

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

MEMORANDUM OF AGREEMENT

BETWEEN

THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9



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

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

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

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

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Signature

Signature

Printed Name

Printed Name

**Director
Title**

**Regional Administrator
Title**

Date

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

1 **I. GENERAL**

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a. Review and Modifications

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

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

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

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

21 **c. Responsibilities of Parties**

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

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

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

36 **d. Sharing of Information**

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

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

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

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

53 **e. Duty to Revise Program**

54 Within 270 days of an amendment to a relevant regulation promulgated at 40 C.F.R. Parts 124,
55 144, 145 or 146 revising or adding requirements with respect to state UIC programs, ADEQ shall
56 submit a modified Program Description, Attorney General's statement, Memorandum of
57 Agreement, or such other documents as EPA determines to be necessary under the circumstances
58 to demonstrate that the State Program meets the revised or added requirement, as required by 40
59 C.F.R. § 145.32(e).

60 **f. Definition and Exemptions of USDW**

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

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

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

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

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

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

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

95 **g. Duration of Agreement**

96 This Agreement will remain in effect as long as primary enforcement responsibility is vested in
97 ADEQ through program approval, according to the provisions of 40 C.F.R. §§ 145.31, 145.33,
98 145.34.

99 **h. General Provisions**

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

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

106 Nothing in this Agreement shall be construed to restrict EPA's statutory oversight responsibility
107 or limit the authority of the EPA to take action pursuant to Sections 1421, 1422, 1423, 1424,
108 1425, 1431 or other Sections of the SDWA.

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

113 **i. Notices, Correspondence, Reports**

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

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Manager, Groundwater Protection Section
Water Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

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

Enforcement and Compliance Division
Water Section 1, ENF 3-1
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

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

Director, ADEQ
Water Quality Division
Underground Injection Control Program
1110 West Washington Street
Phoenix, AZ 85006

II. PERMITTING

a. General

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

b. Transfer of Responsibility from EPA to ADEQ

i. General

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

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

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

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

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

167 **i. Florence Copper Project UIC Area Permit General**

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

171 **c. Major and Minor Facilities**

172 The definition of “Major Facility” for the purposes of the EPA Regional Administrator and the
173 ADEQ Director’s joint determination includes all UIC wells or UIC well fields except for Class
174 V wells authorized by rule.

175 **d. Class VI Injection Depth Waivers**

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

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

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

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

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

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200 **f. Compliance Schedule and Reports**

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

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204 **g. Environmental Justice**

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

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

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

237 **iii. Enforcing Class VI Regulatory Protections.** The Safe Drinking Water Act
238 UIC program Class VI regulations include strong protections for communities
239 to prevent contamination of underground drinking water sources. These
240 regulatory protections include a variety of measures, including proper site
241 characterization and strict construction, operating, and monitoring
242 requirements to ensure well and formation integrity, proper plugging of wells,
243 and long-term project management and post-injection site care to ensure
244 leakage prevention. ADEQ will properly implement and enforce these
245 requirements to protect communities from potential harms associated with
246 injection wells. ADEQ will make reports of enforcement activities accessible
247 to the public.

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249 **iv. Incorporating Other Mitigation Measures.** ADEQ will proactively work
250 within its legal authority to prevent and/or reduce any adverse impacts to
251 underground sources of drinking water from well construction and operational
252 activities. While the UIC program is designed to protect underground sources
253 of drinking water, ADEQ may consider other mitigation measures in order to
254 ensure Class VI projects do not increase environmental impacts and public
255 health risks in already overburdened communities such as carbon dioxide
256 monitoring, release notification networks and installation of enhanced
257 pollution controls. Additional considerations include the adoption of other
258 measures to offset impacts by improving environmental amenities for the
259 communities identified within the delineated area and providing resources for
260 clean-up of previously degraded public areas, as authorized by state law.

261 262 **III. COMPLIANCE MONITORING**

263 264 **a. General**

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

269 **b. Compliance Schedule**

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

275 **c. Review of Compliance Reports**

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

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

282 **d. Inspection and Surveillance**

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

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

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

300 **e. Information from the Public**

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

304 **f. Authority to Enter**

305 ADEQ shall have the authority to enter any site or premises subject to regulation for purposes of
306 compliance monitoring and evaluation or to review and copy the records of relevant program
307 operations where such records are kept in accordance with A.R.S. §§ 41-1009, 49-104(B)(8), 49-
308 203(B)(1).

309 **g. Admissibility**

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

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315 **a. General**

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

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

328 **b. Enforcement Mechanisms**

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

335 **c. Public Participation**

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

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

347

348 **d. EPA Enforcement**

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

354 **e. Assessment of Fines**

355 The State shall assess civil penalties in amounts appropriate to the violation and calculated
356 economic benefit of non-compliance as required by A.R.S. § 49-262.
357

358 **V. EPA OVERSIGHT**

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360 **a. General**

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

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

369 **b. Immediate Reporting on Noncompliance**

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

373 **c. Program Reporting**

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

377 **d. Inspection and Surveillance by EPA**

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

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

387 **e. Annual Performance Evaluation**

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

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