128 U.S. EPA, Region 9
129 75 Hawthorne Street
130 San Francisco, CA 94105
131

- 132 iii. All notices and correspondence from the EPA should be sent to:

133
134 Director, ADEQ
135 Water Quality Division
136 Underground Injection Control Program
137 1110 West Washington Street
138 Phoenix, AZ 85006
139

140 **II. PERMITTING**

141
142 **a. General**

143 ADEQ is responsible for expeditiously drafting, circulating, issuing, modifying, reissuing, and
144 terminating UIC permits and shall do so in accordance with 40 C.F.R. § 145.11. The Director
145 shall review and issue permits based on the permit conditions of Parts C through J in Arizona
146 Administrative Code, Title 18, Chapter 9, Article 6, including but not limited to, procedures for
147 public participation. Permits shall be issued which comply with applicable federal and state
148 requirements.

149 **b. Transfer of Responsibility from EPA to ADEQ**

150 **i. General**

151 The Regional Administrator shall transfer from EPA to ADEQ any current or pending permit,
152 permit application, and any other information relevant to program operation not already in the
153 possession of the ADEQ Director when ADEQ assumes primacy of the UIC Program.

154 At the time this Agreement was executed, there were 5 federally issued permits authorizing
155 underground injection at 3 facilities:

- 1) UIC Permit # R9UIC-AZ3-FY19-1, for the Florence Copper Project Facility at the same site in Florence, AZ.
- 2) an Area Permit for the Class III In-Situ Production of Copper known as the Excelsior Copper Project; and
- 3) three individual Class III permits issued to Morton Salt.

Additionally, there are approximately 65,000 shallow Class V wells that are authorized by rule. At the time of primacy, EPA provided ADEQ with a list of all injection wells in EPA's inventory.

Upon program approval and transference of the federal UIC permits from EPA to ADEQ, ADEQ intends to modify the UIC permits in accordance with A.A.C. R18-9-C632 and A.A.C. R18-9-C618.

i. Florence Copper Project UIC Area Permit General

UIC Permit # R9UIC-AZ3-FY19-1 contains conditions at Part II.M based on a Memorandum of Agreement developed pursuant to the National Historic Preservation Act (NHPA). ADEQ will retain Part II.M of Permit # R9UIC-AZ3-FY19-1, which contains the NHPA conditions.

c. Major and Minor Facilities

The definition of "Major Facility" for the purposes of the EPA Regional Administrator and the ADEQ Director's joint determination includes all UIC wells or UIC well fields except for Class V wells authorized by rule.

d. Class VI Injection Depth Waivers

ADEQ shall provide all information received through the injection depth waiver application process described in 40 C.F.R. § 146.95, to the Regional Administrator. Based on the information provided, the Regional Administrator shall provide written concurrence or non-concurrence regarding waiver issuance. ADEQ shall not issue a Class VI injection depth waiver without receipt of written concurrence from the Regional Administrator. EPA will review injection depth waivers and either provide concurrence or non-concurrence in accordance with federal standards.

The issuance of a Class VI UIC permit and the written concurrence or non-concurrence of an injection depth waiver are separate regulatory actions. If the injection activity is dependent on EPA's written concurrence with an injection depth waiver, ADEQ may issue the permit but the permit will not be effective unless and until EPA concurs with the injection depth waiver. Therefore, injection, well construction, and any other activities requiring authorization will not be authorized unless and until EPA concurs with the injection depth waiver.

e. Class VI Post-Injection Site Care and Site Closure

ADEQ and EPA will consult on any alternative post-injection site care timeframes (other than the 50-year default timeframe required by 40 C.F.R. § 146.93), if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. Pursuant to 40 C.F.R. § 145.1(g),

nothing in this MOA precludes ADEQ from adopting or enforcing requirements which are more stringent or more extensive than those required under federal regulations, and if the State Program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally approved program.

f. Compliance Schedule and Reports

The Director agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

g. Environmental Justice

ADEQ agrees to examine the potential risks of a proposed Class VI well within its jurisdiction to identify and address any particular impacts on minority and low-income populations. ADEQ will work within its legal authority to support communities through a variety of approaches, including:

i. Implementing an Inclusive Public Participation Process. ADEQ will fully incorporate robust and ongoing opportunities for public participation, especially for lower-income people, communities of color and those experiencing a disproportionate burden of pollution and environmental hazards, as described in the Program Description. For example, ADEQ will provide notice of proposed Class VI wells and tailor public participation to specific community needs and interests. Tailored public participation activities may include scheduling public meetings at times convenient for residents with appropriate translation services where needed, enabling face-to-face or written feedback on permit applications early in the review process, convening local stakeholders and community groups for safety planning, or supporting the development of community benefits agreements.

ii. Considering Environmental Justice & Civil Rights Impacts on Communities. As described in the Program Description, ADEQ will include environmental justice as a core element in implementing their Class VI programs. For example, in review of permit applications, ADEQ will evaluate whether the siting of a Class VI project at the proposed location will create any new risks or exacerbate any existing impacts on lower-income people and communities of color. Such evaluations will consider the presence of existing environmental hazards, cumulative impacts, potential exposure pathways, and vulnerable sub-populations, as well as the likely distribution of any environmental and public health benefits from the proposed Class VI project in affected communities. EPA's EJScreen, or a similar tool, will be employed to identify environmental and social stressors in specific communities, as described in the Program Description. ADEQ will utilize EPA tools to support its effort in calculating impacts to communities, including but not limited to the most up-to-date versions of EPA-published EJ guidance documents.

- 237 **iii. Enforcing Class VI Regulatory Protections.** The Safe Drinking Water Act
238 UIC program Class VI regulations include strong protections for communities
239 to prevent contamination of underground drinking water sources. These
240 regulatory protections include a variety of measures, including proper site
241 characterization and strict construction, operating, and monitoring
242 requirements to ensure well and formation integrity, proper plugging of wells,
243 and long-term project management and post-injection site care to ensure
244 leakage prevention. ADEQ will properly implement and enforce these
245 requirements to protect communities from potential harms associated with
246 injection wells. ADEQ will make reports of enforcement activities accessible
247 to the public.
- 248
- 249 **iv. Incorporating Other Mitigation Measures.** ADEQ will proactively work
250 within its legal authority to prevent and/or reduce any adverse impacts to
251 underground sources of drinking water from well construction and operational
252 activities. While the UIC program is designed to protect underground sources
253 of drinking water, ADEQ may consider other mitigation measures in order to
254 ensure Class VI projects do not increase environmental impacts and public
255 health risks in already overburdened communities such as carbon dioxide
256 monitoring, release notification networks and installation of enhanced
257 pollution controls. Additional considerations include the adoption of other
258 measures to offset impacts by improving environmental amenities for the
259 communities identified within the delineated area and providing resources for
260 clean-up of previously degraded public areas, as authorized by state law.

262 **III. COMPLIANCE MONITORING**

264 **a. General**

265 ADEQ shall implement a timely and effective compliance monitoring system to track
266 compliance with program requirements. For the purposes of this Agreement, the terms
267 "compliance monitoring" or "compliance evaluation" shall refer to all efforts associated with
268 determining compliance with UIC Program requirements.

269 **b. Compliance Schedule**

270 ADEQ agrees to maintain procedures to receive, evaluate, retain, and investigate all notices and
271 reports that are required by permit compliance schedules and UIC Program regulations. These
272 procedures shall also include the necessary elements to investigate the failure of persons required
273 to submit such notices and reports. ADEQ shall initiate appropriate enforcement actions when
274 required information is not received or when the reports are not submitted.

275 **c. Review of Compliance Reports**

ADEQ shall conduct a timely and substantive review of all such reports to determine compliance status in accordance with the State compliance program and the UIC Program requirements. The State compliance program shall determine whether:

- (1) the reports required by permits and UIC Program regulations are submitted;
- (2) the submitted reports are complete and accurate; and
- (3) the permit conditions and UIC Program requirements are met.

d. Inspection and Surveillance

ADEQ agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the UIC Program. The procedures may include surveys or other methods of surveillance to identify persons and facilities who have not complied with program requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request. ADEQ shall conduct inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections shall be performed to assess compliance with all UIC permit conditions or UIC Program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections shall be conducted to determine compliance or noncompliance, to verify the accuracy of information submitted in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information. ADEQ shall give the Regional Administrator at least seven (7) days' notice in order to allow an opportunity for joint inspection and coordination of scheduling in any compliance evaluation inspection scheduled by ADEQ.

ADEQ intends to witness at least 25% of the mechanical integrity tests conducted by permittees each grant year.

EPA intends to notify ADEQ of EPA sponsored UIC inspector training opportunities.

e. Information from the Public

Pursuant to 40 C.F.R. § 145.12(b)(4), ADEQ shall provide a mechanism for the public to submit information on violations and shall have procedures for receiving, investigating, and ensuring proper consideration of the information, and for responding to the public.

f. Authority to Enter

ADEQ shall have the authority to enter any site or premises subject to regulation for purposes of compliance monitoring and evaluation or to review and copy the records of relevant program operations where such records are kept in accordance with A.R.S. §§ 41-1009, 49-104(B)(8), 49-203(B)(1).

g. Admissibility

ADEQ shall conduct any investigatory inspections, and collect samples and other information in a manner that provides evidence admissible in an enforcement proceeding or in court.

IV. ENFORCEMENT

a. General

ADEQ is responsible for taking timely and appropriate enforcement action(s) against persons in violation of compliance schedules, technical requirements, permit conditions, and other UIC Program requirements. This includes violations detected during inspections conducted by ADEQ or EPA. ADEQ may request assistance from EPA with enforcement.

ADEQ shall notify EPA of any enforcement actions taken by the State. For serious violations, including violations that threaten human health and/or the environment, that threaten the integrity of the UIC Program, or that violate crucial provisions of the UIC program, ADEQ shall notify EPA in writing within one week of taking the action. ADEQ shall also submit information via quarterly UIC program grant reporting on all enforcement actions including actions for serious violations and actions for non-serious violations, such as reporting violations that do not threaten the integrity of the UIC Program and pose little or no direct threat to the environment pursuant to the grant workplan.

b. Enforcement Mechanisms

The State shall maintain mechanisms to immediately restrain any person engaging in an unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. ADEQ shall also have the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any program requirement. Additionally, ADEQ shall maintain mechanisms to access or sue to recover in court civil penalties and criminal remedies as established in 40 C.F.R. § 145.13.

c. Public Participation

Pursuant to A.R.S. § 49-264, ADEQ shall provide for public participation in the enforcement process by providing either:

1. Intervention as of right by any citizen having an interest which is or may be adversely affected in any civil or administrative action to obtain remedies as specified in the paragraph above, or
2. Assurance that ADEQ will:
 - (i) Investigate and provide written responses to all citizen complaints,
 - (ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statutes, rule, or regulation, and
 - (iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

d. EPA Enforcement

Nothing in this Agreement shall affect EPA's authority to take enforcement actions under Sections 1423 and 1431 of SDWA. EPA retains the right to initiate inspections and review facilities for compliance unilaterally. When ADEQ has a fully approved UIC Program, EPA will not take enforcement actions without providing prior notice to ADEQ and otherwise complying with sections 1423 and 1431 of SDWA.

e. Assessment of Fines

The State shall assess civil penalties in amounts appropriate to the violation and calculated economic benefit of non-compliance as required by A.R.S. § 49-262.

V. EPA OVERSIGHT

a. General

EPA shall oversee the State's administration of the UIC Program on a continuing basis to assure that such administration is consistent with this MOA, the State Program grant application, and all applicable requirements embodied in current regulations, policies and federal law. EPA policy or guidance related to the implementation of the UIC program is relevant to ADEQ's administration of the program, yet constrained to the boundaries of the law.

In addition to the specific oversight activities listed in this section, EPA may request specific information, and ADEQ shall submit and provide access to files necessary for evaluating ADEQ's administration of the UIC Program.

b. Immediate Reporting on Noncompliance

ADEQ shall immediately notify the Regional Administrator by telephone, or otherwise, of any major, imminent hazard to public health resulting from the endangerment of a USDW of the State by well injection.

c. Program Reporting

The reporting schedule shall be determined in the grant workplan each year and shall meet the federal requirements noted in 40 C.F.R. §§ 144.8, 146.91; consistent with EPA's reporting guidance.

d. Inspection and Surveillance by EPA

The Regional Administrator may select facilities and activities within the State for EPA inspection. EPA may conduct such inspections jointly with ADEQ. The Regional Administrator may choose to conduct inspections with ADEQ or independently. EPA shall notify ADEQ at least seven (7) days before any inspection that EPA determines to be necessary to allow coordination of scheduling and to allow joint inspection. However, if an emergency exists, or for some reason it is impossible to give advance notification, the Director and the Regional Administrator may waive advance notification to inspect a facility. In keeping with Section

385 1445(b)(2) of SDWA, ADEQ understands not to inform the person whose property is to be
386 entered of the pending inspection.

387 **e. Annual Performance Evaluation**

388 EPA shall conduct annual performance evaluations of the State Program using the program
389 reports and other requested information to determine State Program consistency with the
390 program submission, SDWA and applicable regulations, and applicable guidance and policies.
391 The review may include a review of financial expenditures, program implementation, changes in
392 the Program Description, and efforts toward progress on program elements.

393 EPA shall submit a summary of the evaluation findings to ADEQ outlining any deficiencies in
394 program performance and making recommendations for improving ADEQ operations. ADEQ
395 shall respond to the summary with concurrence or comments on the findings and
396 recommendations within 15 working days from the date of receipt.