

40 CFR 145.22(a)(6) – Public Participation Showing

40 C.F.R. 145.31. Approval Process - Statement

40 CFR 145.31(a) and (b) - Public Participation Summary: Intent to Adopt UIC Program

The Arizona Department of Environmental Quality (ADEQ) published notice of the intent to adopt the Safe Drinking Water Act - Underground Injection Control (SDWA-UIC) program, in accordance with the requirements in the *Code of Federal Regulations* (40 C.F.R. 145.31(a)) through publications in the *Arizona Republic* and the *Arizona Daily Star* (two newspapers with large circulations in the state of Arizona). These notices circulated on Sunday, October 15, 2023 which is the day of the week with both the most circulation and the highest level of engagement. ADEQ also sent email notice through its UIC-relevant “GovDelivery” blast email subscription lists. These email subscription lists include contacts collected from state groundwater regulatory programs, subscribers interested in state water quality and water quality rulemaking, known state UIC permittee contacts and are available for the general public to sign up for. The three (3) notices mentioned above all directed the audience to review the proposed program submission published on the ADEQ website at: <https://azdeq.gov/public-notice-underground-injection-control-program-primacy-application>

A copy of the proposed program submission webpage is attached as Appendix 1. Copies of those notices are attached as Appendices 2 through 4. The three notices also included a brief outline of the fundamental aspects of the State UIC program, identification of the ADEQ staff member to be contacted with further questions about the program, and indicated review of the program submission is free of charge.

ADEQ provided a written public comment period on the intent to adopt the UIC program from October 15, 2023 – November 20, 2023; a period of greater than 30 days. On the final day of the written comment period (November 20, 2023), ADEQ conducted a hearing, giving an opportunity for the public to testify on the record orally. A recording of the public hearing held on November 20, 2023 is included as Appendix 5.

In all, ADEQ received one oral comment at the hearing and 21 discrete written comments. The commenters shared concerns with draft primacy application element language on aquifer exemptions, permit transition upon primacy, modifications, incorrect cross-references in the UIC rule, public notice provisions, environmental justice, Federal UIC policies, Class V drywells, permit templates and the regulatory difference between Arizona’s Aquifer Protection Program (APP) and the SDWA’s UIC program. ADEQ responded to all commenters on the record by sending a copy of the responsiveness summary to them via email. A responsiveness summary of all oral and written comments received on ADEQ’s intent to adopt the UIC program and the draft program submission elements is attached as Appendix 6. The responsiveness summary identifies the public participation activities conducted, describes the matters presented to the public, lists all comments received and responds to them. Copies of this responsiveness summary were sent to all oral and written commenters and to those who requested a copy.

40 CFR 145.31(b) - Public Participation Summary: Arizona UIC Rulemaking

In order to have state regulatory authority in place for the state’s application for primary enforcement authority (primacy) of the SDWA-UIC regulatory program ADEQ, on behalf of the State of Arizona, conducted a state rulemaking complete with a robust stakeholder outreach and engagement leading up to the filing of the rule with the Arizona Secretary of State (*see* 40 C.F.R. 145.22(a)(5)). Stakeholder events for the pursuit of primacy and the rulemaking began in the winter of 2017 / 2018 and lasted until the summer of 2022, when the state rule housing the program became effective in the Arizona Administrative Code (A.A.C.; *note*: primacy of the program is a separate event from the effective date of the state rulemaking initiated by EPA). A list of stakeholder events is attached as Appendix 7.

All UIC stakeholder meetings were noticed using ADEQ's UIC-relevant "GovDelivery" blast email subscription lists, except for the rulemaking filings themselves which were noticed in the *Arizona Administrative Register* (A.A.R.) in accordance with state statute governing rulemakings (*see* A.R.S. Title 41, Chapter 6, Article 3). These email subscription lists include contacts collected from state groundwater regulatory programs, subscribers interested in state water quality and water quality rulemaking, state UIC permittees and are available for the general public to sign up for. ADEQ posted a record of significant UIC-related stakeholder events and materials on the following webpage: <https://azdeq.gov/node/4994>

More specifically, from December 2017 through October 2019, ADEQ held numerous stakeholder meetings and tribal listening sessions on topics related to the rulemaking such as the intent to pursue primacy, the program and rule guiding principles and design values, reviews and discussions of draft rule outlines, rule drafts themselves, and general discussion and listening sessions for stakeholder and tribal feedback. In all, ADEQ held: nine (9) stakeholder meetings, either presenting to stakeholders, receiving stakeholder input or both; and three (3) Tribal consultation presentations. Attendees varied depending on the scope of the stakeholder event.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ's progress in pursuing primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the "program rule". Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others were determined to be inapplicable or unnecessary. All comments received were considered and are appreciated by the Agency.

In addition to the "program rule", ADEQ developed the remaining major rule components of the regulatory program closely with existing UIC permittees in Arizona. These components include the Licensing Time Frames and Fee rules. Drafts of these rule components were sent back and forth for comment and revision with existing stakeholders in an iterative process.

After the above-mentioned stakeholder outreach, ADEQ filed a Notice of Docket Opening (NDO) with the Arizona Secretary of State (AzSoS) on October 1st, 2021; officially noticing the state of an imminent rulemaking intended at adopting the SDWA-UIC regulatory program (*see* 27 A.A.R. 1592). Thereafter, on January 7th, 2022, ADEQ filed three Notices of Proposed Rulemaking (NPRM) with the AzSoS for each of the three (3) major rule components (licensing time frames, program rules & fees); which were followed by a comment period of greater than 30 days (*see* 28 A.A.R. 16, 22 and 79; respectively). On the final day of the written comment period (February 14, 2022), ADEQ conducted a hearing in accordance with state law. The hearing provided an opportunity for the public to testify on the record orally. No recording or transcript of the hearing was taken; however, all oral comments taken during the hearing were captured along with the written comments in the rulemaking's responsiveness summary attached as Appendix 8. This responsiveness summary complies with state rulemaking law.

In all, ADEQ received 77 discrete written or oral comments on the proposed rules. The commenters shared concerns on licensing time frames, fees, drywells, underground storage / recharge facilities, UIC septic regulation, program scope / jurisdiction, definitions, historic preservation, tribal consultation, duplicative regulation, public notice, appeal rights of final permit decisions and more. Upon receiving, reviewing and carefully considering the comments from the NPRM, ADEQ (in some cases) adjusted the proposed rules in a non-substantive fashion. Thereafter, ADEQ proceeded to craft the Notices of Final Rulemaking (NFRM) in accordance with state law. The NFRMs contain the responsiveness summary to the comments received during the NPRM process as a component therein. The NFRMs were published in the A.A.R. for public viewing (*see* Headings No. 11 at 28 A.A.R. 1808, 1819 and 1917). Sixty (60) days after the NFRMs were published in the A.A.R., the Arizona UIC rules became effective in the A.A.C. (*note*: primacy of the program is a separate event from the effective date of the state rulemaking initiated by EPA).

Public Participation Appendices

Public Participation Appendices:

1. A copy of the proposed program submission webpage is attached as Appendix 1.
2. GovDelivery Notice on Intent to Adopt
3. *Arizona Republic* Notice on Intent to Adopt
4. *Tucson Daily Star* Notice on Intent to Adopt
5. Recording of Intent to Adopt Hearing
6. Responsiveness Summary on Intent to Adopt
7. List of Rulemaking Stakeholder Events
8. Responsiveness Summary on Rulemaking

Appendix 1

Copy of Proposed Program Submission Webpage

<https://azdeq.gov/public-notice-underground-injection-control-program-primacy-application>

PUBLIC NOTICE/PUBLIC HEARING | Underground Injection Control (UIC) Program Primacy Application

Posted On: Oct. 13, 2023 - 2:03 p.m.

Pursuant to Arizona statutes,¹ ADEQ is applying for primary enforcement authority (“primacy”) over the Underground Injection Control (UIC) program, currently administered by the United States Environmental Protection Agency (EPA) under the Safe Drinking Water Act.² ADEQ is required to adopt a permit program for UIC that is consistent with the provisions of the Safe Drinking Water Act, in order to prevent underground injection activities that endanger underground sources of drinking water.

We welcome public review of Arizona’s proposed UIC primacy program application to EPA. Additionally, we welcome any comments on the proposed application and its elements and invite you to participate in the upcoming virtual public hearing (see Public Comment Period below).

Review Documents:

- Original Published Public Notice | [View/Download >](#)
- UIC Primacy Application Documents:
 - Memorandum of Agreement | [View/Download >](#)
 - Program Description | [View/Download >](#)
 - Appendix 1 – Application Templates | [View/Download >](#)
 - Appendix 2 – Permit Templates | [View/Download >](#)
 - Appendix 3 – Arizona – UIC Rule | [View/Download >](#)
 - Appendix 4 – Aquifer Exemption Checklist | [View/Download >](#)
 - Appendix 5 – Aquifer Exemptions | [View/Download >](#)
 - Appendix 6 – 2023 ADEQ Compliance and Enforcement Handbook | [View/Download >](#)
 - Attorney General Statement | [View/Download >](#)
 - Copies of all applicable State statutes and regulations | [View/Download >](#)
- You may also review the above documentation in person at the ADEQ Record Center | [Learn How >](#)

Public Comment Period:

Dates: Oct. 15, 2023 – Nov. 20, 2023

Comments may be submitted as follows:

- By Email | [Send Email >](#)
- By Mail (must be sent by Nov. 20, 2023):

ADEQ
Attn: Water Quality Division/ UIC Program
1110 W. Washington St.
Phoenix, AZ 85007
- Online or by phone at the virtual public hearing on Nov. 20, 2023 | [Register to Attend >](#) | [View Details >](#)

¹ Arizona Revised Statutes (A.R.S.) §§ 49-203(A)(6) and 49-257.01(A)

² Any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until EPA approves Arizona’s primacy application through publication of a final rule in the Federal Register.

Appendix 2

“GovDelivery” Blast Email Notice on Intent to Adopt

Public Notice of Comment Period & Public Hearing | Underground Injection Control Program Primacy Application

1 message

Arizona Department of Environmental Quality <AZDEQ@public.govdelivery.com>

Fri, Oct 13, 2023 at 3:45 PM

Reply-To: AZDEQ@public.govdelivery.com

To: rezabek.jon@azdeq.gov



Underground Injection Control Program Primacy Application

ADEQ is applying for primary enforcement authority (“primacy”) over the Underground Injection Control (UIC) program, currently administered by the United States Environmental Protection Agency under the Safe Drinking Water Act. ADEQ has authority to apply for and obtain primacy under both the Safe Drinking Water Act¹ and Arizona State law.²

A successful application for primacy would allow us to administer a regulatory program for underground injection wells within the State of Arizona’s jurisdiction that is consistent with the Safe Drinking Water Act, tailored to the specific needs of Arizonans and the state’s unique environment, and designed to protect underground sources of drinking water from underground injection activities.

We welcome public review of Arizona’s proposed UIC Primacy Application elements.

[View Public Notice/Related Documents >](#)

Virtual Public Hearing

Date: Monday, Nov. 20, 2023

Time: 10 a.m. – 12 p.m.

Location: Online or by phone

[Register via GoToWebinar >](#)

[View Public Hearing Details >](#)

We encourage and value your input and participation.

**Submit comments or questions by email to
uic@azdeq.gov by Nov. 20, 2023, or give spoken
comments at the virtual public hearing**

¹ 42 United States Code (U.S.C.) § 300h et seq.

² Arizona Revised Statutes (A.R.S.) §§ 49-203(A)(6) and 49-257.01(A)

About ADEQ

Under the Environmental Quality Act of 1986, the Arizona State Legislature established the Arizona Department of Environmental Quality in 1987 as the state agency for protecting and enhancing public health and the environment of Arizona. For more information, visit azdeq.gov.

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and/or to those with disabilities. Requests for language translation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting the Title VI Nondiscrimination Coordinator, Leonard Drago, at 602-771-2288 or Drago.Leonard@azdeq.gov. For a TTY or other device, Telecommunications Relay Services are available by calling 711.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y/o para personas con discapacidades. Las solicitudes de servicios de traducción de idiomas, interpretación ASL (lengua de signos americano), subtitulado de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación comunicándose con el Coordinador de Anti-Discriminación del Título VI, Leonard Drago, al 602-771-2288 o Drago.Leonard@azdeq.gov. Para un TTY u otro dispositivo, los servicios de retransmisión de telecomunicaciones están disponible llamando al 711.

STAY CONNECTED:



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Appendix 3

Arizona Republic Notice on Intent to Adopt

THE ARIZONA REPUBLIC

PO Box 194, Phoenix, Arizona 85001-0194

Phone 1-602-444-7315

Fax 1-877-943-0443

This is not an invoice

PNI-Arizona Republic

AFFIDAVIT OF PUBLICATION

AZ DEPT ENVIR. QUALI
1110 W. WASHINGTON STREET, 341
PHOENIX, AZ 85007

This is not an invoice

Order # 0005841079 # of Affidavits 1

P.O #

Issues Dated:

10/15/23

STATE OF WISCONSIN } **SS.**
COUNTY OF BROWN

I, being first duly sworn, upon oath
deposes and says: That I am the legal
clerk of the Arizona Republic, a newspape
of general circulation in the counties of
Maricopa, Coconino, Pima and Pinal, in
the State of Arizona, published weekly
at Phoenix, Arizona, and that the copy
hereto attached is a true copy of the
advertisement published in the said
paper in the issue(s) dated indicated.



Sworn to before me this

15 TH day of
OCTOBER 2023


Notary Public

My Commission expires:

9/19/25

VICKY FELTY
Notary Public
State of Wisconsin

The Arizona Department of Environmental Quality (ADEQ) is applying for primary enforcement authority ("Primacy") over the Underground Injection Control (UIC) program, currently administered by the United States Environmental Protection Agency (EPA) under the Safe Drinking Water Act (SDWA) of 1974 (as amended). ADEQ has authority to apply for and obtain Primacy under both the SDWA and Arizona State law at 42 United States Code (U.S.C.) § 300h et seq. and Arizona Revised Statutes (A.R.S.) §§ 49-203(A)(6) and 49-257.01(A), respectively.

A successful application for Primacy allows ADEQ to administer the regulatory program for underground injection wells in the State of Arizona that is consistent with the SDWA, tailored to the specific needs of Arizonans and the State's unique environment, and designed to protect underground sources of drinking water (USDWs) from underground injection activities.

Arizona's UIC program regulates six classes of injection wells (Classes I through VI), including a permitting program for Classes I, II, III, and VI, as well as an inventory and authorization by rule for Class V. Class I wells are industrial and municipal waste disposal wells. Class II wells are

oil-and-gas-related injection wells. Class III wells are solution mining injection wells. Class IV wells are shallow hazardous and radioactive waste injection wells and are prohibited. Class V wells inject

non-hazardous fluids into or above USDWs. Class VI wells are geologic sequestration injection wells. The Arizona UIC Program does not apply to injection activities outside of the scope of the program, such as the underground injection of natural gas for purposes of storage nor the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities (see A.A.C. R18-9-A601(68); 42 U.S.C. 300h(b)(2); 42 U.S.C. 300h(d)(1)(b)).

Pursuant to the Code of Federal Regulations, 40 CFR § 145.31(a), this Public Notice serves to inform the public, statewide, of Arizona's intention to obtain Primacy over EPA's UIC program and administer the program through ADEQ.

ADEQ hereby welcomes public review of Arizona's proposed UIC Primacy Application submission materials, currently available for zero cost on ADEQ's website, <https://www.azdeq.gov/UIC>. Furthermore, ADEQ appreciates and invites public participation in the Public Notice and Comment period, open from October 15, 2023 – November 20, 2023, with comments submitted to ADEQ via email at uic@azdeq.gov or at the virtual Public Hearing.

The details for the virtual Public Hearing are as follows:

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By Phone:

562-247-8321 (Access Code: 821-374-244)

ADEQ staff member that may be contacted for further information: Jon Rezabek: uic@azdeq.gov

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Pub: Oct 15, 2023

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Legal Notices

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ADEQ hereby welcomes public review of Arizona's proposed UIC Primacy Application submission materials, currently available for zero cost on ADEQ's website, <https://www.azdeq.gov/UIC>. Furthermore, ADEQ appreciates and invites public participation in the Public Notice and Comment period, open from October 15, 2023 – November 20, 2023, with comments submitted to ADEQ via



Legal Notices

email at uic@azdeq.gov or at the virtual Public Hearing.

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Location: Virtual

Online:

Register: GoToWebinar <https://attendee.gotowebinar.com/register/6679782062526501472> after registering, you will receive a confirmation email containing information and instructions on how to join)

By Phone:

562-247-8321 (Access Code: 821-374-244)

ADEQ staff member that may be contacted for further information: Jon Rezabek: uic@azdeq.gov

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Pub: Oct 15, 2023

Anthemnet, Inc., is proposing a 80' monopole-type telecommunications tower within a 2500 square foot (MOL) lease are to be located at 26240 W Baseline Road in Buckeye, Arizona, coordinates N 33-22'-50.3", W 112-36'-58.1" An application has been filed with the FAA to determine aviation safety and any anticipated lighting (FAA Study 2023-AWP-15531-OE). Anthemnet's Federal Communications Commission ASR 854 File Number is A1256967, which you can view at <http://www.fcc.gov/asr/applications>. Anthemnet seeks comments from all interested persons on the potential environmental impact or concerns of the tower; visit the FCC website to learn how to file a comment at <http://www.fcc.gov/asr/environmentalrequest>. The FCC strongly encourages requests to be filed online; however, you may send a written request to: FCC Requests for Environmental Review, Attn: Ramon Williams, 445 12th Street SW, Washington, DC 20554. Comments due no later than November 17th, 2023.

Pub: Oct 15, 2023

Appendix 4

Arizona Daily Star Notice on Intent to Adopt

Arizona Daily Star

4061 W Costco Place, Tucson, AZ 85741

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TUC-Arizona Daily Star

AFFIDAVIT OF PUBLICATION

ADEQ/WATER QUALITY D
1110 W WASHINGTON ST # MC5415B
PHOENIX, AZ 85007-2952

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Order # 0005841084 # of Affidavits 1

P.O #

Issues Dated:

10/15/23

STATE OF WISCONSIN } SS.
COUNTY OF BROWN }

I, being first duly sworn deposes and says:
That I am the legal clerk of **TNI PARTNERS**, a
General Partnership organized and existing
under the laws of the State of Arizona, and
that it prints a publishes the Arizona Daily
Star, a daily newspaper printed and
published in the City of Tuscon, Pima
Country, state of Arizona, and having a
general circulation in said City, Country,
State and elsewhere, and that the
attached ad was printed and published
correctly in the entire issue(s) of the
said Arizona Daily Star on each of the
above dates.



Subscribed and sworn to before me this

15 TH day of OCTOBER 2023



Notary Public, State of Wisconsin County of Brown

My Commission expires:

9/19/25

AD NO. 0005841084

VICKY FELTY
Notary Public
State of Wisconsin

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Published 10/15/23, AZ Daily Star



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A successful application for Primacy allows ADEQ to administer the regulatory program for underground injection wells in the State of Arizona that is consistent with the SDWA, tailored to the specific needs of Arizonans and the State's unique environment, and designed to protect underground sources of drinking water (USDWs) from underground injection activities.

Arizona's UIC program regulates six classes of injection wells (Classes I through VI), including a permitting program for Classes I, II, III, and VI, as well as an inventory and authorization by rule for Class V. Class I wells are industrial and municipal waste disposal wells. Class II wells are oil-and-gas-related injection wells. Class III wells are solution mining injection wells. Class IV wells are shallow hazardous and radioactive waste injection wells and are prohibited. Class V wells

inject non-hazardous fluids into or above USDWs. Class VI wells are geologic sequestration injection wells. The Arizona UIC Program does not apply to injection activities outside of the scope of the program, such as the underground injection of natural gas for purposes of storage nor the underground injection of fluids or propping agents pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities (see A.A.C. R18-9-A601(68); 42 U.S.C. 300h(b)(2); 42 U.S.C. 300h(d)(1)(b)).

Pursuant to the Code of Federal Regulations, 40 CFR § 145.31(a), this Public Notice serves to inform the public, statewide, of Arizona's intention to obtain Primacy over EPA's UIC program and administer the program through ADEQ.

ADEQ hereby welcomes public review of Arizona's proposed UIC Primacy Application submission materials, currently available for zero cost on ADEQ's website, <https://www.azdeq.gov/UIC>. Furthermore, ADEQ appreciates and invites public participation in the Public Notice and Comment period, open from October 15, 2023 – November 20, 2023, with comments submitted to ADEQ via email at uic@azdeq.gov or at the virtual Public Hearing.

The details for the virtual Public Hearing are as follows:

Date: November 20, 2023

Time: 10:00 AM – 12:00 PM (MST)

Location: Virtual

Online:

Register: GoToWebinar <https://at.tandee.gotowebinar.com/register/667978062526501472> after registering, you will receive a confirmation email containing information and instructions on how to join)

By Phone:

862-247-8321 (Access Code: 821-374-244) ADEQ staff member

that may be contacted for further information: Jon Rezabek: uic@azdeq.gov

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities.

Requests for language translation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting the Title VI Nondiscrimination Coordinator, Leonard Draso, at 602-771-2288 or Leonard.Draso@azdeq.gov. For a TTY or other device, Telecommunications Relay Services are available by calling 711.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y/o para personas con discapacidades. Las solicitudes de servicios de traducción de idiomas, interpretación ASL (lengua de signos americana), subtítulo de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación comunicándose con el Coordinador de Anti-Discriminación del Título VI al 602-771-2288 o Leonard.Draso@azdeq.gov. Para un TTY u otro dispositivo, los servicios de retransmisión de telecomunicaciones están disponible llamando al 711.

Published 10/15/23, AZ Daily Star

Appendix 5

Recording of Intent to Adopt Hearing

See attached MP4 file:

A5_Recording of Intent to Adopt Hearing.mp4

Appendix 6

Responsiveness Summary on Intent to Adopt

Responsiveness Summary

on Arizona’s Intent to Adopt the UIC Program

and Program Submission Elements

In accordance with the Code of Federal Regulations (CFR) at 40 CFR 145.31, subsections (A) and (B), the Arizona Department of Environmental Quality (ADEQ), on behalf of the State of Arizona, issued public notice of the intent to adopt a Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) regulatory program and to seek program approval from EPA.

On Sunday, October 15th, 2023, ADEQ had “intent to adopt” notices published in the *Arizona Republic* and the *Arizona Daily Star* (two newspapers with large circulations in the state of Arizona). Additionally, email notice was sent to ADEQ’s UIC-relevant “GovDelivery” blast email subscription lists. These email subscription lists include contacts collected from state groundwater regulatory programs, subscribers interested in state water quality and water quality rulemaking, known state UIC permittee contacts and are available for the general public to sign up for. All three (3) notices mentioned above directed the audience to review the proposed program submission published on the ADEQ website at:

<https://azdeq.gov/public-notice-underground-injection-control-program-primacy-application>

ADEQ provided a written public comment period on the intent to adopt the UIC program from October 15, 2023 – November 20, 2023; a period of greater than 30 days. On the final day of the written comment period (November 20, 2023), ADEQ conducted a hearing, giving an opportunity for the public to testify on the record orally. In all, ADEQ received one oral comment at the hearing and 21 discrete written comments. The commenters shared concerns with draft primacy application element language on aquifer exemptions, permit transition upon primacy, modifications, incorrect cross-references in the UIC rule, public notice provisions, environmental justice, Federal UIC policies, Class V drywells, permit templates and the regulatory difference between Arizona’s Aquifer Protection Program (APP) and the SDWA’s UIC program.

Below, please find all 22 comments from the above-mentioned written and oral public comments recreated and responded to.

Comment 1: Resource Extraction Industry Legal Representative-

The MOA, at the bottom of page 3, states,

“[a]n 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).”

That sentence, as written, is potentially overbroad. It should be revised as follows, which would make it consistent with the federal rule (40 C.F.R. § 146.4(b)), the proposed Arizona rule (R18-9-A606), ADEQ’s Permit Application Templates (Part N – Aquifer Exemption), and ADEQ’s Aquifer Exemption Checklist (C – Regulatory Criteria):

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 for the reasons~~ 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.

See, e.g., R18-9-A606(2)(a) (“It cannot now and will not in the future serve as a source of drinking water because: (a) It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or

hydrocarbons that considering their quantity and location are expected to be commercially producible;”) (emphasis added).

ADEQ Response 1:

ADEQ appreciates the comment. ADEQ purposely designed the primacy application element, Memorandum of Agreement or “MOA”, to speak generally of the agreements between EPA and ADEQ when it comes to UIC primacy. The primacy application element, Program Description or “PD”, was designed to house the specifics. A more generalized statement on aquifer exemptions in the MOA does not change the legal requirements for aquifer exemptions found in rule at A.A.C. R18-9-A605, R18-9-A606 and elsewhere in rule. Please see MOA and PD primacy regulation requirements in the Code of Federal Regulations (CFR) at 40 CFR 145.25 and 40 CFR 145.23, respectively.

Comment 2: Resource Extraction Industry Legal Representative-

The MOA, at the top of page 6, incorrectly lists FCL’s pilot test facility (“PTF”) UIC permit as one of the five “current or pending” permits the administration of which would be transferred from EPA to ADEQ. That is no longer correct. On September 12, 2023, EPA issued to FCL a new UIC permit to govern FCL’s commercial-scale in situ copper mining activities in Florence, Arizona. That permit supersedes and replaces the PTF permit. No person or entity has timely filed a petition to review the new UIC permit before EPA’s Environmental Appeals Board or the Ninth Circuit Court of Appeals. As a result, the new UIC permit has full force and effect and is the only UIC permit that governs FCL’s activities. Accordingly, the list at the top of page 6 of the MOA should be revised as follows:

1. UIC Permit # ~~R9UIC-AZ3-FY11-1~~ R9UIC-AZ3-FY19-1 for the Florence Copper ~~Production Test 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 156 Copper Project; and 157
3. three individual Class III permits issued to Morton Salt.

ADEQ Response 2:

ADEQ appreciates the comment and has revised accordingly.

Comment 3: Resource Extraction Industry Legal Representative-

The MOA, near the top of page 6, states that, “[u]pon 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. R8-9-C618.” This leaves unclear, in the MOA, any conditions regarding the scope of the permit modifications. On the other hand, the UIC “Program Description” that would be a component of the application to EPA states, on pages 21 and 22 (ATTACHMENT 2 hereto, where highlighted), that: (1) the permit modifications would be “administrative modification[s]” made pursuant to R18-9-C632(E)(3), “limited to regulation reference updates . . . as well as other non- substantive modifications for the purpose of adjusting the permit[s] to fit within the state authorities and program” (emphasis added); and (2) under R18-9- C631(D), the scope of those permit modifications, and thus any public comments on the modifications, would be limited to “the conditions up for modification and not the rest of the permit.” FCL agrees with these limitations because they would ensure that the modifications of the already-issued UIC permits to transfer them to ADEQ’s primary jurisdiction do not directly or through third-party action result in violations of the permittees’ due process rights concerning the permits or regulatory takings of the permittees’ vested rights under the permits. FCL requests that the same limitations be stated clearly on page 6 of the MOA.

ADEQ Response 3:

ADEQ appreciates the comment. ADEQ designed the MOA in line with the requirements set forth in the Code of Federal Regulations (CFR) at 40 CFR § 145.25 to speak generally of the agreements between EPA and ADEQ regarding UIC primacy. Specifically, the MOA includes broad provisions specifying a procedure for transferring the administration of existing permits from EPA to the State applying for primacy (145.25(b)(1)). The PD, alternatively, may interpret the provisions set forth in the MOA in line with the requirements of 40 CFR § 145.23(c) to submit a description of the program the State is proposing to administer in lieu of the Federal program, including a description of State permitting procedures (145.23(c)) and a description of the permit schedule and priorities for issuing permits (145.23(f)(1) and (2)). ADEQ intends the PD description in Section X, along with A.A.C. R18-9-C631(D) which limits the scope of permit modifications, to interpret the intention of the language set forth in the proposed MOA related to permit modifications for existing permits upon primacy.

Comment 4: Resource Extraction Industry Legal Representative-

FCL recommends that a new paragraph be added to R18-9-C632 that is devoted to the type of modification described on pages 21 and 22 of the Program Description (discussed in comment 2.c, above), as follows:

H. *In the case of a permit that was issued by the Administrator prior to the effective date of the Arizona UIC Program and that has force and effect as of the effective date, any modification of the permit that is made by the Director in order to give effect to the transfer of the permit from EPA's primary jurisdiction to ADEQ's primary jurisdiction shall be limited to regulation reference updates, from the Code of Federal Regulations (CFR) to the corresponding rules in the Arizona Administrative Code (AAC), as well as other non-substantive modifications for the purpose of adjusting the permit to fit within the Arizona UIC Program, and any public comments on the modification shall be limited to those regulation reference updates and other non-substantive modifications and not the rest of the permit.*

Such clarification in R18-9-C632 is essential to avoid the possibility that the modifications of the already-issued UIC permits to transfer them to ADEQ's primary jurisdiction do not directly or through third-party action result in violations of the permittees' due process rights concerning the permits or regulatory takings of the permittees' vested rights under the permits.

ADEQ Response 4:

ADEQ appreciates the comment. ADEQ disagrees that a new subsection to A.A.C. R18-9-C632 is necessary. Such an addition would result in a more cumbersome rule that is more difficult to navigate, less user friendly and, ultimately, less effective. These concerns, along with others, are why ADEQ leaves certain specifics on the UIC program to the required primacy application elements (MOA & PD) that will further help guide in administering the program.

It should be noted that the UIC permit transition between EPA and ADEQ, to occur upon the granting of primacy, will be limited to ministerial modifications, such as regulation reference updates and other non-substantive modifications for the purpose of adjusting the permits to fit within the state authorities and program. Under A.A.C. R18-9-C631(D), the scope of the transition modification public process (comments, etc.) will be limited to the modifications themselves and not the rest of the permits. Furthermore, the Federal permits will remain in effect and valid up until the final state permits have been modified. ADEQ's vision for this transition includes a seamless transfer.

ADEQ purposely designed the MOA to speak generally of the agreements between EPA and ADEQ when it comes to UIC primacy. The PD was designed to house the specifics. Please see MOA and PD regulation

requirements in the Code of Federal Regulations (CFR) at 40 CFR 145.25 and 40 CFR 145.23, respectively.

Comment 5: Resource Extraction Industry Legal Representative-

R18-9-C632(G) should be harmonized with R18-9-A606. If an exemption underlies the permitted activity, then the facility is suitably located with respect to any uses of groundwater in the vicinity.

ADEQ Response 5:

ADEQ appreciates the comment. ADEQ notes that A.A.C. R18-9-C632(G) mirrors the analogous provision in the Federal UIC program at 40 CFR 144.39(c). Also of note is that ADEQ is bound to propose a UIC program that is at least as stringent as the Federal program, but no more stringent (*see* A.R.S. § 49-104(A)(16)). In addition, the rulemaking associated with establishing the Arizona state UIC program was open for public comment, closed and finished in Calendar Year 2022.

Comment 6: Resource Extraction Industry Legal Representative-

There appear to be a several incorrect cross-references within the UIC rules, at R18-9-A606, R18-9-B614(A)(4), R18-9-C616(D)(9), R18-9-C630(A), R18-9-C632(E)(5)(b), R18-9-D635(10)(d), R18-9-D636(6)(a), R18-9-J666(3)(e), R18-9-J666(6)(b)-(c), R18-9-J667(C)-(D), and R18-9-J668(A)(2)(d).

ADEQ Response 6:

ADEQ appreciates the comment and agrees that the cross-references listed are incorrect. While ADEQ does not feel these incorrect cross-references affect the functionality of the program in a significant manner, ADEQ will revise accordingly at a future date.

Comment 7: Resource Extraction Industry Legal Representative-

The requirement, at R18-9-C620(D)(1)(e), to give public notice of permit actions to “[a]ny persons on a contact list developed from past permit proceedings and public outreach” (emphasis added) is vague and could be construed in a manner that is overbroad. To avoid this problem, the text should be qualified as follows:

Any persons on a contact list developed from past permit proceedings and public outreach concerning (1) the actual or proposed injection well that is the subject of the permit action or (2) any activity authorized by the area permit that governs or would govern that injection well.

ADEQ Response 7:

ADEQ appreciates the comment. ADEQ does not agree that the sentence is overly broad, and in fact, ADEQ is of the opinion that the construing of the provision in a broad manner would only further stakeholder engagement, due process and the protection of human health and the environment (ADEQ’s mission). ADEQ notes that A.A.C. R18-9-C620(D)(1)(e) was adapted from a similar provision applicable to the Federal UIC program at 40 CFR 124.10(c)(1)(ix).

Comment 8: Resource Extraction Industry Legal Representative-

R18-9-C632(B) appears to be missing language that was included in the January 7, 2022 proposed rule, which should be included in the final rule, as follows:

If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of Subsection (G) of this Section, and may request an updated

application if necessary. When a permit is modified, only the conditions subject to modification are reopened.

This language should be added to R18-9-C632(B) because it is otherwise less than clear that the limitation in R18-9-C631(D) would apply also to modifications made under R18-9-C632(B), as R18-9-C631(D) begins with the clause “[i]n a permit modification under this Section” (emphasis added).

ADEQ Response 8:

ADEQ appreciates the comment. ADEQ purposefully removed the identified draft language from proposed rule A.A.C. R18-9-C632(B) in the final rule as it was deemed redundant with final rule A.A.C. R18-9-C631(D). Please see the note on changes to the rule between the Notice of Proposed Rulemaking (NPRM) and the Notice of Final Rulemaking (NFRM) in the *Arizona Administrative Register* (AAR), 28 A.A.R. 1916. While R18-9-C631(D) does appear to limit the provision “...only those conditions to be modified shall be reopened when a new draft permit is prepared...” to “...permit modification[s] under this Section...”, ADEQ intends for all modifications, regardless of the specific rule or subsection where authority is derived, to be limited in the public notice and participation process to the scope of the modification itself and that this scope limitation exists inherently and implicitly in the program.

Comment 9: Resource Extraction Industry Legal Representative-

R18-9-C632(G) is vague and could be construed in a manner that effectively deprives a permittee of its ability to rely on a corresponding aquifer exemption. To avoid this problem, the text should be qualified as follows:

Subject to the requirements of R18-9-A606, ~~Suitability~~ suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

ADEQ Response 9:

ADEQ appreciates the comment. ADEQ notes that A.A.C. R18-9-C632(G) mirrors the analogous provision in the Federal UIC program at 40 CFR 144.39(c). Also of note is that ADEQ is bound to propose a UIC program that is at least as stringent as the Federal program, but no more stringent (*see* A.R.S. § 49-104(A)(16)). At this time, ADEQ acknowledges some asymmetry between A.A.C. R18-9-A606 and A.A.C. R18-9-C632(G) and will consider a revision in the future. The rulemaking associated with establishing the Arizona state UIC program was open for public comment, closed and finished in Calendar Year 2022. A revisionary rulemaking is not scheduled at this time.

Comment 10: Resource Extraction Industry Legal Representative-

As a general matter [*see* R18-9-C632(G)], if an aquifer exemption that encompasses or concerns the “facility” was previously established because the criteria of R18-9-A606(a) and (b)(1) were deemed satisfied, then the location of the “facility” is already “suitable” with respect to *any* uses of groundwater in the vicinity, regardless of new information concerning such uses. *See, e.g.,* R18-9-A606(2)(a) (“It cannot now and will not in the future serve as a source of drinking water because:

It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;”) (emphasis added).

ADEQ Response 10:

ADEQ appreciates the comment. ADEQ notes that A.A.C. R18-9-C632(G) mirrors the analogous provision in the Federal UIC program at 40 CFR 144.39(c). Also of note is that ADEQ is bound to propose a UIC program that is at least as stringent as the Federal program, but no more stringent (*see* A.R.S. § 49-104(A)(16)). At this time, ADEQ acknowledges some asymmetry between A.A.C. R18-9-A606 and A.A.C. R18-9-C632(G) and will consider a revision in the future. The rulemaking associated with establishing the Arizona state UIC program was open for public comment, closed and finished in Calendar Year 2022. A revisionary rulemaking is not scheduled at this time.

Comment 11: Federal Government -

We recognize and appreciate the significant work ADEQ has put into the development of the draft UIC Primacy documents.

ADEQ Response 11:

ADEQ appreciates the comment.

Comment 12: Federal Government -

In September 2023, EPA issued a final Class III UIC permit to Florence Copper for their commercial-scale facility; the Permit was effective on Oct 31, 2023. See the final Permit at UIC Class III In-Situ Production of Copper Permit No. R9UIC-AZ3-FY19-1: Florence Copper Project, Florence, AZ | US EPA. Please update the Primacy documents, specifically the draft MOA, to reflect this action.

ADEQ Response 12:

ADEQ appreciates the comment. Please see ADEQ Response 2, above.

Comment 13: Federal Government -

On November 2, 2023, EPA announced the new Underground Injection Control (UIC) Class VI Wells grant program. Grants under this program are intended to support activities related to the establishment and operation of a UIC Class VI primacy program. As a condition of receiving funding, applicants to the new UIC Class VI Wells grant program must demonstrate how environmental justice and equity considerations will be incorporated into their UIC Class VI primacy programs. Together with EPA's announcement, the Agency issued a Grant Implementation Document for the UIC Class VI Wells grant program which includes specific environmental justice requirements that all grant recipients must incorporate into their UIC Class VI primacy program to be eligible for funding. We recommend that ADEQ review the grant requirements and include additional language, as needed, in the UIC Primacy documents to ensure ADEQ will be eligible to request grant funds for Class VI program development and implementation.

ADEQ Response 13:

ADEQ appreciates the comment. Upon further discussion with EPA Region 9, it was agreed that the existing draft language will remain as-is for the purpose of the primacy package submission with the associated updates to the environmental justice language relevant to the Class VI grant identified within ADEQ's grant application work plan.

Comment 14: Resource Extraction Industry Representative -

We strongly support ADEQ's proposed UIC program application and ADEQ's related efforts to obtain UIC primacy and see compelling benefits for the assumption of primacy over the federal UIC permit program including ADEQ's substantial experience issuing permits protective of groundwater resources; ADEQ's position in understanding state and local concerns; the increased speed and efficiency in UIC permit review and issuance; the reduced lifecycle costs; better alignment between federal and state programs relating to groundwater protection; and cooperative federalism.

ADEQ Response 14:

ADEQ appreciates the comment.

Comment 15: Resource Extraction Industry Representative -

It is unclear what “current federal policies” ADEQ will administer the UIC program “in accordance with”, as stated in the Memorandum of Agreement (MOA) at p. 2, lines 13-15. Neither the Safe Drinking Water Act (SDWA), nor its implementing regulations, with respect to state program assumption (40 C.F.R. Part 145), require states seeking to assume the program to comply with “federal policies.” Moreover, policies by their nature are not legally binding. A similar concern exists with respect to the reference to policies on p. 11, line 361 of the proposed MOA (EPA to oversee ADEQ’s administration of the UIC program to ensure that it is consistent with applicable requirements embodied in, inter alia, “current . . . policies”). In both locations, the proposed MOA should be revised to remove the vague references to federal policies.

ADEQ Response 15:

ADEQ appreciates the comment. A state applying for primacy must demonstrate that their UIC program is at least as stringent, but no more stringent than the corresponding federal standards (*see* A.R.S. § 49-104(A)(16)). 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.

Comment 16: Resource Extraction Industry Representative -

We request, consistent with the language in ADEQ’s proposed UIC Program Description, that the language on p. 6, lines 162-164 of the proposed MOA be revised to recognize that the planned permit modifications for existing permits after permit transfer from EPA to ADEQ will be non-substantive, administrative revisions for which the scope of comments will be limited.

ADEQ Response 16:

ADEQ appreciates the comment. Please see ADEQ Response 3, above.

Comment 17: Resource Extraction Industry Representative -

The following language from the Class V permit application template, provided with the proposed Program Description as Appendix A-1, should be removed as it is not a requirement to secure an aquifer exemption associated with a Class V well, and is only appropriate for an aquifer exemption request associated with Class III wells pursuant to 40 C.F.R. § 144.7(c)(1) and A.A.C. R18-9-A605(C)(1): “[if an aquifer exemption is needed in conjunction with a Class V well permit, then:] the applicant must also submit data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Relevant information as is contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone must be submitted.”

ADEQ Response 17:

ADEQ appreciates the comment and agrees with the change. Since the permit application templates are not yet final, the identified language has been removed from the Technical Report Outline for Class V Injection Well Permit Applications, Part N (Page 5 of the Technical Report Outline, Appendix A-1).

Comment 18: Resource Extraction Industry Representative -

The proposed MOA provides that ADEQ will notify EPA within one week of taking enforcement actions for serious violations, identified as those 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” (p. 10, lines 318-320). What are considered to be “crucial provisions of the UIC program” under this proposed section? Vague terminology such as this should be avoided if possible.

ADEQ Response 18:

ADEQ appreciates the comment. ADEQ designed the MOA in line with the requirements set forth in the Code of Federal Regulations (CFR) at 40 CFR § 145.25 to speak generally of the agreements between EPA and ADEQ regarding UIC primacy. Specifically, the MOA includes broad provisions on Arizona’s compliance monitoring and enforcement program, including procedures to assure coordination of enforcement activities (145.25(b)(4)(ii)). The PD, alternatively, may interpret the provisions set forth in the MOA in line with the requirements of 40 CFR § 145.23 to submit a description of the program the State is proposing to administer. Specifically, the PD includes a “complete description” of the State’s enforcement program (145.23(e)). As such, PD Section IX(B) distinguishes between minor and major UIC violations, with major violations handled in accordance with ADEQ’s Compliance and Enforcement Handbook, Chapter 4: Formal Enforcement. Chapter 4 delineates the circumstances in which formal enforcement is necessary. “Crucial provisions” of the UIC program can therefore be interpreted to include violations of the law or permit that necessitate formal enforcement action by ADEQ under its proposed enforcement program. Of note, a notification requirement incumbent upon ADEQ to report such enforcement actions does not alter ADEQ’s approach to compliance and enforcement for the UIC program.

Comment 19: Drywell Industry Member -

We recommend that the Arizona Department of Environmental Quality require a minimum of 50% Total Suspended Solids (TSS) removal prior to injection of stormwater into a Class V UIC. This is because, while stormwater runoff is low risk of contaminating groundwater, it transports trash, sediment, and natural materials like leaves that can clog a Class V well if not removed prior to injection. Demonstration of the 50% TSS removal should be documented by providing a Certification from the New Jersey Department of Environmental Protection, or a General Use Level Designation for Pretreatment by the Washington State Department of Ecology. At a minimum, stormwater should be treated by a device capable of removing 50% of the TSS load prior to disposal in a Class V UIC so that the long-term functionality of the UIC is preserved. Preferably, stormwater would be treated by a device capable of removing 80% off the TSS load prior to subsurface disposal to maximize the effective life of the UIC. Furthermore, the pretreatment device should be sized so that the approved design hydraulic loading rate is not exceeded for all runoff treated prior to injection. Establishing this standard will ensure that drywells are protected from the accumulation of sediment and associated pollutants over time and will protect the infiltration capacity of wells.

ADEQ Response 19:

ADEQ appreciates the comment. It should be noted that per statutory mandate at A.R.S. § 49-204(B)(16), ADEQ regulations can be no more stringent than corresponding Federal law. EPA also requires a state applying for primacy to put in place a program that is at least as stringent as the Federal analog.

TSS is not a regulated parameter under the UIC Program; however, drywells are subject to the movement of contaminants prohibition under the Class V UIC regulations. Per the requirements in A.A.C. R18-9-B608, any injection activity that introduces contaminants that results in a violation of a National Drinking Water Standard is prohibited. Best Management Practices (BMPs) in the design of dry wells allow for solids to settle out and thereby reduce floating material that may clog the well intake. Newer dry well designs continue to enhance removal of sediment and floating material, thereby delivering cleaner water to the injection zone. This improves injection performance and extends dry well lifetimes. ADEQ drywell guidelines specify that drywells be constructed with hydrophobic petrochemical absorbent and a device to screen floating debris to retain such material in a settling chamber (refer to ADEQ Drywell Design Guidance, May 2018 [https://static.azdeq.gov/wqd/drywell/design_install_op_main_inspect.pdf]).

There are also specific design requirements for drywells that drain areas where hazardous substances are used or stored, and where motor vehicle fuels are used or stored that mandate construction requirements under A.A.C. R18-9-C301 and R18-9-C304. ADEQ requires that the drywell design includes a method to remove, intercept, or collect pollutants prior to reaching the drywell, which may include a flow control or pretreatment device, such as an interceptor or a sump.

Comment 20: Private Industry -

In the last line of R18-9-C630(A) an “and” should be added between “Article” and “the Safe Drinking Water Act.

ADEQ Response 20:

ADEQ appreciates the comment. ADEQ acknowledges the error in A.A.C. R18-9-C630(A) and will consider updating the rule language upon any subsequent re-opening of A.A.C. Title 18, Chapter 9, Article 6. ADEQ does not, however, believe the error prevents or impedes understanding of the rule such that a change to the rule is necessitated under this primacy package submittal.

Comment 21: Private Industry - Programmatic Implementation

Can you briefly explain the integration between the UIC and Aquifer Protection Permit programs.

ADEQ Response 21:

ADEQ appreciates the comment. The Aquifer Protection Permit (APP) program is a state groundwater protection program established under Title 49, Chapter 2, Article 3 of the A.R.S. and developed under Title 18, Chapter 9, Articles 1-3 of the A.A.C.. Pursuant to A.R.S. § 49-241 and the exemptions under section 49-250, an APP is required for any person who discharges or who owns or operates a facility that discharges. Discharge is defined as “the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer” (A.R.S. § 49-201(12)).

The UIC program is a federal program established under the Safe Drinking Water Act to protect underground sources of drinking water. The program regulates six classes of injection wells: Class I UIC wells are industrial and municipal waste disposal wells. Class II UIC wells are oil and gas related injection wells. Class III UIC wells are solution mining injection wells. Class IV UIC wells are shallow hazardous and radioactive waste injection wells and are prohibited. Class V UIC wells inject non-hazardous fluids into or above USDWs. Class VI UIC wells are geologic sequestration injection wells. Classes I, II, III, and VI injection wells must be permitted and Class V wells may be authorized by rule or may be permitted under an individual or area UIC permit.

While UIC wells are a discharge pursuant to the APP program, there are exemptions carved out for UIC wells within both the APP statutes and rules. A.R.S. § 49-250(B)(26) exempts any UIC well (other than Class V injection wells operating as prescribed by rule or authorized by rule) covered by a UIC permit from the APP program. A.A.C. R18-9-103(6) establishes a class exemption for UIC Class V injection wells regulated under an area or individual permit per 18 A.A.C. 9, Article 6, Part I. It should be noted that while UIC wells at a site may be exempt from the APP program, other discharging facilities (such as impoundments) may require APP permit coverage.

Comment 22: Resource Extraction Industry Legal Representative - UIC Regulation

What assurance is there, specifically in ADEQ's codified rules, that already-existing, federally issued UIC permits that will be transferred to ADEQ's jurisdiction upon program primacy will not be reopened or changed beyond their provisions that presently indicate EPA has primary jurisdiction over the permits.

ADEQ Response 22:

ADEQ appreciates the comment. As part of primacy, EPA will transfer the five Federal UIC permits for the facilities located within the state of Arizona under state jurisdiction whereupon ADEQ will make administrative modifications to them as soon as possible. As described in the UIC PD, Section X, the administrative modifications will be “limited to regulation reference updates...as well as other non-substantive modifications for the purpose of adjusting the permits to fit within the state authorities and program” (Page 21). A.A.C. R18-9-C631 of ADEQ’s codified rules provides for the scope of permit modifications, revocations, reissuances, or terminations. Subsection (D) therein states, “[i]n a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.” The scope of the administrative modifications is further limited by the requirement from EPA for ADEQ’s rules to be at least as stringent as the Federal rule and from Arizona law for ADEQ regulations to be no more stringent than the corresponding Federal rule (A.R.S. § 49-104(A)(16)).

Appendix 7

List of Rulemaking Stakeholder Events



| Engagement Event | Date | Location |
|---|------------|-------------------|
| Stakeholder Meeting - Commencement | 12/4/2017 | Phoenix |
| AZ Primacy Stakeholder Meeting & Presentation | 6/18/2018 | Phoenix |
| Stakeholder Meeting - Phoenix | 6/19/2018 | Phoenix |
| Stakeholder Meeting - Tucson | 6/29/2018 | Tucson |
| Stakeholder Meeting - Guiding Principles and Design Values | 8/3/2018 | Phoenix |
| Stakeholder Meeting - Overview of Stakeholder Input | 9/3/2018 | Flagstaff |
| Tribal Consultation - Letter to all Tribal Chairs | 11/15/2018 | Mailed |
| Stakeholder Meeting - High Level Overview of Proposed Rule Components | 12/14/2018 | Phoenix |
| AMA Stakeholder Meeting - Request for Support of Primacy | 5/6/2019 | Phoenix |
| Tribal Listening Session - Phoenix | 5/10/2019 | Phoenix |
| Tribal Listening Session - Tucson | 5/14/2019 | Tucson |
| Tribal Listening Session - Flagstaff | 5/16/2019 | Flagstaff |
| AMA Stakeholder Meeting - Discussion on Licensing Time Frame (LTF) and Fee Rule | 7/24/2019 | Phoenix |
| Tribal Consultation - Letter to all Tribal Chairs | 10/24/2019 | Mailed |
| Email to Stakeholders - Soliciting Comments on Early Rule Draft | 10/26/2019 | Email-Govdelivery |
| Informal Stakeholder Meeting & Presentation - Early Draft Rule | 11/6/2019 | Phoenix |
| Stakeholder Meeting - Draft UIC Program Rule Update - Comments | 12/13/2019 | Phoenix |
| Meeting with ADWR | 7/9/2020 | Phoenix |
| Ohio Meeting (OEPA) | 7/13/2020 | Virtual |
| New Mexico Meeting (NMED) | 7/22/2020 | Virtual |
| Texas Meeting (TCEQ) | 9/21/2020 | Virtual |
| Wyoming Meeting (WDEQ) | 9/30/2020 | Virtual |
| UIC Program Outline Document Released to Stakeholders | 9/9/2020 | Email-Govdelivery |
| Executive Summary of 2019 Draft Rule Comments Released | 10/8/2020 | Website |
| November 2020 Revised Draft Rule Published on Website | 11/3/2020 | Website |
| APP Drywell Application Modifications - Email to Stakeholders | 11/3/2020 | Email-Govdelivery |
| UIC Rule Development Stakeholder Meeting | 1/19/2021 | Phoenix |
| Stakeholder Meeting - LTF and Fee Rule | 1/19/2021 | Phoenix |

| | | |
|---|------------|-------------------|
| UIC EPA Grant Award Success Meeting | 9/14/2021 | Virtual |
| Email to Stakeholders - UIC Update | 12/20/2021 | Email-Govdelivery |
| Proposed Rulemaking filed w/Sec. of State | 1/7/2022 | Website |
| Written Comment Period - Proposed Rule | 1/7/2022 | Website |
| Public Hearing on Proposed Rulemaking | 2/14/2022 | Webinar |
| Letter to Stakeholders - Drywell Regulations - APP to UIC | 6/1/2022 | Email-Govdelivery |
| Drywell Application Modification Presentation | 6/28/2022 | Phoenix |
| AZ Gov's Reg. Review Council - Study Session | 6/28/2022 | Phoenix |
| AZ Gov's Reg. Review Council - Council Mtg. & Vote | 7/6/2022 | Phoenix |
| Final UIC Rulemaking filed w/Sec. of State | 8/5/2022 | Website |
| AZ UIC Rule Effective Date in Arizona Administrative Code (AAC) | 9/6/2022 | Website |

Appendix 8

Responsiveness Summary on Rulemaking

Responsiveness Summary

...on the comments received from ADEQ's SDWA-UIC Regulatory Program Notices of Proposed Rulemaking (NPRM) published in the Notices of Final Rulemaking (NFRM) in the Arizona Administrative Register (A.A.R.)

(NPRM filed on 1/7/22; *see* 28 A.A.R. 16 through 88)

(NFRM filed on 8/5/22; *see* 28 A.A.R. 1801 through 1824 and 1903 through 1975)

In accordance with the Arizona Revised Statutes (A.R.S.) governing rulemaking at Title 41, Chapter 6, Article 3, the Arizona Department of Environmental Quality (ADEQ) filed three (3) Notice of Docket Openings (NDO) with the Arizona Secretary of State (AzSoS), announcing an imminent rulemaking adopting a Safe Drinking Water Act - Underground Injection Control (SDWA-UIC) regulatory program in the state. Those notices were filed on 9/27/19, 9/25/20 and 10/1/21, respectively. They can be found in the Arizona Administrative Register (AAR) at the following citations: 25 AAR 2491, 26 AAR 2003, 27 AAR 1592, respectively. Following the final NDO, ADEQ filed three NPRMs with the AzSoS on 1/7/22, which was followed by a comment period on the proposed rules of greater than 30 days. On the final day of the written comment period (2/14/22), ADEQ conducted a hearing, giving an opportunity for the public to testify on the record orally. In all, ADEQ received 77 discrete written or oral comments on the proposed rules. The commenters shared concerns on licensing time frames, fees, drywells, underground storage / recharge facilities, UIC septic regulation, program scope / jurisdiction, definitions, historic preservation, tribal consultation, duplicative regulation, public notice, appeal of final permit decision, etcetera. Upon receiving, reviewing and carefully considering the comments from the NPRM, ADEQ crafted the NFRM in accordance with state law. The NFRM contains the responsiveness summary to the NPRM as a component therein and is published in the A.A.R. for public viewing (*see* Heading No. 11 in 28 AAR 1903).

Below, please find all 77 comments from the above-mentioned written and oral public comments recreated and responded to.

Arizona UIC Licensing Time Frames Rulemaking Comments

Arizona Administrative Code

Title 18, Chapter 1, Article 5

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment 1: Resource Extraction Industry Member – Class VI Licensing Time Frames

What time frame is anticipated for the Class VI application?

ADEQ Response 1:

ADEQ appreciates the comment. Class VI Carbon Sequestration applications are considered to be significantly complicated in nature. In the proposed UIC Licensing Time Frame rules, Class VI applications (along with Area and Class I applications) have been allotted more licensing time than the not significantly complicated group of classes (Class II, III and V). The significantly complicated group has been allotted 35 days for administrative completeness, 249 for substantive review and 284 days for the overall time frame. The not significantly complicated group has been allotted 35 days for administrative completeness, 186 for substantive review and 221 days for the overall time frame.

Comment 2: Tribal Interest Group

The proposed Licensing Time Frame rules do not explain what is meant by “significantly complicated” versus “not significantly complicated” or how this determination was reached.

ADEQ Response 2:

ADEQ appreciates the comment. The UIC program regulates six classes of injection wells which are based on the characteristics of the fluids injected and the placement of the injectate in relation to Underground Sources of Drinking Water (USDW). Well construction, injection depth, design requirements, and operating techniques vary among well classes. Some wells are used to inject fluids into formations below USDWs, while others involve injection into or above USDWs. The proposed rules set out specific permitting and performance standards for each class of wells. In determining the licensing time frames for the prospective UIC applications, these factors were considered.

ADEQ categorized the prospective UIC applications by class into two categories, “significantly complicated” and “not significantly complicated”. Area, Class I, and Class VI wells are categorized as “significantly complicated”, while Class II, Class III, and Class Vs were determined to be “not significantly complicated”. The following facts were relied upon in distinguishing “significantly complicated” prospective UIC applications from the “not significantly complicated”:

1. Area Permits
 1. Comprised of multiple injection wells.
 2. Increased aquifer stresses induced by multiple injection wells.
 3. Larger Area of Review and zone of endangering influence due to the induced aquifer stress.
 4. Delineation of the Area of Review would likely require numerical groundwater modeling.
 5. Area Class III solution mining wells require hydraulic capture of lixiviant and pregnant leachate solution to prevent migration into USDWs.
 6. Monitoring networks are often a function of the Area of Review and complexity of the hydrogeology.
 7. Class III Area Permits may require an Aquifer Exemption and subsequent aquifer restoration for closure. This closure strategy will require sophisticated geochemical modeling and long-term closure and post closure monitoring.
2. Class I wells are typically deep wells that inject waste into formations below a USDW.
 1. Class I wells allow injection far below the lowermost USDW (injection zones typically range from 1,700 to more than 10,000 feet in depth).
 2. The well design for injection is complex due to the depth of the injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.

3. In Arizona, Class I wells are authorized to inject non-hazardous industrial waste, municipal wastewater, and radioactive waste. Hazardous waste injection is prohibited in Arizona.
4. A Class I well requires a multilayered well design to prevent fluids from entering USDWs.
5. Operation, monitoring, and testing is critical for ensuring that injected wastewater is fully confined. These functions become more complex at greater well depths.
6. Seismic hazards must be thoroughly evaluated due to the deeper injection zone.
3. Class VI wells are used to sequester carbon in deep geologic formations.
 1. Although CO₂ is initially captured as a gas, it is compressed into a supercritical fluid (a relatively dense fluid intermediate to a gas and a liquid) before injection and remains in that state due to high pressures in the underground formation.
 2. The CO₂ is injected through specially designed wells into geologic formations, typically a half a mile or more below the Earth's surface.
 3. CO₂ can be physically trapped in the pore space, trapped through a chemical reaction of the CO₂ with rock and water, dissolved into the existing fluid within the formation, or absorbed onto organic material or go through other chemical transformations. Geologic sequestration may take place over hundreds of years after injection, ultimately resulting in permanent storage of the CO₂.
 4. The well design for injection is complex due to the depth of injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
 5. Mechanical integrity testing must be performed routinely to verify long-term well stability and operations.
 6. Complex reservoir modeling must be conducted to determine the long-term storage capacity of a given geologic formation.
 7. Groundwater monitoring can also be complex due to the longevity of the sequestration operations and area of influence of the injectate.

Comment 3: Tribal Interest Group

Arizona law requires strict compliance with LTFs and issues penalties for exceedances. Additionally, EPA's current guidance (see EPA's informational webpage on Class V wells; see also 40 C.F.R. § 146.5(e); see also 40 C.F.R. 144.81) notes that by regulation, Class V wells can actually be complex under certain circumstances. This should be reflected in ADEQ's UIC Program as well.

ADEQ Response 3:

ADEQ appreciates the comment. Arizona law requires state agencies that issue licenses to comply with licensing time frames (LTFs) (see A.R.S. § 41-1072 et seq.). While there may be complex Class V permits, ADEQ does not feel the additional time that comes with the "complex" category is needed.

- Arizona UIC Programmatic Rulemaking Comments - - Arizona Administrative Code - Title 18, Chapter 9, Article 6 -

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment 1: Drywell Owners – UIC Drywell Regulation

How will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled in the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

ADEQ Response 1:

ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 and C304).

In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrative control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells). ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.

Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking.

Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq.

Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of \$200. Class V wells, authorized by rule, will also be charged \$100 upon transfer of the well to a new owner.

Comment 2: Drywell Industry Member – UIC Drywell Regulation

Will this proposed regulation impact the existing required registration of the typical parking lot drywell with ADEQ?

ADEQ Response 2:

ADEQ appreciates the comment. If EPA grants ADEQ primary enforcement authority of the SDWA-UIC program and a person wanted to install a typical drywell draining a parking lot and comply with the prospective regulatory scheme for drywells in Arizona (projected for 2023), they would have to inventory the new drywell with ADEQ through the SDWA-UIC program (the old

state dry well program would no longer exist). It should be noted that Arizona drywells are required to be inventoried under the SDWA-UIC program through the Federal EPA program before primacy. In the inventory process, it is possible that the drywell described in the question above would additionally be subject to the Aquifer Protection Permits (APP) if:

- the drywell drained an area where hazardous substances are used, stored, loaded or treated (see Arizona Administrative Code R18-9-C301), or if
- the drywell drained a motor fuel dispensing facility where motor fuels are used, stored or loaded (see Arizona Administrative Code R18-9-C304).

Please note that this potential, additional APP requirement exists now and will remain unaffected by the legislation referred to above.

Comment 3: Drywell Industry Member – UIC Drywell Regulation

As far as moving the UIC EPA program to Arizona, I am concerned that we will lose access to obtaining drywell lists that are important to conducting Phase I Environmental Site Assessments. How is ADEQ going to maintain the ADEQ database for Drywells?

ADEQ Response 3:

ADEQ appreciates the comment. Similar to the EPA Online Inventory Form, ADEQ plans to provide online inventorying and reporting for all Class V wells (including drywells) through myDEQ, which is designed to be an easy-to-use, online interface for stakeholders. The existing drywell registrations will be migrated to the myDEQ Class V inventory database. This means both past registrations and future inventories will be accessible to the public. ADEQ is currently developing the UIC program and will take this comment into consideration as development continues. More information on this process will be made public as program development continues.

Comment 4: Injection Well Industry Member – UIC Underground Storage Facility Regulation

We provide professional services to various entities that operate Underground Storage Facilities (USF) that recharge (inject by gravity) treated effluent or potable water into drinking water aquifers in the state. Unless these facilities recharge only CAP water they require an APP. Can you please clarify which USFs, if any, would also require a UIC Class V permit under the proposed ADEQ UIC regulation R18-9-A604(E)(f), or any other provision of the proposed rule?

ADEQ Response 4:

ADEQ appreciates the comment. USFs are considered Class V wells for the purposes of the UIC program (see proposed UIC rule R18-9-A604(E)(1)(f)). All USFs (including facilities that inject only CAP water) are required to inventory with the UIC program pursuant to R18-9-I652. Each individual well requires an inventory.

Comment 5: Local Government – Class V Septic Regulation

AAC R18-9-A604(E)(2)

Class V wells do not include: Single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with the capacity to serve fewer than 20 persons a day or a design capacity of less than 3,000 gallons per day.

The proposed language in AAC R18-9-A604(E)(2) above can be interpreted to include all of the following to be within the scope of UIC Class V regulation:

- Any non-residential septic system that comingles industrial or commercial waste with their sanitary waste, regardless of volume.
- Any non-residential septic system receiving sanitary waste serving 20 or more people a day, regardless of volume.
 - This can include an office building for 20 or more employees (20 gpd x 20 employees = 400 gpd design flow).
 - This can include facilities open to the public. An example could be a convenience mart with 3 employees a day and a men's and a women's bathroom (20 gpd x 3 employees = 60 gpd; 200 gpd x 2 public toilets = 400 gpd; total design flow of 460 gpd).
 - This can include theaters, strip malls, park restrooms, arenas, or other businesses discharging only sanitary waste.
- Any non-residential septic system with design capacity 3,000 gpd or more.

Because it states "single-family residential septic system wells or", it can be assumed the passage after "non-residential septic system wells" applies to the first part as well. It would read "Class V wells do not include: Single-family residential septic system wells used solely for the disposal of sanitary waste with the capacity to serve fewer than 20 persons a day or a design capacity of less than 3,000 gallons per day". If so, the following would also apply.

- Any single-family residence septic system with a design capacity of 3,000 gallons per day or more.
- Any single-family residence septic system that comingles industrial or commercial waste with their sanitary waste, regardless of volume. This can occur with home businesses.
- Any single-family residence septic system receiving sanitary waste serving 20 or more people a day, regardless of volume. This can occur with home businesses.

ADEQ Response 5:

ADEQ appreciates the comment and recognizes the issues illustrated above. In response, ADEQ has decided to amend A.A.C. R18-9-A604(E)(2). The new language is as follows,

Class V wells do not include single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.

Eliminating the first of the previously two standards should address the stakeholder's concerns above. The language removed was "with the capacity to serve fewer than 20 persons a day."

Taking the amended language above along with all of the classification language in proposed rule R18-9-A604, the following list of wells would be considered Class V wells:

- Non-residential septic systems receiving only sanitary waste with a design capacity of 3,000 gallons per day or more.
- Single-family residential septic systems with a design capacity of 3,000 gallons per day or more.

Taking the amended language above along with all of the classification language in proposed rule R18-9-A604, the following list

of wells would not be considered Class V wells:

- Non-residential septic systems that commingle industrial or commercial waste with their sanitary waste.
- Single-family residential septic systems that commingle industrial or commercial waste with their sanitary waste.

Comment 6: Local Government – UIC / APP Septic Regulation Interface

AAC R18-9-A604(E)(2) does not directly correlate with the Aquifer Protection General Permits, Type 4.23. APP Type 4.23 General Permits include cumulative flows on a property. This means it could be one septic system or multiple septic systems on the property. Nowhere in the UIC proposed regulations does it suggest that one consider the flow for the entire site or multiple septic systems for application of the UIC regulations when considering design capacity of 3000 gpd or more. One could avoid this regulation by installing multiple smaller septic systems that serve only sanitary waste with design capacities of less than 3000 gpd for each one. This would allow for example six 2500 gpd septic systems to be placed on a property without classifying as a Class V Injection Well.

ADEQ Response 6:

ADEQ appreciates the comment. For the purpose of calculating design flow for an APP Type 4.23 General Permit, all septic systems on a property are counted cumulatively. Therefore, an RV Park with three 1,100 gallon per day septic systems (totaling 3,300 gallons per day in cumulative design flow) would require an APP Type 4.23 General Permit. However, the UIC program takes the opposite approach for the purpose of determining applicability to Class V regulation. Under the UIC program, each septic system's design flow (even if on the same property) is viewed independently of the other. Therefore, due to AAC R18-9-A604(E)(2) requirement of 3,000 gallons per day or more for Class V applicability, each of the 1,100 gallon per day septic systems in the hypothetical above **would not** be applicable to the UIC program.

Taking the regulation of both the APP and UIC programs together, the six 2500 gallon per day septic systems from the commenter's example above would not be applicable to UIC Class V regulation (not counted cumulatively), but would be applicable to APP General Permit regulation (counted cumulatively). ADEQ drafted the rules here carefully in order to make sure any septic systems with design flows below 3,000 gallons per day would be subject to the APP program and septic systems with design flows at or above 3,000 gallons per day would be subject to, at least, the UIC Class V regulation. However, it should be noted that onsite wastewater treatment facilities of a cumulative design flow of between 3,000 and 24,000 gallons per day are subject to an APP General Permit (see A.A.C. R18-9-E323). If the facility is singular and falls between 3,000 and 24,000 gallons per day in design flow, then the UIC Class V regulation would apply in addition to the APP regulation.

Comment 7: Local Government – Class V Septic Regulation

AAC R18-9-A604(E)(1)(i) - Class V wells include but are not limited to septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.

This section suggests that regardless of flow volume or flow type (sanitary, commercial, or industrial), multiple family and business septic systems are Class V Injection Wells.

ADEQ Response 7:

ADEQ appreciates the comment. It should be noted that the proposed rules are based on the Federal analog. This is dictated by the fact that EPA requires ADEQ's rules to be at least as stringent as the Federal rule. Also, Arizona law dictates that the regulations be no more stringent than the corresponding Federal rule (see A.R.S. § 49-104(16)).

With that said, ADEQ understands UIC Class V regulation to include septic system wells used to inject effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank, regardless of flow volume. Flow volume is considered only for single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day. In other words, R18-9-A604(E)(2) is carved out of the broader, R18-9-A604(E)(1)(i). For example, a non-residential small business building septic system would initially be applicable to UIC Class V regulation. However, the same septic system w/a design flow below 3,000 gallons per day would fall out of UIC Class V applicability under R18-9-A604(E)(2).

Comment 8: Local Government - UIC Class V / APP Regulation Interface

Concerning UIC Class V regulation at AAC R18-9-A604(E)(1), air conditioning return flows, storm wells, and some of the other identified inclusions may include APP Type 1 and Type 2 General Permits or other permits within the AAC.

ADEQ Response 8:

ADEQ appreciates the comment. Per A.R.S. § 49-250(B)(26), UIC Class V is the only UIC well class in which wells are additionally subject to the APP program. This statute preserves ADEQ's robust APP program while taking into consideration that UIC Class V regulation requires (almost always) only an inventory instead of a permit. However, it should be noted that under proposed UIC rule R18-9-I651, the Director has the authority to require a permit of a Class V well that was previously subject to an "authorization by rule". Even in this rare situation, the language proposed in R18-9-103(6) would exempt a Class V well which has been issued a UIC permit from APP applicability. The statute and rule language relevant to this question was designed to eliminate duplicative permitting.

Comment 9: Local Government – Cesspools

AAC R18-9-A604(E)(1)(b) - Class V wells include but are not limited to cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

Cesspools are prohibited by AAC R18-9-A309(A)(4).

ADEQ Response 9:

ADEQ appreciates the comment. The rule cited by the stakeholder above applies to the APP program, not the UIC program. However, proposed UIC rule R18-9-I654 likewise prohibits cesspools from the UIC program. The rule cited by the stakeholder above characterizes the wells. Therefore, UIC Class V regulation does apply to cesspools, amongst other injection wells. However, R18-9-I654 prohibits them nonetheless.

Comment 10: Local Government – Aquifer Storage Recharge Wells

We recommend allowing Class V wells authorized by rule to be exempt from requiring an individual APP if the source water injected into the aquifer is already regulated by an AZPDES/NPDES permit, or the SDWA. We feel it too burdensome on the utility to also obtain APP coverage for ASR wells when the source water being injected into the aquifer is already regulated by existing rules or regulations. This would align with the UIC program exempting Class V wells having individual UIC permit coverage exempt from requiring an APP permit to avoid duplicative permitting.

The EPA UIC program allows Class V wells to be authorized by rule if both the owner or operator submits the well information and the well injection does not endanger a USDW. If being authorized by rule is indicative that the injectate will not endanger the USDW, we recommend the establishment of a regulatory avenue for owners and operators to further demonstrate that their injectate will not endanger the USDW and allow an exemption from the individual APP requirement. If the UIC program standards are based on the National Primary Drinking Water Standards like the State's APP program then in cases where the injectate is potable water then a process to submit for exemption would be preferred rather than having to obtain another permit.

ADEQ Response 10:

ADEQ appreciates the comment. ASR facilities are applicable to UIC, but exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless the facility is using reclaimed water. Under the UIC program ASRs are considered Class V wells, which require an inventory to become authorized by rule. The AZPDES Program (per ARS 49-255.01) regulates discharges to surface water bodies under the Clean Water Act, which does not align with the requirements of the UIC Program (under the SDWA) or APP that explicitly regulates discharges to groundwater. Additionally, the surface water quality standards under the AZPDES Program at Title 18, Chapter 11 of the A.A.C. differ from the Aquifer Water Quality Standards which are used in the APP Program (see A.A.C. R18-11-406).

Comment 11: Resource Extraction Industry Member – Class VI Primacy Authority

Are legislative changes required in order to apply for Class VI primacy?

ADEQ Response 11:

ADEQ appreciates the comment. Legislative changes are not required. Arizona Revised Statute 49-203(A)(6) and 49-257.01 gives ADEQ authority to pursue all injection well classes under the UIC program, including Class VI.

Comment 12: Local Government – Applicable Standards

Will National Primary Drinking Water Regulations take priority over existing Aquifer Water Quality Standards, where they pertain to underground injection activities?

ADEQ Response 12:

ADEQ appreciates the comment. All UIC facilities must protect to the primary MCL's. The Aquifer Protection Program will continue to use the Aquifer Water Quality Standards.

Comment 13: Local Government – Underground Storage Facility / Central Arizona Project

Will an Underground Storage Facility (USF) permitted by ADWR, using water other than effluent, need an APP permit under the UIC program? Unless it is Central Arizona Project (CAP) water?

ADEQ Response 13:

ADEQ appreciates the comment. Generally, USF facilities are exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless injecting reclaimed water. The proposed UIC rule at R18-9-A604(E)(1)(f) lists "[r]echarge wells used to replenish water in an aquifer..." as a part of the scope of UIC Class V authorized by rule regulation. This descriptor encompasses USF facilities. In plain terms, USF facilities are subject to UIC Class V regulation which requires an inventory under proposed rule R18-9-I652.

Specifically, USFs permitted by ADWR under A.R.S. title 45, chapter 3.1 and using water other than reclaimed water are exempt from APP under A.R.S. § 49-250(B)(12), but are applicable to UIC Class V authorization by rule regulation under proposed rule R18-9-A604(E)(1)(f). USFs permitted by ADWR under A.R.S. title 45, chapter 3.1, article 6 and using CAP water are exempt from APP under A.R.S. § 49-250(B)(13), but are applicable to UIC Class V authorization by rule regulation under proposed rule R18-9-A604(E)(1)(f).

ADEQ would be happy to meet with any potential applicants to ensure they comply with all applicable environmental programs.

Comment 14: Local Government – Aquifer Storage Recharge Wells

Are dry and Aquifer Storage Recharge (ASR) wells considered class V wells, authorized by rule, for the purposes of the UIC program? Do such wells need to get an individual permit under the UIC program?

ADEQ Response 14:

ADEQ appreciates the comment. Both drywells and ASR wells are subject to UIC Class V regulation, authorized by rule. Generally, ASR facilities are exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24), unless injecting reclaimed water. ADEQ would be happy to meet with any potential applicants to ensure they comply with all applicable environmental programs.

Comment 15: Local Government

Our ASR wells have USF permits issued by ADWR. These will now require an individual APP under the UIC program, correct? So, these wells will have a USF permit, APP permit and UIC inventory required by rule?

ADEQ Response 15:

ADEQ appreciates the comment. ASR wells will not be required to apply for an individual APP under the UIC program. The APP and UIC programs are separate regulatory programs. Both currently (under the EPA administration) and upon primacy (prospective ADEQ administration), ASR wells in Arizona must:

- inventory under the UIC Class V program (authorized by rule), and
- have an Underground Storage Facility permit.

Also, ASRs may be applicable to APP, depending on whether the operation is exempt from APP under A.R.S. § 49-250(B)(12), (13), (14) or (24). For example, if an ASR well is injecting CAP water, then it is exempt from the APP program per ARS 49-250(B)(13) unless the storage water is blended with reclaimed water. Also of not, Class V wells (other than ASR and geothermal wells) are likely not subject to the APP program.

Comment 16: Law Firm – Tribal Lands

Does EPA retain authority to issue UIC permits on tribal lands?

ADEQ Response 16:

ADEQ appreciates the comment. Arizona's UIC primacy authority will not extend to tribal lands within the state. UIC authority on tribal lands resides with the tribal nation or community (if that tribal nation or community has primacy) or is retained by the EPA otherwise.

Comment 17: Law Firm – Definition of Permit

The federal UIC program's definition of "permit" specifically states that the term does not include Class V wells authorized by rule,

40 CFR 144.3

"Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part, parts 145, 146 and 124. 'Permit' includes an area permit (§ 144.33) and an emergency permit (§ 144.34). Permit does not include UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a 'draft permit.'"

ADEQ's proposed definition does not include this language. Is there a reason for that (i.e., does ADEQ intend any different interpretation of the term "permit")?

R18-9-A601(48)

"'Permit' means an authorization issued by the Director pursuant to this Article, including an area permit under R18-9-C624 and an emergency permit under R18-9-C625."

ADEQ Response 17:

ADEQ appreciates the comment. A.R.S. § 49-201(32) provides the statutory definition for programs authorized within Title 49, Chapter 2 of the Arizona Revised Statutes, unless the context otherwise requires. Article 3.3 of Title 49, Chapter 2 contains the authority to establish a UIC permit program. Therefore, A.R.S. § 49-201(32) applies to the UIC program unless otherwise stated.

A.R.S. § 49-201(32)

"'Permit' means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility..."

A.A.C. R18-9-A601(48) was crafted to conform with A.R.S. § 49-201(32). ADEQ did not intend a different interpretation of the definition of permit for the purposes of the UIC program than that of the Federal analog at 40 CFR 144.3. In response to this comment, ADEQ has adjusted the language to better conform with 40 CFR 144.3 for the final rule.

R18-9-A601(48)

"Permit" means an authorization issued by the Director pursuant to this Article. 'Permit' includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. 'Permit' does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a 'draft permit.'"

Comment 18: Government Agency – Regulatory Differences

The following proposed regulations differ from the federal UIC regulations at 40 CFR Parts 124, 144, and 146:

R18-9-A601.37 (Definitions)

R18-9-A603.A (Confidentiality of Information)

R19-9-C616 (Individual Permits; Application for Individual Permits)

R18-9-C620.D (Public Notice of Permit Actions and Public Comment Period)

R18-9-C622 (Public Hearing)

R18-9-C631.B (Modification; Revocation and Reissuance; or Termination of Permits)

R18-9-D635.17.b. (Conditions Applicable to All Permits)

R18-9-D636.A.1 (Establishing Permit Conditions)

The entity suggests that ADEQ review the proposed regulations identified above and revise as necessary to ensure that the program is at least as stringent as the federal UIC program.

ADEQ Response 18:

ADEQ appreciates the comment.

R18-9-A601(37) (Definitions)

Proposed rule R18-9-A601(37) is the definition of "hazardous waste", in which language differs from the analogous federal definition at 40 CFR 261.3. Despite the difference in language, the proposed rule incorporates the Federal rule by reference in the following manner; R18-9-A601(37) incorporates A.R.S. § 49-921(5) by reference, which incorporates "...any waste identified as hazardous pursuant to section 49-922..." by reference, which incorporates A.A.C. R18-8-261(A) by reference, which incorporates "...[a]ll of 40 CFR 261..." by reference. Therefore, despite the difference in language between R18-9-A601(37) and 40 CFR 261.3, the proposed rule is exactly as stringent as its federal analog due to its incorporation by reference.

R18-9-A603(A) (Confidentiality of Information)

40 CFR 145.11(a) lists the required permitting language a state program must have legal authority to implement in their rule in order for EPA to consider their application for primacy. 40 CFR 145.11(a)(1) requires the Federal language from 40 CFR 144.5(b), but not subsection (a), to be used in a state rule concerning confidential information. Arizona UIC proposed rule, R18-9-A603(B) contains language identical to 40 CFR 144.5(b) while deliberately missing language from 40 CFR 144.5(a). Therefore, even though the language in R18-9-A603(A) differs from 40 CFR 144.5, the fact that the language from 40 CFR 144.5(b) is included in R18-9-A603(B) suffices. Also, R18-9-A603(A) is crafted to meet the state confidentiality requirements in A.R.S. § 49-205.

R18-9-C616 (Individual Permits; Application for Individual Permits)

40 CFR 144.31(d) is the federal rule for application for a permit or authorization by permit. Subsection (d) of 40 CFR 144.31 is entitled "completeness". This subsection is not included in the proposed Arizona UIC rule analog at R18-9-C616 because application completeness is prescribed elsewhere in the Arizona Administrative Code. Due to the requirements in statute for Arizona agencies who issue licenses to develop licensing time frames (LTF), ADEQ already has an application completeness review rule that would be applicable to the UIC program upon primacy in place (see A.A.C. R18-1-503(A)). 40 CFR 144.31(d) was not

included in the proposed UIC rule for this purpose.

R18-9-C620(D) *(Public Notice of Permit Actions and Public Comment Period)*

40 CFR 124.10(c)(1) is the federal rule for recipients of a public notice. Arizona's UIC rule analog at R18-9-C620(D) does not use the federal rule language verbatim. However, 40 CFR 124.10(c)(1)(viii) and (x) are covered under R18-9-C620(D)(1)(b). Also, 40 CFR 124.10(c)(1)(ix)(B) and (C) are covered under the new R18-9-C620(D)(1) list item, C620(D)(1)(e). R18-9-C620(D)(1)(e) was added to meet stringency between the proposed rule submitted and the final rule.

R18-9-C622 *(Public Hearing)*

40 CFR 124.12 is the federal rule for public hearings. Arizona's proposed UIC rule analog at R18-9-C622 did not use the federal rule language verbatim. A subsection (E) has been added in order to meet stringency requirements for 40 CFR 124.12(d).

R18-9-C631(B) *(Modification; Revocation and Reissuance; or Termination of Permits)*

40 CFR 124.5 is the federal rule for modification, revocation and reissuance, or termination of permits. Arizona's proposed UIC rule analog at R18-9-C631 does not use the federal rule language verbatim. The language in R18-9-C631(B) was designed to accommodate a stakeholder's request to be issued a notice of intent to deny when the Director denies a request for a modification or revocation and reissuance. While this language is not mirrored in the federal analog, its inclusion in the proposed UIC rule does not make the rule more or less stringent. The language creates a reasonable right for an applicant whose request for a modification or revocation and reissuance has been denied by the Director.

R18-9-D635(17)(b) *(Conditions Applicable to All Permits)*

A stakeholder made ADEQ aware of a pair of incorrect references in R18-9-D635(17)(b). Specifically, in the first sentence, the reference to R18-9-B614 should have been to R18-9-B613. In the third sentence, the reference to R18-9-B613 should have been R18-9-B614. Both corrections have been made in the final rule and are otherwise the same as the analogous Federal rule.

R18-9-D636(A)(1) *(Establishing Permit Conditions)*

A stakeholder made ADEQ aware of an incorrect reference in R18-9-D636(A)(1). Specifically, in the fifth sentence, the reference to R18-9-B634 should have been to R18-9-B633. The correction has been made in the final rule and are otherwise the same as the analogous Federal rule.

Comment 19: Interest Group

We understand that ADEQ intends to adopt administration of the USEPA's UIC program. Because this is a State implementation of a Federal program, the State's implementation requires compliance with Federal laws and regulations, including consideration of the effects on historic properties afforded under Section 106 of the National Historic Preservation Act as implemented in 36 C.F.R. Part 800. Compliance with the State's equivalent statute, the Arizona State Historic Preservation Act (A.R.S. 41-861 to 865) would be a reasonable implementation of the intent of Federal law and regulation.

We applaud ADEQ for including the provision of notification of permit actions to the Arizona State Historic Preservation Officer (SHPO) (R18-9-C620.D.1.c), which adequately complies with A.R.S. 41-864 (Review of agency plans), however the proposed rulemaking is not consistent with A.R.S. 41-862 and A.R.S. 41-863, which also would require ADEQ to locate and inventory historic properties affected by agency actions and initiate measures to ensure that historic properties are avoided or mitigated prior to being affected by the state action. We request that the proposed rules be amended to require the permittee to retain a cultural resources (archaeological) consultant to inventory the proposed permit area and submit a report of findings to the SHPO, and that the SHPO be afforded an opportunity to review and respond prior to ADEQ approval of the permit.

ADEQ Response 19:

ADEQ appreciates the comment. ADEQ is required by statute at A.R.S. §§ 49-203(A)(6) and 49-257.01 to adopt, by rule, the Safe Drinking Water Act's Underground Injection Control permit program. The process of transferring administrative authority from EPA to a state is known as primary enforcement authority or primacy. Despite the fact that, upon primacy, ADEQ would administer a program that has its origin in Federal law, ADEQ's permitting actions in administering the UIC program thereafter would not be considered a "federal action". Many Federal laws and regulations are applicable only when a "federal action" is taken, as is the case with Section 106 of the National Historic Preservation Act as implemented in 36 C.F.R. Part 800 (see 40 CFR 800.1(a)).

Concerning the State Historic Preservation Act, A.R.S. § 41-863 requires each state agency to,

"...initiate measures, in consultation with the state historic preservation officer; to assure that if, as a result of state action or assistance given by the agency, historic property is to be substantially altered or demolished, timely steps are taken to make appropriate documentary recordation in accordance with standards which the state historic preservation officer establishes..."

The notice provided to SHPO at R18-9-C620(D)(1)(c) fulfills the obligation to "initiate measures" in A.R.S. § 41-863. Providing such a notice allows SHPO to review a draft permit and determine whether the proposed state action would substantially alter or demolish historic property. If the proposed state action is determined to be an issue, SHPO and ADEQ would consult and develop the appropriate steps necessary to comply with the documentary recordation requirement.

In addition, ADEQ has added a required application component at R18-9-C616(D)(9) and R18-9-J657(B)(21) that reads as follows,

R18-9-C616(D)(9)

"All applicants ... shall provide the following information to the Director, using the application form provided by the Director ... [a] listing of any historic property or potential historic property as defined by R12-8-301."

R18-9-J657(B)(21)

"Prior to the issuance of a permit for the construction of a new Class VI well ... the Director shall consider the following ... [a] listing of any historic property or potential historic property as defined by R12-8-301."

ADEQ will consult with SHPO if historic property is identified by the applicant or by SHPO.

Comment 20: Tribal Interest Group

ADEQ must engage in direct government-to-government Tribal consultation with all Arizona Tribes since the proposed UIC program will likely have different and specific impacts on the treaty rights, water resources and traditional, religious, and cultural practices of each tribal nation or community depending on their unique circumstances.

ADEQ Response 20:

ADEQ appreciates the comment. The Agency agrees and is willing to engage in Tribal consultation as requested by each Tribal Nation or Community. ADEQ's Tribal Consultation Policy outlines the actions that the Agency will take to engage with Tribal Nations and commits to collaborating with each Tribe to develop a consultation procedure that will meet its unique needs: <http://www.azdeq.gov/substantivepolicy?page=0%2C0>

When ADEQ began pursuing primacy, the agency notified all 22 federally recognized Tribal Nations or Communities about our efforts, offering Tribal consultation. ADEQ held three tribal listening sessions to discuss the UIC program and the agency's primacy efforts on May 10, 14 and 16th of 2019. The agency also informed at least 7 Tribal leaders about the UIC primacy efforts during other in-person Tribal consultations. Since then, ADEQ has responded to a number of inquiries from Arizona tribes concerning primacy of the UIC program, including the Ak-Chin Indian Community, San Carlos Apache Tribe and the Yavapai-Prescott Indian Tribe, among others.

ADEQ's proposed rule at R18-9-C620(D)(1)(b) requires the Department to provide public notice to any affected tribal agency or council of government when a draft permit has been prepared or when a hearing has been scheduled. As ADEQ understands ancestral lands to be widespread throughout Arizona, ADEQ plans to implement R18-9-C620(D)(1)(b) by sending each public notice out to all 22 Federally-recognized Tribal Nations or Communities.

ADEQ has also developed a "Permits in Process" (PIP) online web page where the public can view water quality permit applications and their status in application review and permit development in real time. ADEQ anticipates adding the UIC program to the PIP web page.

Lastly, when EPA authorizes ADEQ's Underground Injection Control program, the program will not apply on tribal land. ADEQ's UIC program would apply only on lands under the jurisdiction of the State of Arizona.

Comment 21: Tribal Interest Group

The proposed UIC program rules lack needed requirements for engagement and coordination with tribes, the State Historic Preservation Office, and wildlife managers. R18-9-C620(A), R18-9-C620(D)(1)(b) and R18-9-C620(D)(1)(c) represent the extent of relevant notice requirements.

ADEQ Response 21:

ADEQ appreciates the comment. Please see response 20 for reference.

Comment 22: Tribal Interest Group

Waiting until after ADEQ and an applicant have fully negotiated the terms of a UIC permit – which is a process that can take some time – to provide notice to affected Tribes, the SHPO, jurisdictions, and affected wildlife managers deprives ADEQ of real time information that might be in the possession of Tribes, SHPO, jurisdictions, and wildlife managers regarding (1) existing conditions that might be relevant to ADEQ's consideration of the application and its development of the draft permit; (2) potential adverse impacts that the issuance of a UIC permit might have on cultural resources, the affected environment, wildlife, and the water resources. Certainly, relevant information known to Tribes, the SHPO, local jurisdictions, and wildlife managers should be considered before the draft UIC permit is negotiated and drafted, not after.

ADEQ Response 22:

ADEQ appreciates the comment. Please see response 20 for reference.

Comment 23: Tribal Interest Group

The proposed rules are completely silent as to how ADEQ intends to determine which Tribal governments are or will be "affected" by the issuance of the proposed UIC permit.

ADEQ Response 23:

ADEQ appreciates the comment and understands ancestral lands to be widespread throughout Arizona. With that in mind, ADEQ plans to implement R18-9-C620(D)(1)(b) by sending each public notice out to all 22 Federally-recognized Tribal Nations or Communities.

Comment 24: Tribal Interest Group

An appropriate Tribal Consultation Policy would be the first step towards setting forth a clear standard for how ADEQ might work with Tribes to identify geographic and other areas of interest in Arizona, where the issuance of permits, like a UIC permit, could correspondingly "affect" the interests of a Tribe. Such a policy could also assist ADEQ in its engagement efforts with the SHPO.

ADEQ Response 24:

ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 25: Tribal Interest Group

Requiring that Tribal notice take place only after both events at R18-9-C620(A) have occurred – and the proverbial "what's done has been done" – and not before, simply treats affected tribal governments like other interested members of the public and ignores the sovereign nature of Tribes and the government-to-government relationship between Arizona's 22 federally recognized Tribes and ADEQ as an agency of the State of Arizona. This is inappropriate.

ADEQ Response 25:

ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 26: Tribal Interest Group

SHPO is only mentioned at one point in the proposed rulemaking, that is, in the requirement for "public notice" found in R18-9-C620(D)(1)(c). Indeed, ADEQ has no obligation under the proposed rule to coordinate with the SHPO at any point during its application and permit review process to ensure that the UIC permit will comply with Arizona's historic preservation laws. This is in stark contrast to ADEQ's UIC Program Outline, which boldly promises that the SHPO "would be involved in reviewing applications that indicate a threat to historic or archaeological sites." At minimum, this promise should be reflected in the final rulemaking.

ADEQ Response 26:

ADEQ appreciates the comment. Please see responses 19 and 20 above for reference.

Comment 27: Tribal Interest Group

The transfer of UIC Primacy to the State of Arizona could sever the federal nexus for numerous environmental and cultural resource laws that Arizona Tribes rely upon to ensure that Tribal interests and concerns are considered, and Tribal resources are protected. EPA Primacy can sever the United States' trust responsibility to Indian tribes, limit the application of Executive Order No. 13175 and related consultation authorities, remove important requirements under Section 106 of the National Historic Preservation Act (NHPA) – including with regard to the resolution of adverse effects, and limit or cut off obligations under the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). This is a matter of particular concern in Arizona, since the state of Arizona does not have any laws (or state programs) that are remotely comparable to Section 106 of the NHPA, NEPA or ESA. Even Arizona's existing historic preservation laws are limited at best, since they do not include an adequate review process, do not require the resolution of adverse effects, and do not provide the SHPO with authority comparable to the authority of the Advisory Council on Historic Preservation.

ADEQ Response 27:

ADEQ appreciates the comment. NEPA, ESA, NHPA, and the other federal statutes impose procedural requirements on actions taken by federal agencies. The procedural requirements do not apply to state actions if there is no federal involvement (such as federal funding). Substantive requirements of the ESA still apply, including the requirements of permittees (i.e. Section 9 of the ESA prohibits take of threatened and endangered species; the prohibition is not limited to federal agencies). Generally, please see responses 19 and 20 above for reference.

Concerning NEPA, 40 C.F.R. § 124.9(b)(6) provides in pertinent part that,

“all RCRA, UIC and PSD permits are not subject to the environmental impact statement provisions of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4321.”

This regulation was adopted in response to case law holding that the UIC permitting process is functionally equivalent to NEPA's environmental impact statement requirements.

Comment 28: Tribal Interest Group

Regarding ESA compliance, the ADEQ UIC Program Outline also asserts that “State UIC permittees would have to comply with the ESA” and that “the Arizona UIC program has developed procedures in its permit process to adhere to the duties required in this law.” UIC Program Outline at 7. This promise is also not reflected in the proposed rulemaking.

ADEQ Response 28:

ADEQ appreciates the comment. Please see response 27 for reference.

Comment 29: Tribal Interest Group

The proposed Licensing Time Frame rules do not explain what is meant by “significantly complicated” versus “not significantly complicated” or how this determination was reached.

ADEQ Response 29:

ADEQ appreciates the comment. The UIC program regulates six classes of injection wells which are based on the characteristics of the fluids injected and the placement of the injectate in relation to Underground Sources of Drinking Water (USDW). Well construction, injection depth, design requirements, and operating techniques vary among well classes. Some wells are used to inject fluids into formations below USDWs, while others involve injection into or above USDWs. The proposed rules set out specific permitting and performance standards for each class of wells. In determining the licensing time frames for the prospective UIC applications, these factors were considered.

ADEQ categorized the prospective UIC applications by class into two categories, “significantly complicated” and “not significantly complicated”. Area, Class I, and Class VI wells are categorized as “significantly complicated”, while Class II, Class III, and Class Vs were determined to be “not significantly complicated”. The following facts were relied upon in distinguishing “significantly complicated” prospective UIC applications from the “not significantly complicated”:

1. Area Permits
 - a. Comprised of multiple injection wells.
 - b. Increased aquifer stresses induced by multiple injection wells.
 - c. Larger Area of Review and zone of endangering influence due to the induced aquifer stress.
 - d. Delineation of the Area of Review would likely require numerical groundwater modeling.
 - e. Area Class III solution mining wells require hydraulic capture of lixiviant and pregnant leachate solution to prevent migration into USDWs.
 - f. Monitoring networks are often a function of the Area of Review and complexity of the hydrogeology.
 - g. Class III Area Permits may require an Aquifer Exemption and subsequent aquifer restoration for closure. This closure strategy will require sophisticated geochemical modeling and long-term closure and post closure monitoring.
2. Class I wells are typically deep wells that inject waste into formations below a USDW.
 - a. Class I wells allow injection far below the lowermost USDW (injection zones typically range from 1,700 to more than 10,000 feet in depth).
 - b. The well design for injection is complex due to the depth of the injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
 - c. In Arizona, Class I wells are authorized to inject non-hazardous industrial waste, municipal wastewater, and radioactive waste. Hazardous waste injection is prohibited in Arizona.
 - d. A Class I well requires a multilayered well design to prevent fluids from entering USDWs.
 - e. Operation, monitoring, and testing is critical for ensuring that injected wastewater is fully confined. These functions become more complex at greater well depths.
 - f. Seismic hazards must be thoroughly evaluated due to the deeper injection zone.
3. Class VI wells are used to sequester carbon in deep geologic formations.

- a. Although CO₂ is initially captured as a gas, it is compressed into a supercritical fluid (a relatively dense fluid intermediate to a gas and a liquid) before injection and remains in that state due to high pressures in the underground formation.
- b. The CO₂ is injected through specially designed wells into geologic formations, typically a half a mile or more below the Earth's surface.
- c. CO₂ can be physically trapped in the pore space, trapped through a chemical reaction of the CO₂ with rock and water, dissolved into the existing fluid within the formation, or absorbed onto organic material or go through other chemical transformations. Geologic sequestration may take place over hundreds of years after injection, ultimately resulting in permanent storage of the CO₂.
- d. The well design for injection is complex due to the depth of injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
- e. Mechanical integrity testing must be performed routinely to verify long-term well stability and operations.
- f. Complex reservoir modeling must be conducted to determine the long-term storage capacity of a given geologic formation.
- g. Groundwater monitoring can also be complex due to the longevity of the sequestration operations and area of influence of the injectate.

Comment 30: Tribal Interest Group

Arizona law requires strict compliance with LTFs and issues penalties for exceedances. Additionally, EPA's current guidance (see EPA's informational webpage on Class V wells; see also 40 C.F.R. § 146.5(e); see also 40 C.F.R. 144.81) notes that by regulation, Class V wells can actually be complex under certain circumstances. This should be reflected in ADEQ's UIC Program as well.

ADEQ Response 30:

ADEQ appreciates the comment. Arizona law requires state agencies that issue licenses to comply with licensing time frames (LTFs) (see A.R.S. § 41-1072 et seq.). While there may be complex Class V permits, ADEQ does not feel the additional time that comes with the "complex" category is needed.

Comment 31: Tribal Interest Group

The proposed rules fail to describe the criteria for determining which permit applications would and would not warrant a public hearing for any UIC permit. This is a critical component of the program for stakeholders, permit holders, and the public to understand. This is separate from the provision allowing for the public to request a hearing at a later date, if there is "a significant degree of public interest" (see R18-9-C622).

ADEQ Response 31:

ADEQ appreciates the comment. UIC proposed rule R18-9-C622 provides the requirements of a UIC program public hearing. R18-9-C622 closely follows the federal UIC program rule at 40 CFR 124.12. Subsections A and B of R18-9-C622 require the Director to hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit or permits. Furthermore, the rule allows the Director to hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision.

Subsection A gives the Director discretion as to when a significant degree of public interest exists based on a public hearing request. ADEQ does not believe further criteria in determining whether a public hearing is necessary or not is needed.

Comment 32: Tribal Interest Group

ADEQ has stated that it intends for the UIC Program to be almost entirely funded through collected permit fees. For many years, ADEQ has suffered from deficient state funding. ADEQ should not be pursuing UIC Program primacy without asking for sufficient funding from the Arizona Legislature. This is critical, as sufficient funding and adequate ADEQ workforce expertise must be present for ADEQ to fulfill its obligations under this Program, as well as its obligations to Arizona tribes.

ADEQ Response 32:

ADEQ appreciates the comment. The Arizona UIC program is proposed to operate on a fee-for-service model that derives funding from diverse sources of revenue, which includes fixed annual fees, well installation fees, an hourly fee for application and technical review, and an annual work grant from EPA. The Annual Fees (listed in the UIC Licensing Time Frame proposed rules at Tables 3.1 and 3.2, R18-14-104) and the UIC Flat Fees (listed in proposed rule R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program.

Projected revenue will be augmented by an increase in the hourly rate for a UIC water quality protection service associated with a UIC permit, which has been set at \$145 an hour in proposed rule R18-14-102(B).

Furthermore, ADEQ has proposed in the Fee rulemaking the periodic review of the revenues collected from the UIC program every three years (see proposed rule R18-14-115). The reviews will ensure that enough revenue is being collected to properly administer the program. The reviews will also ensure that the fees are equitable and not overly burdensome to the stakeholders.

Comment 33: Tribal Interest Group

The rulemakings analysis of economic, small business, and consumer impacts (p.18) focuses heavily on alleviating financial burdens to stakeholders. While this may be an important aspect of an ADEQ UIC Program, ADEQ must also consider its obligations to protect the public health and the environment, and the economic costs of failing to do so, which can be catastrophic.

ADEQ Response 33:

ADEQ appreciates the comment. While alleviating financial burdens to stakeholders is an important attribute of primacy over the UIC program, ADEQ's mission to protect human health and the environment remains priority number one. The UIC program is a robust regulatory program that compliments Arizona's Aquifer Protection Permit program in its focus on injection wells.

Comment 34: Tribal Interest Group - Class V Wells / APP

Through the UIC Program, ADEQ proposes to regulate several types of injection wells across the state of Arizona (Class I through Class VI). Of these, ADEQ notes there are reportedly "many tens of thousands" of Class V injections in Arizona (a closer approximation was not provided). The rulemaking acknowledges further that most of these Class V wells "are used to dispose of wastes into or above" underground sources of drinking water. Indeed, ADEQ acknowledges that "[m]any" of these Class V wells require

an Aquifer Protection Permit (APP). However, ADEQ intends to no longer require APP permits if a UIC permit has been issued.

ADEQ Response 34:

ADEQ appreciates the comment. A.R.S. § 49-250(B)(26) exempts all injection wells from the APP program if the facility has been issued an UIC permit. UIC Class V wells are not issued permits under normal circumstances. Such wells are “authorized by rule” under R18-9-I650 et seq. This means that a Class V well will not be exempt from the Aquifer Protection Program. Class V wells “authorized by rule” must inventory under R18-9-I652 and follow a set of criteria to become and remain authorized. These Class V wells are also subject to the APP program, if the well type is applicable. For example, APP regulates specific drywells that are special or pose a significant threat to groundwater (draining hazardous substance loading areas, tracer studies and draining a motor fueling area) (see R18-9-C301, R18-9-C303 and R18-9-C304). These drywells would also require authorization by rule under UIC.

Comment 35: Tribal Interest Group - APP vs. UIC

The UIC Program requires injected fluids to stay within a well or injection zone, and prohibits injection activity “that allows” movement of fluid containing any contaminant into an underground source of drinking water, if it may cause a violation (see proposed R18-9-B608). A complex formula is then proposed with certain assumptions for computing a zone of endangering influence (see proposed R18-9-B612). However, Arizona’s APP program goes further than this and provides an additional layer of coverage over underground water resources by addressing discharge more broadly (defined at A.R.S. § 49-201(12) as “the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.” The UIC Program, as proposed, does not appear to contemplate the possibility of indirect contamination, or require consideration of the reasonable probability that a pollutant will reach an aquifer. Removal of the APP requirement from UIC activities without incorporating the protections provided by APP into the program does not remove duplicate regulations, as ADEQ suggests. Given the high number of Class V wells already located across Arizona that would be affected by this rule change, it reduces protections to Arizona’s precious underground waters and has the potential to impact Tribal water sources and harm the cultural resources and ancestral lands of Arizona tribes.

ADEQ Response 35:

ADEQ appreciates the comment. ADEQ’s efforts to obtain primacy over the UIC program does not include revising the UIC program. ADEQ’s statutory authority is to obtain primacy without being more stringent than the federal program. Therefore, concerns about the UIC program considering indirect contamination are not applicable to obtaining primacy over the UIC program. ADEQ notes that many activities and facilities currently regulated by APP will continue to be regulated upon UIC primacy as those activities and facilities will not be regulated under the UIC program. For example, a facility that requires a UIC permit for Class III injection wells, may also require an APP permit for impoundments or other discharging facilities.

In 2021, the Arizona Legislature passed A.R.S. § 49-250(B)(26) which exempts certain UIC wells from APP regulation. The language specifically leaves UIC Class V wells out of the exemption from APP (meaning UIC Class V wells are still applicable to regulation under APP).

Comment 36: Tribal Interest Group - Waiver of Permit Conditions

We are concerned with the wide latitude vested in the ADEQ Director to issue a UIC Permit with less stringent requirements to the extent the Director finds that a “reduction in requirements will not result in an increased risk of movement of fluids” into a USDW. While there may be instances where a waiver of this type might be appropriate, the proposed rulemaking should carefully and specifically outline criteria for the Director to apply when deciding to exercise this authority under the Program. It should not be a broad exemption over all other permit program requirements where a permittee may seek and easily obtain reduced requirements of many critical aspects such as “area of review, construction, mechanical integrity, operation, monitoring, and reporting.” (see proposed R18-9-B610)

ADEQ Response 36:

ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in the SDWA in order for EPA to consider a state’s primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B608, ADEQ has used the analogous Federal language at 40 CFR 144.12, verbatim. ADEQ has no ability to develop further criteria for this rule and stay within the parameters of state and Federal law.

Comment 37: Tribal Interest Group - Groundwater Modeling

UIC Permits should not be considered in a vacuum. If insufficient or no information exists about the underground nature of the area, the UIC Program rulemaking may specify circumstances under which a groundwater model would be required. This is not contemplated for any class of well.

ADEQ Response 37:

ADEQ appreciates the comment. Proposed rule R18-9-B612 specifies the methods and, if appropriate, the calculations used to determine the area of review (AOR). This determination includes:

1. The zone of endangering influence based on physical measurements;
2. The zone of endangering influence computation based on the modified Theis equation (analytical groundwater model);
3. A fixed radius not less than 1/4 mile, from the injection well for an individual well permit or for an area permit; or
4. A mathematical (groundwater) model.

* Annotation in parenthesis above added for clarification.

Comment 38: Tribal Interest Group - Area of Review

Restricting review to the “applicable area of review” (see R18-9-B612) may be self-limiting. Impacts to features and aquifers beyond this area may not be detected, because they have already been omitted from review.

ADEQ Response 38:

ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in the SDWA in order for EPA to consider a state's primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B612, ADEQ chose to use the analogous Federal language at 40 CFR 144.16, verbatim.

Comment 39: Law Firm - Prohibition on Movement

Change the first phrase in Arizona UIC Proposed Rule R18-9-B608(A) from:

"No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs..."

-- to --

"No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into USDWs..."

For the following reasons:

1. Account for the possibility that fluids introduced by the injection activity will cause a migration of contaminant-containing fluid already present in the groundwater in the vicinity of the injection activity as a result of previous injection activities or other causes;
2. Correlate to the Arizona statutes that require the Arizona Department of Water Resources ("ADWR") to rely on ADEQ for determinations of whether ADWR's grant of a permit would cause or exacerbate migration of contaminated groundwater, see, e.g., A.R.S. § 45-811.01(C)(5); and
3. On its face, not make the rule more stringent than the federal UIC rules (alternatively, the modification suggested above would not be inappropriate under A.R.S. §§ 41-1052(D)(9) and 49-104(A)(16), given the operation of A.R.S. § 45-811.01(C)(5)).

ADEQ Response 39:

ADEQ appreciates the comment. The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in the SDWA in order for EPA to consider a state's primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). In the case of proposed rule R18-9-B608, ADEQ chose to use the analogous Federal language at 40 CFR 144.12, verbatim. ADEQ has no ability to revise the rule and stay within the parameters of state and Federal law.

Comment 40: Law Firm - Duplicative Regulation

The aquifer protection permit class exemption for UIC Class V wells with an individual UIC permit (proposed A.A.C. R18-9-103(6)) makes sense and should be retained. Requiring both an individual APP and individual UIC permit for a Class V well would be unnecessary and largely duplicative. Arguably, this exemption duplicates the statutory exemption found at A.R.S. § 49-250(B)(26), but the language of that exemption is less clear than it might be, so including the proposed new class exemption in the APP rules serves to clarify any uncertainty. It also is consistent with the mandate in A.R.S. § 49-203(D) to eliminate duplication and dual permitting to the maximum extent practicable.

ADEQ Response 40:

ADEQ appreciates the comment and agrees with the stakeholder's statement.

Comment 41: Law Firm - Tribal Lands

ADEQ clarified at the public hearing that the state UIC program will not apply on tribal lands, and that EPA would still issue UIC permits for injection wells located on those lands. It may be prudent to specify that in the rule. As it stands, proposed A.A.C. R18-9-A602(C) states that injection in the state of Arizona is prohibited unless authorized by ADEQ (or OGCC, if it adopts an approved program), which suggests that only ADEQ or OGC can issue UIC permits in the state.

ADEQ Response 41:

ADEQ appreciates the comment and has addressed the issue accordingly.

The proposed rule at A.A.C. R18-9-A602(C) is as follows,

Underground injection is prohibited in the State of Arizona unless authorized by permit or rule under this Article or authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq. Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

In this proposed final rulemaking, ADEQ has amended the language in A.A.C. R18-9-A602(C) and (D) as follows,

(C) Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:

1. *Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq.,*
2. *Authorized by OGCC pursuant to regulations approved by EPA.*

(D) Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.

The restructuring of A.A.C. R18-9-A602(C) and (D) above distinguishes between lands under the jurisdiction of the State of Arizona and lands that are not (I.E. - Tribal Land).

Due to the restructuring of R18-9-A602(C), what was proposed to be R18-9-A602(D) has become R18-9-A602(E) and so on

throughout the subsections.

Comment 42: Law Firm

The definition of “permit” (proposed A.A.C. R18-9-A601(48)) should be clarified to state that it does not include authorization by rule. This is clearly implied by the definition and the wording of other proposed rules, but it should be made explicit to avoid any potential for confusion. The comparable definition of “permit” in the federal UIC regulations (40 C.F.R. § 144.3) specifically states: “Permit does not include UIC authorization by rule” Given that ADEQ clarified at the public hearing that it intended no different interpretation of the term than exists under the federal program, ADEQ should add language tracking the federal definition to the final state definition of “permit.”

ADEQ Response 42:

ADEQ appreciates the comment. Please see response 17 above.

Comment 43: Law Firm

Is the last sentence of proposed A.A.C. R18-9-B608(B) needed? It does not appear in the analogous EPA regulation (40 C.F.R. § 144.12(b)). The sentence refers readers to the section of the proposed rules relating to Class V permits authorized by rule, but proposed A.A.C. R18-9-A608(C) and (D) also seem to apply to all Class V wells, including those authorized by rule. Does the cross-reference to the specific Class V rules add anything that is not encompassed within subsections C and D, especially given that the most pertinent provision of the Class V rules simply refers right back to proposed A.A.C. R18-9-B608 (see A.A.C. R18-9-I650(B)(2)(a))?

ADEQ Response 43:

ADEQ appreciates the comment. ADEQ added the cross references specifically to mirror federal law. The final sentence in proposed rule A.A.C. R18-9-B608(B) is as follows,

“In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.”

The final two sentences of the federal analog at 40 CFR 144.12(b) are as follows,

In the case of wells authorized by rule, see §§ 144.21 through 144.24. For EPA administered programs, such enforcement action shall be taken in accordance with appropriate sections of the SDWA.

The final sentence in 40 CFR 144.12(b) is inapplicable to ADEQ’s prospective state UIC program, given the preface of the sentence, “[f]or EPA administered program...” EPA requires ADEQ to adopt a rule that is at least as stringent as the federal analog. In the case of 40 CFR 144.12(b), the second to last sentence is the last sentence that is required to be in the proposed rule.

Comment 44: Law Firm - Public Notice

With respect to the public notice requirements for permits (proposed A.A.C. R18-9-C620(D)(1)(b)), what constitutes an “affected” federal, state, tribal, or local agency or council of government? Is it simply the government with jurisdiction over the land where the injection occurs? If so, the word “tribal” should be removed, since ADEQ does not have authority to issue UIC permits on tribal lands. If the notification is intended to be broader, as suggested by the reference to agencies and COGs, ADEQ should provide some explanation of how it will identify the “affected” agencies or governments that will receive notification.

ADEQ Response 44:

ADEQ appreciates the comment. The federal rule unto which A.A.C. R18-9-C620(D)(1)(b) is based on includes the following as a listed recipient of public notice at 40 CFR 124.10(c)(1)(iii),

“...including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)”

EPA requires ADEQ to adopt a rule that is at least as stringent as the federal rule equivalent. Therefore, ADEQ effectively adopted the language from the CFR.

Please refer to response 20 as well.

Comment 45: Law Firm

Also in the public notice section (proposed A.A.C. R18-9-C620(D)(1)(c)), notification regarding individual permits must be provided to SHPO and to state and federal agencies with jurisdiction over fish, shellfish and wildlife resources (presumably, AGFD and FWS). ADEQ should make clear in the preamble to the final rules that this notification does not stem from any mandatory consultation requirements that apply to the agency. Consultation requirements under the ESA and NHPA apply only to federal agencies, not state agencies, and the UIC delegation regulations do not require states to adopt requirements associated with the ESA or NHPA.

ADEQ Response 45:

ADEQ appreciates the comment. Please see responses 19 and 27 above.

Comment 46: Law Firm

Proposed A.A.C. R18-9-C629(A)(1) provides that an expiring permit continues in force and effect if a “timely application that is a complete application” for a new permit is submitted. This tracks language in EPA’s UIC regulations for EPA-issued permits (40 C.F.R. § 144.37(a)(1)), but it is not clear what exactly this would require under the state program. Specifically:

- **Timely:** When will an application need to be submitted in order to be considered “timely”? Is simply submitting the application before the current permit expires timely? If not, how long before an existing permit expires must submission be made in order to be considered timely?
- **Complete:** ADEQ should clarify that an application will be considered “complete” for purposes of this provision if the application contains the requirements necessary to find administrative completeness (i.e., it contains the information listed in proposed A.A.C. R18-9-C616(D) or, for Class VI wells, the information listed in proposed A.A.C. R18-9-J657(B)). Later requests for additional technical information or analysis made during the substantive review phase should not result in a conclusion that the application was not complete when submitted.

ADEQ Response 46:

ADEQ appreciates the comment and reiterates that the proposed rule A.A.C. R18-9-C629(A)(1) follows the analogous Federal rule at 40 CFR 144.37(a)(1). Under a state UIC program, the term “Timely”, for the purposes of proposed rule R18-9-C629(A), is

within a reasonable amount of time before the expiration of the permit term occurs. ADEQ notes CAA and CWA programs define “timely” as 6 to 18 months prior to permit expiration. Also “Complete”, for the purposes of proposed rule R18-9-C629(A), is commensurate with “Administrative completeness” as defined in A.A.C. R18-1-501(1).

Comment 47: Law Firm

For new Class V wells (i.e., those created after the state begins implementing the UIC program), presumably it will be sufficient if the inventory form information specified in proposed A.A.C. R18-9-I652(B) is submitted prior to commencing injection. If that is correct, then ADEQ should so state in the preamble to the final rules.

ADEQ Response 47:

ADEQ appreciates the comment. Submitting an inventory pursuant to R18-9-I652 is a prerequisite to injection. The information has been added to the Preamble for the final rules.

Comment 48: Law Firm

There appears to be an incorrect cross-reference in proposed A.A.C. R18-9-I650(B)(1). That section begins: “With certain exceptions listed in subsection (B) of this Section . . .” The reference presumably should instead be to subsection “(2)” of the section.

ADEQ Response 48:

ADEQ appreciates the comment and the identification of an incorrect cross-reference. The reference in A.A.C. R18-9-I650(B)(1) to subsection (B) has been adjusted to read (B)(2).

Comment 49: Law Firm

ADEQ’s authority to require a permit for a Class V well (proposed A.A.C. R18-9-I650(B)(2)(b)) should specifically cross-reference proposed A.A.C. R18-9-I651, which sets out the circumstances in which the Department can require a permit to be obtained. The first sentence of that subsection should read: “The Director specifically requires a Class V permit for the well to operate pursuant to A.A.C. R18-9-I651.”

ADEQ Response 49:

ADEQ appreciates the comment and agrees with the stakeholder’s concern and suggested revision. The first sentence of A.A.C. R18-9-I650(B)(2)(b) has been amended to align with the language suggested above for the purposes of the final rule.

Comment 50: Law Firm

To avoid ADEQ having unfettered discretion to require Class V wells to obtain an individual permit, the three grounds listed in proposed A.A.C. R18-9-I651 should be identified as the only three grounds for requiring an individual permit. Rather than saying that the grounds for such a decision “include” the three listed, which arguably suggests that there could be additional unlisted grounds, the final rule should indicate that the three listed grounds represent the only bases for requiring an individual permit. For these reasons, proposed A.A.C. R18-9-I651(A) should be modified to read: “The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit in any of the following circumstances. Cases where individual or area UIC permits may be required include:”

- In the alternative, and recognizing that the analogous EPA regulation (40 C.F.R. § 144.25(A)) also uses the word “include,” ADEQ should clarify in the preamble that use of the word “include” in this rule is intended to identify the full universe of grounds for requiring a permit (i.e., it is distinct from the phrase “include but is not limited to,” which is used at least once elsewhere in the proposed rules, see proposed A.A.C. R18-9-A604(E)(1)).

ADEQ Response 50:

ADEQ appreciates the comment.

The stakeholder’s suggested language would curtail the Director’s authority to require a Class V well to obtain an individual permit. Narrowing the breadth of discretion in the rule would also make it less stringent than the federal analog. ADEQ respectfully declines to implement this suggested language in the final rule.

Comment 51: Law Firm

Proposed A.A.C. R18-9-I650(B)(2) states that a Class V well authorized by rule may instead be required to get a permit “if one of any one of the following:” There is clearly excess verbiage in this phrase. The requirement would be more clearly stated if it instead said something like “in the following circumstances.”

ADEQ Response 51:

ADEQ appreciates the comment and agrees with the stakeholder’s concern. The language has been amended for the final rule and reads as follows,

“A Class V well requires a permit and shall no longer be authorized by rule upon any of the following...”

Comment 52: Law Firm

When Class V wells are plugged and abandoned, the proposed rules require proper disposal of soil, gravel, sludge, liquids or other materials removed from “or adjacent to” the well (proposed A.A.C. R18-9-I650(B)(3)(b) and proposed A.A.C. R18-9-B614(C)). This tracks language in EPA’s UIC rules at 40 C.F.R. § 144.82(b). This requirement should not apply to materials that are unrelated to the well but merely happen to be located adjacent to it at the time of well closure. If this interpretation is correct, then ADEQ should so indicate in the preamble. If this interpretation is not correct, then ADEQ should explain in the preamble the intended scope of the requirement.

ADEQ Response 52:

ADEQ appreciates the comment. As stated by the stakeholder, both 40 C.F.R. § 144.82(b) and A.A.C. R18-9-I650(B)(3)(b) contain similar language to the following,

“...you must dispose or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to your well in accordance with all applicable Federal, State, and local regulations and requirements.”

ADEQ believes the request to make a distinction between materials that are unrelated to the well but merely happen to be located adjacent to the well at the time of well closure and materials that are related to the well is unnecessary. Furthermore, implementing the requested distinction could affect the stringency of ADEQ’s proposed rule versus the Federal analog. ADEQ’s rules must remain as stringent as EPA’s analog rule in the CFR in order for ADEQ to be eligible for primacy.

Comment 53: Law Firm

The language in proposed A.A.C. R18-9-B614(C) and proposed A.A.C. R18-9-I650(B)(3) is virtually identical. This is not inherently problematic, but it is unusual to see the same language repeated twice in a rule package. Are both sections needed? Would a cross-reference in one location suffice?

ADEQ Response 53:

ADEQ appreciates the comment. ADEQ agrees that R18-9-B614(C) and R18-9-I650(B)(3) are quite similar. ADEQ has decided to amend the rules by leaving R18-9-B614(C) as is and changing R18-9-I650(B)(3) to read as follows,

“Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).”

The former R18-9-I650(B)(3)(a) and (b) have been removed.

Comment 54: Law Firm

The proposed rules provide that a discharger may appeal to the Water Quality Appeals Board ADEQ’s determination that a permit is needed for a Class V well (proposed A.A.C. R18-9-I651(B)(5)). The proposal also states that authorization by rule for a Class V well ceases if an application for a permit is not submitted as specified by ADEQ, or when a permit is denied (proposed A.A.C. R18-9-I650(B)(2)(b)). To avoid the scenario where a discharger must apply for (and possibly even obtain) a permit that it is challenging the need for, this latter provision should be modified to state that if ADEQ’s decision to require a permit for a Class V well is appealed, then authorization by rule continues until that appeal is resolved. This could be accomplished by amending proposed A.A.C. R18-9-I650(B)(2)(b) to read that authorization by rule ceases upon the later of: (1) failure to submit an application in a timely manner as specified in a notice from ADEQ; (2) the effective date of permit denial; or (3) the date of a final administrative decision or other resolution of an appeal filed challenging the Department’s decision that a permit is required.

ADEQ Response 54:

ADEQ appreciates the comment and request to amend the rule language, but respectfully declines. ADEQ believes that the rule sufficiently provides the applicant’s right to appeal the individual permit requirement in proposed rule R18-9-I651. Proposed rule R18-9-I651 references the Water Quality Appeals Board statutes at Arizona Revised Statutes, Title 49, Chapter 2, Article 7. ADEQ prefers to allow those statutes to delineate any appeals rights an applicant may have upon the Director’s decision including any potential stay pending appeal.

Comment 55: Resource Extraction Industry Member

Proposed A601 defines “appropriate Act and regulations” even though that terminology is not employed anywhere else in the proposed rules. ADEQ may wish to delete that definition accordingly.

ADEQ Response 55:

ADEQ appreciates the comment. “Appropriate Act and regulations” can be found in the analogous Federal rule at 40 CFR 144.3. ADEQ will keep the definition in the regulations as the term is used elsewhere in the UIC primacy application, such as the Memorandum of Agreement.

Comment 56: Resource Extraction Industry Member

Proposed A602(A) provides that, “upon the date of the Environmental Protection Agency’s approval of the Arizona UIC program,” ADEQ shall administer and enforce any UIC permit that “has been previously authorized or issued” in Arizona under the federal UIC program. This leaves unclear the continuing status of legal instruments ancillary to the permit, the implementation of which was and continues to be a condition of EPA’s issuance of the permit. In order to address this issue, a sentence should be added at the end of A602(A) more or less as follows:

In addition, the Arizona UIC Memorandum of Agreement shall, under terms and conditions agreed to by the Director and Administrator, provide for the continued force, effect and administration of legal instruments ancillary to such permits, the implementation of which was and continues to be a condition of the Administrator’s authorization and issuance of the permit, such as, without limitation, an agreement relating to the permit that was executed and is being implemented pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, 36 C.F.R. Part 800.

ADEQ Response 56:

ADEQ appreciates the comment, but respectfully declines to add the language suggested. The ancillary matters referred to above and those matters of a like kind will be addressed in the permits themselves and or other documents, like the Memorandum of Agreement.

Comment 57: Resource Extraction Industry Member

Proposed A602(J) should be revised to replace the words “upon the date of primacy” with the words “upon the date of the Environmental Protection Agency’s approval of the Arizona UIC program.” This change would make A602(J) consistent with proposed A602(A).

ADEQ Response 57:

ADEQ appreciates the comment and will update the final rule to align with the definition in final rule R18-9-A601(21).

Comment 58: Resource Extraction Industry Member

Proposed A605(B)(4) concerning exemption of aquifers makes cross-references to “A606(A)(2)” and “A606(A)(3).” These cross-references appear to be incorrect. Based on the analogous provisions of 40 C.F.R. § 144.7, ADEQ should change these to “A605(B)(2)” and “A605(B)(3).”

ADEQ Response 58:

ADEQ appreciates the comment. After review of the specified cross references above, it was determined that they are correct.

Comment 59: Resource Extraction Industry Member

In proposed A606(2)(a), the word “consider” should be changed to “considering”. This change would make (2)(a) consistent with 40 C.F.R. § 146.4(b)(1).

ADEQ Response 59:

ADEQ appreciates the comment and will align the final rule with the recommended language above.

Comment 60: Resource Extraction Industry Member

In proposed C626(A), Class II and III wells are excepted when describing the effect of compliance with a UIC permit. Although this exception language is found in EPA UIC regulations, it is unclear why there is a distinction between different classes of wells

and why compliance with a permit for Class II and III wells is not considered compliance with the UIC regulations or the Safe Drinking Water Act. If there is not a satisfactory explanation, we recommend that this language be dropped after appropriate discussions with EPA.

ADEQ Response 60:

ADEQ appreciates the comment. UIC Class II and III wells are excepted from C626(A) because such permits are for the life of the operating facility. Therefore, compliance with a permit goes beyond the “term” and extends to the life of the facility in the case of Classes II and III. Please reference C628(A).

Comment 61: Local Government

The UIC rules require submittal of highly technical information. Will ADEQ have the staff available to review the applications and technical details? All business sectors are experiencing staff shortages. Unless ADEQ is offering competitive salaries, it may be difficult to attract candidates with the necessary expertise.

ADEQ Response 61:

ADEQ appreciates the comment. ADEQ has and will continue to develop the educational background and relevant experience to manage and administer the UIC Program. Upon primacy, ADEQ will utilize existing expertise within the Groundwater Protection Section to manage and administer the UIC program. It should also be noted that the Arizona Legislature appropriated funding for 3.2 full-time-equivalent positions specifically for the UIC program. ADEQ plans on hiring additional qualified staff based on capacity and workload needs. ADEQ salary structure and benefits package is attractive and should not be prohibitive in attracting qualified personnel.

Comment 62: Local Government

How will the Underground Injection Control Program interface with the Aquifer Protection Permit Program?

ADEQ Response 62:

ADEQ appreciates the comment. The UIC program and the APP program will complement each other in the fabric of groundwater protection regulation in Arizona. A.R.S. § 49-250(B)(26) exempts UIC wells from APP regulation for Classes I, II, III, IV and VI. However, Class V wells that are “authorized by rule” (as opposed to being individually permitted) will potentially be applicable to both UIC and APP regulation if the specific type of UIC Class V well is subject to APP. For example, a drywell that drains a motor fueling area would be required to inventory under UIC Class V regulation and would be required to apply for an APP Type 2.04 General Permit (see R18-9-C304).

Comment 63: Local Government

Typo. Preamble. Subheading: Why is Article 1 being amended? Sentence: Individually Permitted Class V UIC Wells Omit the second “not” in the sentence “ADEQ is concerned that Class V wells “prescribed by rule” may be interpreted to include Class V wells “authorized by rule” and individually permitted Class V wells, which ADEQ does not believe was not the intention of the legislation.”

ADEQ Response 63:

ADEQ appreciates the comment and will amend the language in the Preamble in the Notice of Final Rulemaking

Comment 64: Local Government

Will the National Primary Drinking Water Regulations in Table 1 supersede existing Arizona Aquifer Water Quality Standards?

ADEQ Response 64:

ADEQ appreciates the comment. The applicable primary drinking water maximum contaminant levels (MCLs) will be the standards used for the UIC program. EPA requires ADEQ use these standards in order to achieve the stringency in the rule required for EPA to grant ADEQ primacy. Arizona Aquifer Water Quality Standards will still apply for the APP.

Comment 65: Local Government

At R18-9-C616(C)(2), what is a reasonable timeframe? There should be a limitation on time, to ensure expediency.

ADEQ Response 65:

ADEQ appreciates the comment. The language in R18-9-C616(C)(2) makes it incumbent upon a permittee to submit a permit application prior to construction of an injection well. ADEQ recommends using the LTF framework in A.A.C. Title 18, Chapter 1, Article 5 as guidance for project planning and scheduling. The agency works hard to provide quick decisions on permit applications.

Comment 66: Local Government

- At, R18-9-C616(C)(1), add “, but not to exceed L {i.e. 60 days}]” after “practicable”.
- At, R18-9-C624(A)(2), strike the extraneous word “in”.
- At, R18-9-C633(A)(8), add “d” after “an”.
- At R18-9-D635(A)(16)(b), strike the “d” in “and”.
- At R18-9-F645(B)(2), 3rd sentence, change “suspended” to “suspected”.

ADEQ Response 66:

ADEQ appreciates the comments. See response 65 for reference to Bullet 1. Bullets 2 through 5 have been implemented in the final proposed rule.

Comment 67: Federally-Recognized Arizona Tribal Nation or Community

The proposed rule should require ADEQ to fully implement and enforce the provisions of EPA permits transferred to ADEQ. The EPA, in administering any UIC permit (or indeed, undertaking any major action) must comply with a number of statutory requirements that protect Tribal interests, including Section 106 of the National Historic Preservation Act (NHPA). Through the NHPA, EPA consults with Tribes to protect cultural resources and frequently enters into a Programmatic Agreement or Memorandum of Agreement as a condition of permit issuance. These agreements typically impose conditions and requirements that protect Tribal lands, resources, and areas of cultural significance. Here, ADEQ’s Proposed Rule is silent regarding the continued implementation and enforcement of such Programmatic Agreements and Memoranda of Agreements associated with EPA-issued permits. For transferred permits, ADEQ’s Proposed Rule should include language ensuring that ADEQ implement and enforce the requirements and conditions, under laws such as NHPA, that EPA has imposed on its permittees.

ADEQ Response 67:

ADEQ appreciates the comment. Upon primacy, EPA will transfer the Federal permits to ADEQ for administration. All of the terms in the permit, including NHPA terms, will continue to be enforced jointly between EPA and ADEQ. The joint enforcement will be memorialized in the EPA | ADEQ Memorandum of Agreement (see A.R.S. § 49-203(B)(5)).

Comment 68: Federally-Recognized Arizona Tribal Nation or Community

The proposed rule does not include any requirements for ADEQ to analyze historic and cultural resources as part of UIC permit decision-making. The Community is concerned that the Proposed Rule does not require specific historic and cultural resource considerations in making UIC permitting decisions. Given the prevalence of Tribal communities within Arizona, including a historic and cultural resource review requirement prior to issuance of any UIC permit is particularly critical to protect and preserve these resources. In addition to considering historic and cultural resources as a prerequisite to issuing any UIC permit under ADEQ's proposed program, ADEQ should require that an applicant demonstrate that avoidance, minimization, and mitigation measures regarding impacts to historic and cultural resources have been demonstrated to ensure maximum protection for these resources.

ADEQ Response 68:

ADEQ appreciates the comment. Please see response 19 for reference.

Comment 69: Federally-Recognized Arizona Tribal Nation or Community

The proposed rule requires clarity around whether and when ADEQ will notify a tribe about permit-related actions. As currently drafted, the Proposed Rule states that public notice of activities, including draft permits and public hearings, shall be delivered to "[a]ny affected federal, state, tribal, or local agency, or council of government." The Proposed Rule, however, lacks any parameters around what "affected" means in this context, thus providing no certainty that Tribal Governments whose resources or environments may be affected by a UIC permit will receive notice. Further, without proper notice to Tribal Governments, ADEQ may not realize the extent to which a proposed permit action could impact Tribal communities, their environment, and cultural and historic resources during the decision-making process. To clarify this vague language in the Proposed Rule, we recommend defining "affected" based upon objective criteria, such as when a permitted activity may be located in the same watershed or aquifer where a Tribe is located, located within a set radius of Tribal lands, or could impact cultural resources.

ADEQ Response 69:

ADEQ appreciates the comment. Please see responses 20 and 44 for reference.

Comment 70: Federally-Recognized Arizona Tribal Nation or Community

The proposed rule requires that the State Historic Preservation Office (SHPO) be notified regarding permit-related actions but lacks such notification requirements for Tribal Historic Preservation Offices (THPOs). ADEQ's Proposed Rule requires notification to the SHPO for permit-related actions but does not include the same requirement for any THPO. Because UIC permit activities, regardless of the proximity to a particular Tribe's lands, could impact cultural resources, the Proposed Rule should include requirements to notify THPOs in appropriate circumstances.

ADEQ Response 70:

ADEQ appreciates the comment. Please see responses 19 and 20 for reference.

Comment 71: Federally-Recognized Arizona Tribal Nation or Community

The commenter believes that there will be a number of other issues that ADEQ and EPA must address—in ADEQ's UIC Program regulations and/or in the Arizona UIC Memorandum of Agreement—to protect Tribal interests and the environment. These include: (i) the requirement for ADEQ to engage in meaningful consultations with Tribes regarding proposed UIC permits; (ii) confirmation of ADEQ's authority to consider and impose conditions to protect historic and cultural resources in ADEQ's UIC Program permit decision-making; and (iii) the adequacy of ADEQ resources, staff, and budgets to implement the UIC Program.

ADEQ Response 71:

ADEQ appreciates the comment. Please see responses 19 and 20 for reference.

- Arizona UIC Program Fee Rulemaking Comments - - Arizona Administrative Code - Title 18, Chapter 14, Article 1 -

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment 1: Resource Extraction Industry Member

Proposed R18-14-115 should be revised to replace the words “from the date of primacy” with the words “from the date of the Environmental Protection Agency's approval of the Arizona UIC program.” This is unless ADEQ prefers to define “primacy” as such in A601 and employ that term likewise in A602(A). In these provisions, ADEQ may also wish to employ the words “the Administrator” in lieu of “the Environmental Protection Agency.”

ADEQ Response 1:

ADEQ appreciates the comment.

Comment 2: Drywell Owners – UIC Drywell Regulation

How will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled in the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

ADEQ Response 2:

ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically [R18-9-C301](#), C303 & C304).

In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrative control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells).

ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.

Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking.

Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq.

Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of \$200. Class V wells, authorized by rule, will also be charged \$100 upon transfer of the well to a new owner.

Comment 3: Tribal Interest Group

ADEQ has stated that it intends for the UIC Program to be almost entirely funded through collected permit fees. For many years, ADEQ has suffered from deficient state funding. ADEQ should not be pursuing UIC Program primacy without asking for sufficient funding from the Arizona Legislature. This is critical, as sufficient funding and adequate ADEQ workforce expertise must be present for ADEQ to fulfill its obligations under this Program, as well as its obligations to Arizona tribes.

ADEQ Response 3:

ADEQ appreciates the comment. The Arizona UIC program is proposed to operate on a fee-for-service model that derives funding from diverse sources of revenue, which includes fixed annual fees, well installation fees, an hourly fee for application and technical review, and an annual work grant from EPA. The Annual Fees (listed in the UIC Licensing Time Frame proposed rules at Tables 3.1 and 3.2, R18-14-104) and the UIC Flat Fees (listed in proposed rule R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program.

Projected revenue will be augmented by an increase in the hourly rate for a UIC water quality protection service associated with a UIC permit, which has been set at \$145 an hour in proposed rule R18-14-102(B).

Furthermore, ADEQ has proposed in the Fee rulemaking the periodic review of the revenues collected from the UIC program every three years (see proposed rule R18-14-115). The reviews will ensure that enough revenue is being collected to properly administer the program. The reviews will also ensure that the fees are equitable and not overly burdensome to the stakeholders.

END of

Public Participation Appendices