NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 9

Section I. General

This Memorandum of Agreement (hereinafter, AGREEMENT) establishes policies, responsibilities and procedures pursuant to 40 CFR 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Arizona Department of Environmental Quality (hereinafter, the DEPARTMENT) and reviewed by Region 9 of the United States Environmental Protection Agency (hereinafter, EPA).

The DEPARTMENT and EPA hereby agree that this AGREEMENT does not address permits or portions of permits issued by the DEPARTMENT pursuant to Arizona Revised Statutes which do not apply to discharges of pollutants to navigable waters as such waters are defined in Section 502(7) of the Clean Water Act (CWA) and are otherwise outside of the scope of authorization set forth in Section II.

The DEPARTMENT and EPA hereby agree to maintain a high level of cooperation and coordination between DEPARTMENT and EPA staffs in a partnership to assure successful and effective administration of a NPDES program. In this partnership, EPA will provide to the DEPARTMENT, on a continuing basis, technical and other assistance on permit matters as requested.

The DEPARTMENT will administer a NPDES program in accordance with Sections 402 and 405 of the CWA and the applicable federal regulations promulgated thereunder, this AGREEMENT, applicable state legal authority, and any other agreements entered into between the DEPARTMENT and EPA. This includes the "annual State Program Plan" consisting of the annual Performance Partnership Agreement ("annual workplan") and annual Memorandum of Understanding on Compliance and Enforcement Process and Communication contained therein. EPA guidance, circulars, pretreatment bulletins and enforcement letters regarding the NPDES program have no force of law in the AZPDES program, but those EPA documents may be employed by the DEPARTMENT and regulated entities in negotiating permit conditions and interpretations of program requirements. The DEPARTMENT has the primary responsibility to establish the State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this AGREEMENT, may be set forth in more detail in the annual State Program Plan. This AGREEMENT and the annual State Program Plan regarding the NPDES program shall be consistent. However, the basic requirements of this AGREEMENT shall override any other agreement(s) entered into between the State of Arizona and EPA, as required by 40 CFR 123.24(c).

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Either the DEPARTMENT or EPA may initiate action to modify this AGREEMENT at any time. Any proposed revisions must be put in writing, and signed by the DEPARTMENT and EPA.

Section II. Scope of Authorization

The DEPARTMENT and EPA acknowledge that the DEPARTMENT has requested that EPA grant it authority to administer the NPDES permitting, compliance, and enforcement program for individual and general permits as well as for the sewage sludge program and pretreatment program in Arizona. The DEPARTMENT seeks such authority to administer the NPDES program over all regulated facilities within Arizona, including federal facilities. However, the DEPARTMENT is not seeking authorization to administer the NPDES program in Indian Country, as defined in 18 U.S.C. § 1151. Where there is not an approved tribal program, EPA remains responsible, consistent with its trust responsibility, for implementing and enforcing the NPDES program in Indian Country.

Section III. Program Responsibilities

The DEPARTMENT program equivalent to NPDES, under Sections 402 and 405 of the CWA, and the regulations promulgated thereunder is the Arizona Pollutant Discharge Elimination System (AZPDES) adopted under Title 49, Chapter 2, Article 3.1 and Chapter 4, Article 4 of the Arizona Revised Statutes (A.R.S.) and implemented by Title 18, Chapter 9, Articles 9 and 10 of the Arizona Administrative Code (A.A.C.).

A. DEPARTMENT Responsibilities. In accordance with the priorities and procedures established in this AGREEMENT and the annual State Program Plan, the DEPARTMENT will:

1. Develop and maintain, to the maximum extent possible, the legal authority and the resources required to carry out all aspects of the AZPDES program.
2. Process applications in accordance with the Arizona Licensing Time-frames statute (A.R.S. Title 41, Chapter 6, Article 7.1) to issue, reissue, modify, deny, suspend or revoke all AZPDES permits. Permit applications by major dischargers will normally receive first priority in all NPDES activities; however, priorities may be revised based upon other considerations, including risk-based analyses concerning water quality and public health considerations.
3. Comprehensively evaluate and assess compliance with schedules, effluent limitations and other conditions in these permits as outlined in Section V of this AGREEMENT.
4. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with A.R.S. and the CWA.
5. Maintain an effective program to carry out the pretreatment responsibilities and sewage sludge management responsibilities outlined in Section VI and VII of this AGREEMENT.
6. Maintain an adequate public file at the central office that must be easily accessible to EPA for program evaluation for each permittee. Such files must include, at a minimum, copies of:
   - Permit Application
   - Public Notice and either Fact Sheet or Statement of Basis
   - Draft Permit
   - Public Comments

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Response to Comments
Final Permit or Final Order of Denial
Discharge Monitoring Reports
Annual Reports
All inspection reports
All enforcement actions
Other pertinent information and correspondence.

7. Input the Water Enforcement National Database (WENDB) data elements for individual AZPDES permits into the EPA national Permit Compliance System (PCS) within a month of receipt of the monitoring data, issuance of permit action, inspection of the facility or initiation of enforcement action.
8. Submit to EPA the information described in Section VIII of this AGREEMENT, the annual State Program Plan and applicable portions of 40 CFR 123. Additionally, upon request by the EPA Region 9 Water Division Director, the DEPARTMENT shall submit specific information and allow access to files necessary for evaluating the DEPARTMENT's administration of the AZPDES program.
9. Make available to EPA any information obtained or used by the DEPARTMENT under the AZPDES program upon request without restriction due to claims of confidentiality. If the information has been submitted to the DEPARTMENT under a claim of confidentiality, the DEPARTMENT shall inform EPA of that claim, and EPA shall treat such claims of confidentiality in accordance with 40 CFR 2, Subpart B; and 40 CFR 122.7.
10. Cooperate with EPA in the administration of the AZPDES program.

B. EPA's Responsibilities.

1. EPA commits to funding the DEPARTMENT to the maximum extent possible, as allowed by law and within existing budget requirements and priorities, to support AZPDES program activities.
2. EPA will provide technical support and assistance to the DEPARTMENT, including but not limited to the following areas:
   a. Interpretation of effluent limitations guidelines ("ELG") regulations.
   b. Development of technology-based effluent requirements and related "best management practices," which include the use of "best professional judgment."
   c. General technical assistance in program implementation.
3. EPA will ensure that the DEPARTMENT is kept fully informed and up to date, to the extent allowed by law, concerning:
   a. EPA contractor reports; draft and final EPA development documents; and draft, proposed and final ELG regulations for various industry categories.
   b. Draft and final settlement agreements between litigants and EPA which concern the interpretation or modification of ELG regulations for various industry categories that may affect the AZPDES program or water quality interests of the State.
   c. Draft, proposed, and final versions of EPA regulations, technical guidances, policy and procedures which pertain to implementation of the NPDES program and the water quality standards and planning program.
4. EPA will provide the DEPARTMENT with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the DEPARTMENT

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informed of development of NPDES program policy statements, strategies, and related guidance, and provide for input by the DEPARTMENT when appropriate.

5. As outlined in Section IX of this AGREEMENT, EPA will oversee the DEPARTMENT's administration of AZPDES on a continuous basis for consistency with the CWA, this AGREEMENT, the annual state program plan, and all applicable regulations promulgated pursuant to the CWA, State laws or rules. EPA will, as a part of its assessment, consider among other things, review of permits, reports, and enforcement actions submitted by the DEPARTMENT and may also consider comments from permittees, the public, federal agencies, and local agencies concerning the DEPARTMENT's administration of the AZPDES program. Any such comments considered by EPA will be brought to the attention of the DEPARTMENT by written correspondence if the commenting party has not previously communicated this comment to the DEPARTMENT. Any information obtained or used by the DEPARTMENT under the AZPDES program shall be made available to EPA upon request without restriction. If the information has been submitted to the DEPARTMENT under a claim of confidentiality, the DEPARTMENT shall inform EPA of that claim and EPA shall treat such claims of confidentiality in accordance with 40 CFR 2, Subpart B and 40 CFR 122.7.
6. EPA will provide training in compliance inspections and permit writing, on an as needed basis, contingent upon available EPA resources.

C. Jurisdiction over Permits.

Upon EPA's approval of the AZPDES program, the DEPARTMENT will immediately assume authority (subject to EPA's oversight and enforcement authority pursuant to Sections 402(d) and (i) of the CWA) for permitting, compliance and enforcement activities of the AZPDES program including the pretreatment and sludge programs.

1. Upon program approval, EPA shall suspend, except as provided in paragraph C.4., below, the issuance of NPDES permits for those activities subject to the approved State program. After program approval, except as provided in paragraphs C.2. and C.3. below, the DEPARTMENT will convert any NPDES permit issued by EPA to an AZPDES permit according to the process specified R18-9-A902(A). The DEPARTMENT shall conduct inspections and receive and review discharge monitoring reports for all permits pursuant to the annual State Program Plan. After program approval , the DEPARTMENT may initiate and pursue enforcement action to address violations of AZPDES permit requirements, subject to EPA's oversight and enforcement authority pursuant to Sections 402(d) and (i) of the CWA.
2. For active Federal enforcement cases (administrative orders or formal referrals to Department of Justice) at the time of program authorization, EPA will complete the enforcement action unless otherwise agreed to by the parties of this AGREEMENT. However, the DEPARTMENT will assume permitting, compliance, and pretreatment responsibilities and take the lead on future enforcement actions when NPDES permits are converted to AZPDES permits, subject to EPA's oversight and enforcement authority pursuant to Sections 402(d) and (i) of the CWA. As each EPA enforcement action is resolved, EPA will notify the DEPARTMENT and transfer any additional permit file materials at the time. EPA will make every effort to resolve these matters in a timely manner. Resolution of an enforcement action can be accomplished by the permittee complying with the requirements of a compliance order,

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consent agreement or court order resulting from EPA enforcement action, withdrawal of the action by EPA, a court decision dismissing the action (in whole or in part) or, if agreed to by EPA, the imposition of an equivalent enforceable compliance schedule by the DEPARTMENT.

3. If the permittee requests, EPA may continue to process a NPDES permit application that is pending with EPA at the time of AZPDES program approval. The DEPARTMENT will be responsible for final issuance for all permits after the program approval date. For permits for which an evidentiary hearing has been requested or an appeal taken at the time of program authorization, EPA will retain full jurisdiction until that matter has been resolved. Upon resolution of the administrative challenge the DEPARTMENT will convert the NPDES permit to an AZPDES permit as specified in State rule. EPA will make every effort to resolve these issues in a timely manner and if requested by either EPA or the DEPARTMENT, meetings will be scheduled to discuss issues pertaining to NPDES permits retained by EPA. The DEPARTMENT shall retain its rights under Section 401 of the CWA to consider certification to subsequent EPA permitting actions on these retained NPDES permits. A list of permits that may be on public notice at the time of program approval appears in Attachment A to this AGREEMENT. EPA will provide a final list to the DEPARTMENT of NPDES permits on public notice at the time of program approval.
4. If an EPA objection over a proposed AZPDES permit is not resolved, EPA will assume permitting, compliance, and enforcement authority for that facility, pursuant to federal law.

Section IV. Permit Review and Issuance

The DEPARTMENT is responsible for drafting, providing public notice, issuing, authorizing, denying, modifying, reissuing, suspending and revoking AZPDES permits in accordance with Sections III, IV, and IX of this AGREEMENT, the CWA, and applicable State statutes and rules.

For the purposes of this section, "draft permit" means a document prepared by the DEPARTMENT indicating the DEPARTMENT's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit and "proposed permit" means an AZPDES permit prepared after the close of the public comment period and, when applicable, any public hearing and administrative appeal, which is sent to EPA for review before final issuance by the DEPARTMENT.

A. Receipt of New Permit Applications by the DEPARTMENT. Within thirty (30) working days after receipt of a complete permit application, the DEPARTMENT will enter all required information into PCS.

B. Permit Reissuance. All expiring AZPDES permits for which timely and complete permit renewal requests have been submitted shall be reissued on or before their date of expiration. If such timely reissuance is not possible, the DEPARTMENT will notify EPA of the reasons for the delay. If a permittee submits a timely and complete application, the permit shall be administratively continued beyond its expiration date in accordance with State law, but in no event will the permit be modified or revised.

C. EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and

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Reissuances. The DEPARTMENT may consult with EPA before issuing public notice of a draft permit to ensure that the permit will comply with applicable federal guidelines and requirements. The DEPARTMENT shall transmit to EPA appropriate portions of working documents in connection with these consultations.

1. Unless otherwise waived pursuant to Section IV.D. of this AGREEMENT, EPA will review draft AZPDES permits, permit modifications, revocations and reissuances rather than proposed permits. A proposed permit need not be prepared by the DEPARTMENT and transmitted to EPA for review unless the DEPARTMENT proposes to issue a permit which differs from the draft permit reviewed by EPA, EPA has objected to the draft permit, or there is significant public comment.
2. Unless otherwise waived pursuant to Section IV.D. of this AGREEMENT, EPA will review all draft AZPDES permits, permit modifications, revocations and reissuances. When the draft permit is sent to the applicant, the DEPARTMENT will send EPA one copy of the public notice, the draft permit, the fact sheet or the statement of basis associated with the draft permit. Upon request by EPA, the DEPARTMENT will provide EPA with copies of documents related to or supporting the draft permit. If the permit is for a possible new source under section 306 of the CWA, the DEPARTMENT will submit a new source/new discharger determination to EPA, as necessary. The DEPARTMENT shall supply EPA with copies of these documents for permits EPA has waived review whenever requested by EPA.
3. Within thirty (30) days of EPA's receipt of the draft permit, EPA may make to the DEPARTMENT, in writing, general comments upon, objections to, or recommendations with respect to the draft permit. Within this review time, EPA shall notify the DEPARTMENT of any objections to the issuance of the draft permit, and shall set forth in writing the general nature of the objection. EPA shall also send a copy of any comments, objections, recommendations to the permit applicant. If EPA does not object to the draft permit within 30 days of receipt and no significant public comment on the permit is received, the DEPARTMENT may proceed to issue the permit.
4. In the case of general permits, EPA shall have ninety (90) days from the date of receipt of the draft general permit to comment upon, object to or make recommendations with respect to the draft general permit.
5. In the event EPA files a general objection to a draft permit, EPA shall have ninety (90) days from the date of EPA's receipt of the draft permit to supply the DEPARTMENT, in writing, with the specific grounds for objection, including:
    a. A statement of the reason for the objection (including the section of the CWA or regulations that support the objection). EPA's objection to the issuance of a draft permit must be based upon one or more of the grounds listed in 40 CFR 123.44(c); and
    b. The actions that must be taken by the DEPARTMENT to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by EPA).
6. Prior to notifying the DEPARTMENT of an objection based upon any of the grounds set forth in 40 CFR 123.44(c), EPA:
    a. Shall consider all data transmitted pursuant to 40 CFR 123.43;
    b. May, if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, request the DEPARTMENT to transmit to EPA the complete record of the permit proceedings before the DEPARTMENT, or any portions of the record that EPA determines are necessary for

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review. If this request is made within thirty (30) days of receipt of the DEPARTMENT's submittal under 40 CFR 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in paragraph C.5. of this Section for EPA's review shall recommence when EPA has received such record or portions of the record; and

c. May, at its discretion, and to the extent feasible within the period of time available under paragraph C.5. of this Section afford to interested persons an opportunity to comment on the basis for the objection.

7. In the event EPA does not provide written notification of the objection to the DEPARTMENT, pursuant to paragraph C.5. of this Section, within ninety (90) days of the draft permit having been sent, the DEPARTMENT may proceed to issue the permit, modification, revocation or reissuance.

8. Within ninety (90) days of receipt by the DEPARTMENT of an objection by EPA, the DEPARTMENT or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR 123.44(e) and (f) and 40 CFR 124.10. Following the public hearing, EPA shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the DEPARTMENT of this decision. Exclusive authority to issue the permit passes to EPA for one permit term if its objections are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objection). Following the completion of the permit term authority to issue the permit reverts to the DEPARTMENT.

9. EPA may request to review any applicant's notice of intent to be covered under a general permit. The DEPARTMENT will provide a copy of the notice of intent to EPA within fifteen (15) days of EPA's request. EPA will, within ten (10) days after receipt of the notice of intent, notify the DEPARTMENT of EPA's determination of whether the applicant is eligible for coverage under the general permit. If EPA determines that the applicant does not meet the eligibility criteria of the general permit, the DEPARTMENT and EPA will meet to discuss the basis for EPA's concerns.

10. Following expiration of the period for public comment on a draft permit, a proposed permit will be drafted. The DEPARTMENT may issue the permit without further review by EPA if:
    a. The proposed permit is the same as the draft permit defined in the public notice,
    b. EPA has not objected to such draft permit within thirty (30) days of receipt of a draft individual permit and within ninety (90) days of receipt of a draft general permit, and
    c. Significant public comments have not been made.

    A copy of the final issued permit shall be sent to EPA.

11. If any condition of paragraph C.10. of this Section is not met, then the DEPARTMENT will send one copy of the proposed permit, recommendations of any other affected State or Tribe and copies of written comments and hearing records, including the response to comments prepared under 40 CFR 124.17 to EPA. Whenever the DEPARTMENT prepares a written explanation to an affected State or Tribe explaining the reasons for rejecting any of its recommendations, the DEPARTMENT shall transmit a copy to EPA. EPA will, within thirty (30) days of the date the proposed permit is received by EPA, notify the DEPARTMENT and the permit applicant of any formal objections authorized under the CWA. The notification shall set forth in writing the general nature of the objection.

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D. Waiver of Permit Review by EPA.

1. At this time, EPA waives the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits (to the extent that is necessary to submit to EPA), and final (issued) permits for all discharges or proposed discharges with the exceptions of the categories described below:
   a. Discharges which may affect the waters of another State, Tribe, or nation;
   b. Discharges proposed to be regulated by general permits;
   c. Discharges from publicly owned treatment works ("POTW") with a daily average discharge exceeding one million gallons per day ("MGD");
   d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 MGD;
   e. Discharges from any major discharger;
   f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR 122;
   g. Discharges from any other sources with a daily average discharge exceeding 0.5 MGD, except EPA may waive review of permits for discharges on non-process wastewater regardless of flow;
   h. POTWs required to have a pretreatment program.

   The foregoing does not include waiver of receipt of all final permits issued, or any notices required under Section VIII of this AGREEMENT.
2. With regard to modifications, terminations, or revocations and reissuance of permits, EPA waives the right to review any permit action for which the right to review the original permit was waived (unless the modification would put the permit into one of the categories in paragraph D.1. of this Section) or where a permit action qualifies as a minor modification as defined in State rule.
3. EPA reserves the right to terminate the waivers in paragraphs D.1. and D.2. of this Section (in whole or in part) at any time. Any such termination shall be made in writing to the DEPARTMENT.
4. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of federal laws, regulations, or effluent guidelines, or Arizona Statutes or rules, nor to relinquish the right of EPA to petition the DEPARTMENT for review or any action or inaction because of violation of federal laws, regulations, or effluent guidelines or Arizona Statutes or rules.

E. Public Participation. The public notice provided in the permit process shall be consistent with 40 CFR 124 and State rule.
1. Draft permits, public notices, applications, fact sheets or statements of basis and final permits will be provided to any party upon request and upon payment of applicable state duplicating fees.
2. The DEPARTMENT will prepare and distribute copies of all public notices and fact sheets in accordance with 40 CFR 124.8 and 40 CFR 124.10 and State rule, unless otherwise waived by the specific organization.
3. All draft general permits, major AZPDES permits and pretreatment program approvals shall be public noticed in a daily or weekly newspaper within the area affected by the activity, in

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accordance with 40 CFR 124.10(c)(2)(1).

4. The federally required public notice and comment procedures will be followed with respect to all permit modifications, except those minor modifications described in 40 CFR 122.63 and in State rule. In the event the DEPARTMENT initiates a permit modification for the reasons set forth in 40 CFR 122.63 or analogous State rule, the DEPARTMENT will send the final minor modification to EPA, the applicant and all persons who received notice of the permit issuance. In other cases, public notice will be given of the permit modification application in the same manner as for initial permit applications.
5. Notifications of final permits determinations will be sent to persons requesting notification or commenting upon draft permits.

F. Issuance of Permits or Notice of Intent to Deny.

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in Section VIII of this AGREEMENT.
2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA, and to the applicant in accordance with applicable AZPDES Rules.

G. Termination, Modification, Revocation and Reissuance of permits. Except as waived pursuant to Section IV.D. above, the DEPARTMENT shall notify EPA whenever it intends to terminate an issued AZPDES permit. In addition, the DEPARTMENT shall transmit to EPA a copy of any permit that it proposes to modify or revoke or reissue with the proposed changes clearly identified. The procedures in Section IV.C. above shall be followed with respect to modifications by the DEPARTMENT of any issued permit and, for purposes of this AGREEMENT, each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR 122.63.

H. Major Discharger List. There shall be included as a part of the annual State Program Plan a "major dischargers" list, for industrial and municipal facilities. The industrial major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that, in the opinion of the DEPARTMENT or EPA, have a high potential for violation of water quality standards. The municipal major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a design domestic treatment plant flow of at least 1.0 MGD, a high potential for violation of water quality standards or a potential a threat to human health or the environment. Any other discharger is a minor discharger.

I. Administrative or Court Action. If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by administrative or court action, the DEPARTMENT shall immediately transmit a copy of the permit, with changes identified to EPA and shall allow for EPA to make written objections to the changed permit in accordance with Section IV.C. above. For purposes of this paragraph only, "changed permit" shall replace "draft permit" in Section IV.C.

J. Variances. The DEPARTMENT will conduct an initial review of all requests for fundamentally

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different factors variances; for variances under Sections 301(c), (g), (h) and (k) and Section 316(a) of the CWA; and for modifications to federal effluent limitations established under Section 302 of the CWA submitted on or after the date of authorization of the AZPDES program by EPA. The DEPARTMENT may conduct an initial review of any variance or modification request submitted to EPA before the date of program authorization.

1. The DEPARTMENT may deny or approve a request for a variance under Sections 301(k) or 316(a) of the CWA after EPA has concurred with the proposed decision.
2. The DEPARTMENT may deny a request for a variance under Sections 301(c), (g), or (h), or Section 302 of the CWA, or for fundamentally different factors. Such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit factoring in the variance.

K. Evidentiary Hearings

1. EPA will retain responsibility over permit appeals which are pending on the date of AZPDES program approval. In the event such permit appeals remain unresolved at the time the federally-issued permit expires, the DEPARTMENT will assume jurisdiction over the appeal unless the DEPARTMENT agrees that a particular matter should first be resolved by EPA.
2. The DEPARTMENT will provide EPA with a copy of all settlements and administrative decisions which impact the DEPARTMENT's ability to implement the AZPDES program in accordance with federal requirements.

Section V. Compliance and Enforcement

The DEPARTMENT agrees to maintain a vigorous enforcement program, including a compliance assessment of dischargers, and to initiate timely and appropriate enforcement actions where such action is warranted. This enforcement program shall include activities from all facilities covered by the AZPDES program, including facilities authorized to discharge by either an individual or general permit, unpermitted discharges, indirect dischargers to a POTW, and sludge management facilities (treatment works treating domestic sewage and other sludge use and disposal practices). Discharges which endanger public health shall receive immediate and paramount attention.

For situations where a permittee is operating under a NPDES permit issued by EPA and one or more industrial contributor is regulated by an AZPDES permit, the DEPARTMENT and EPA will coordinate with respect to enforcement actions.

A. Compliance Monitoring. The DEPARTMENT shall operate a timely and effective compliance monitoring program including an automatic data processing ("ADP") and/or manual tracking system for the purpose of determining compliance with permit conditions, and pretreatment or sludge management requirements (when applicable). For purposes of this AGREEMENT, the term "compliance monitoring" includes all activities taken by the DEPARTMENT to assure full compliance with AZPDES program requirements. The DEPARTMENT's monitoring program shall consist of two main activities.

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1. Compliance Review. The DEPARTMENT shall conduct timely and substantive review and keep complete records of all written material relating to the compliance status of NPDES and AZPDES permittees, pretreatment control authorities and sludge management facilities, including compliance schedule reports, discharge monitoring reports, compliance inspection reports, and any other reports that permittees may be required to submit under the terms and conditions of a NPDES or an AZPDES permit, approved pretreatment or sludge management program (when applicable), or administrative or court order.

   The DEPARTMENT shall operate a program to determine if:
   a. The self-monitoring reports required by permit and/or pretreatment or sludge management requirements are submitted in a timely manner;
   b. The submitted reports are complete and accurate; and
   c. The permit conditions and/or pretreatment or sludge management requirements (when applicable) are met.

   The DEPARTMENT and EPA shall have periodic enforcement conferences, either in person or by telephone, to discuss issues regarding initiating enforcement actions.

   The DEPARTMENT shall initiate appropriate enforcement actions whenever required performance is not achieved or when required reports are not received. When the reports are not received or when the reports indicate that the discharger is in violation, the DEPARTMENT shall initiate enforcement action within forty-five (45) days of the due date or the date of receiving the report or make a decision to exercise enforcement discretion not to take any action at that time. In the case of violations by a major discharger, the DEPARTMENT shall initiate an appropriate enforcement action within sixty (60) days of the date a report documenting such violation was received or should have been received by the DEPARTMENT or make a decision to exercise enforcement discretion not to take any action at that time. Priorities for reviewing these reports and for initiating enforcement actions shall be specified in procedures developed by the DEPARTMENT.

2. Compliance Inspections. The DEPARTMENT shall conduct field activities to determine the status of compliance with permit, pretreatment, and sludge management requirements including sampling and nonsampling inspections. Inspection procedures will be in accordance with EPA's NPDES Compliance Inspection Manual, 1994, or subsequent revisions, and will comply with 40 CFR Part 123.26(d). For purposes of this AGREEMENT, the term compliance inspections includes evaluation inspections, performance audits, sampling inspections, biomonitoring inspections, and multi-media inspections that include NPDES and/or pretreatment or sludge management components. For purposes of sludge management facilities, compliance inspections may include sludge and groundwater sampling, as appropriate.

   In the annual program workplan, the DEPARTMENT and EPA will develop targets for the number of compliance inspections to be performed by the DEPARTMENT. The DEPARTMENT shall conduct inspections of minor permittees at least once every five years. The DEPARTMENT shall conduct compliance inspections of all of the major permittees on

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at least an annual basis. The targets may be modified with the concurrence of both DEPARTMENT and EPA. The DEPARTMENT shall also furnish an estimate of the number of other compliance inspections to be performed during the year. The DEPARTMENT will give EPA adequate notice and opportunity to participate in its inspection activities.

EPA or the DEPARTMENT may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, EPA will notify the DEPARTMENT and request the DEPARTMENT to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee, industrial user, or sludge management facility at any time, but will notify the DEPARTMENT to give it an opportunity to participate and will otherwise keep the DEPARTMENT informed of its plans and results.

The DEPARTMENT shall also be responsible for entering all inspection data into the PCS and preparing a list of all noncomplying major permittees in accordance with the regulations at 40 CFR 123.45.

Reports on compliance inspections for major permittees shall be available for review by the DEPARTMENT or the Regional Administrator, as appropriate, within thirty (30) days of the date of the inspection. The DEPARTMENT shall thoroughly review each report to determine what, if any, enforcement action shall be initiated. When the results of the inspection(s) indicate that the discharger is in violation, the DEPARTMENT shall initiate enforcement action within forty-five (45) days of the date of the inspection(s) or make a decision in writing to exercise enforcement discretion not to take any action at that time. Priorities for review of these inspection reports and for initiating enforcement actions shall be specified in procedures developed by the DEPARTMENT.

3. Citizen Complaint Review and Follow-up. The DEPARTMENT shall maintain an administration system to track and evaluate all AZPDES related complaints received from the public. Public complaints received by EPA shall be referred to the DEPARTMENT as soon as reasonably possible. The DEPARTMENT shall maintain either a physical or an electronic record of the initial contact, assignment, investigation and final disposition of AZPDES related complaints received from the public. This record shall be made available to EPA and the public pursuant to applicable state and federal law.

B. Enforcement Action Against Violators. The DEPARTMENT is responsible for taking timely and appropriate enforcement action against all persons in violation of compliance schedules, effluent limitations, reporting requirements, other permit conditions, discharges without a permit, sludge management requirements, and other AZPDES program requirements. The DEPARTMENT is responsible for taking timely and appropriate enforcement action against industrial users in violation of pretreatment requirements, except in situations where a POTW with an approved pretreatment program has taken timely and appropriate enforcement action against the industrial user. This includes violations detected by DEPARTMENT employees or assignees, as well as through other information provided to the DEPARTMENT.

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The DEPARTMENT shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about alleged violations.

If EPA determines that the DEPARTMENT has not initiated a timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement actions available under section 309 of the CWA after notice to and consultation with the DEPARTMENT. Prior to proceeding with an enforcement action, EPA intends to give the DEPARTMENT 30 days to initiate a timely and appropriate enforcement action against a violator. This notification may be made either by telephone or through written communication. Notwithstanding the above, nothing shall be construed as limiting EPA's authority under sections 309 and 504 of the CWA.

In pursuit of enforcement actions against federal facilities, the DEPARTMENT may request EPA to participate in conferences and/or discussions leading to formal filing of an enforcement action by the DEPARTMENT against the federal facility.

The DEPARTMENT understands, supports and agrees to employ the spirit of the EPA CWA Penalty Policy as established in the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995). EPA will supply the DEPARTMENT with a copy of this policy and any subsequent additions or revisions thereto.

The DEPARTMENT shall immediately notify the Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to the health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the United States.

Section VI. Pretreatment

A. General. This section is intended to define the DEPARTMENT and EPA responsibilities for the establishment, implementation,, and enforcement of the national pretreatment program pursuant to Sections 307 and 402(b) of the CWA.

1. After program approval, in lieu of EPA, the DEPARTMENT will serve as:
   a. The "control authority" for those industrial users who introduce pollutants into POTWs without approved pretreatment programs, and
   b. The "approval authority" for POTWs that are required to have a pretreatment program.

2. The DEPARTMENT has primary responsibility for:
   a. Enforcement against discharges prohibited by 40 CFR 403.5;
   b. Application and enforcement of national categorical pretreatment standards established by EPA in accordance with Sections 307(b) and (c) of the CWA, local POTW limitations including implementation of the national pretreatment program for industrial users that discharge to POTWs that do not have a pretreatment program that has been reviewed and approved as provided in paragraph A.2.c. below;
   c. Review, approval or denial of POTW pretreatment programs in accordance with the

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procedures discussed in 40 CFR 403.8, 40 CFR 403.9, and 40 CFR 403.11;

d. Requiring a pretreatment program in NPDES or AZPDES permits issued to POTWs as required in 40 CFR 403.8, and as provided in Section 402(b)(8) of the CWA;
e. Requiring POTWs to develop and enforce local limits, as necessary, as set forth in 40 CFR 403.5(c);
f. Review and, as appropriate, approval of POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with 40 CFR 403.7, 40 CFR 403.9, and 40 CFR 403.11 and enforcing related conditions in the POTW's NPDES or AZPDES permit;
g. Overseeing POTW pretreatment programs to insure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES or AZPDES permit;
h. Requiring industrial reports as outlined in 40 CFR 403.12; and
i. Review and approval of program modifications as specified in 40 CFR 403.18.

The DEPARTMENT will apply and enforce all other applicable pretreatment regulations as required by 40 CFR 403. EPA will oversee DEPARTMENT pretreatment program operations consistent with 40 CFR 403 regulations and this AGREEMENT.

The DEPARTMENT shall perform inspections, audits, surveillance and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW NPDES or AZPDES permit; and carry out inspection, surveillance, and monitoring activities which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with national pretreatment standards. Upon request, the DEPARTMENT will provide to EPA copies of all notices received from POTWs that relate to a new or changed introduction, of pollutants into the POTW.

B. Requests for Categorical Determination. The DEPARTMENT shall review requests for determinations, of whether the industrial user does or does not fall within a particular industrial category or subcategory. The DEPARTMENT will make a written determination for each request stating the reasons for the determination. The DEPARTMENT shall then forward its findings, together with a copy of the request and any necessary supporting information, to the EPA Region 9 Water Division Director for concurrence. The EPA Region 9 Water Division Director may waive receipt of these determinations as specified in 40 CFR 403.6(a)(4)(ii). If the EPA Region 9 Water Division Director does not modify the DEPARTMENT decision within sixty (60) days after receipt thereof, the DEPARTMENT findings are final. EPA will send a copy of any final determination or concurrence to the requester and the DEPARTMENT.

C. Removal Credits and POTW Pretreatment Program Approvals. The DEPARTMENT shall review and approve POTW applications for POTW pretreatment program authority and POTW applications to revise discharge limits for industrial users who are, or may in the future be, subject to categorical pretreatment standards. The DEPARTMENT shall submit its findings together with the application and supporting information to the EPA Region 9 Water Division Director for review. The DEPARTMENT shall not approve any POTW pretreatment program or request for revised discharge limits if EPA objects in writing to the approval of such submission in accordance with 40 CFR 403.11(d).

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D. Variances from Categorical Standards for Fundamentally Different Factors (FDF) and Compliance Deadline Extensions for Innovative Pretreatment Systems. The DEPARTMENT shall conduct an initial review of all requests for fundamentally different factors (FDF) variance requests and compliance deadline extension requests under Section 307(e) of the CWA submitted on or after the date of authorization of the AZPDES program by EPA. The DEPARTMENT may conduct an initial review of any variance or compliance deadline extension request submitted to EPA before the date of program authorization.

1. With regard to compliance deadline extension requests, the DEPARTMENT may deny or approve the compliance deadline extension request, if EPA has determined the innovative system has the potential for industry-wide application, subject to consultation with EPA.
2. With regard to FDF variance requests, the DEPARTMENT may determine to deny the request, and such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors do exist that may warrant such a variance or modification, the request and recommendation for approval shall be sent to the EPA Region 9 Water Division Director for a final determination. The DEPARTMENT may deny, but not approve and implement the FDF variance request until written approval has been received from the EPA Region 9 Water Division Director. If the EPA Region 9 Water Division Director finds that the criteria for an FDF variance exist, a variance reflecting this determination may be granted and provided to the requester and DEPARTMENT. If the EPA Region 9 Water Division Director finds that the criteria for an FDF variance do not exist, the variance request shall be denied, the EPA Region 9 Water Division Director shall notify the requester and DEPARTMENT; the EPA Region 9 Water Division Director shall not approve a request without the concurrence of DEPARTMENT. If EPA approves an FDF variance request, the DEPARTMENT will implement the decision.

E. Other Pretreatment Program Provisions. EPA will submit to the DEPARTMENT a list of POTWs which are required to develop their own pretreatment program or are under investigation by the EPA for the possible need of a local pretreatment program. After program approval, the DEPARTMENT will maintain and update the list and notify EPA of any modifications. The DEPARTMENT will document its reasons for all deletions from this list. Before deleting any POTW with a design flow greater than 5 MGD, the DEPARTMENT will obtain an industrial survey from the POTW and determine (1) that the POTW is not experiencing pass through or interference problems and (2) there are no industrial users of the POTW that are subject either to categorical standards or specific limits developed pursuant to 40 CFR 403.5(c). The DEPARTMENT will document all such determinations and provide copies to EPA. For deletions of POTWs with flows less than 5 MGD, the DEPARTMENT will first determine (with appropriate documentation) that the POTW is not experiencing treatment process upsets, violations of POTW NPDES or AZPDES effluent limitations, or contamination of municipal sludge due to industrial users. The DEPARTMENT will also maintain documentation on the total design flow and the nature and amount of industrial wastes received by the POTW.

The DEPARTMENT and EPA will communicate, through the Section 106 or other appropriate State planning process, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. This process will contain, at a minimum:

1. A list of AZPDES permits to be issued by the DEPARTMENT to POTWs and industrial

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user control mechanism subject to pretreatment requirements and

2. A list of POTWs and industrial users to be audited or inspected.

F. Other Provisions. Nothing in this AGREEMENT is intended to affect any pretreatment requirement, including any standards or prohibitions established under Arizona or local law, as long as the state or local requirements are not less stringent than any set forth in the national pretreatment program, or other applicable requirements or prohibitions established under the CWA or federal regulations.

Section VII. Sewage Sludge/Biosolids Management Program

The DEPARTMENT will ensure the treatment, transportation, disposal, application and management of sewage sludge is in accordance with applicable State statutes or rules, consistent with Section 405 of the CWA. The sludge management program will be carried out in accordance with applicable state and federal statutes, regulations, rules and this AGREEMENT.

The DEPARTMENT will incorporate sewage sludge conditions in AZPDES permits; register land application of biosolids; review and approve solid waste facility plans for municipal solid waste landfills (in accordance with A.R.S. §§ 49-761, 762, and 762.02); and, where necessary, issue sludge-only permits. In permitting cases, the DEPARTMENT will provide for public notice of permits and will modify, renew/reissue, and revoke these authorizations, as necessary.

The DEPARTMENT will monitor compliance with requirements under State rules (consistent with 40 CFR 503) and sewage sludge permit conditions in AZPDES permits. The sludge management program will develop and implement procedures for taking appropriate enforcement actions to ensure resolution of compliance issues.

A. EPA Review of Draft And Proposed Permits.

1. EPA waives its review of draft or proposed sludge-only permits for all classes and categories of permit applications, except for a draft permit for a Class I sludge management facility. The categories of AZPDES permits subject to EPA review or objection of sewage sludge permits will follow the same procedures as described in Section IV.D. of this AGREEMENT.
2. Definition of Class I Sludge Management Facilities. Class I sludge management facilities shall be considered as:
   a. A POTW or combination of POTWs operated by the same authority with a design flow greater than 5.0 MGD and receiving from industrial users pollutants which pass through or interfere with the operation of the treatment plant required to have an approved pretreatment program or are otherwise subject to pretreatment standards; and
   b. Any other treatment works treating domestic sewage classified as a Class I Sludge Management Facility by Regional Administrator in conjunction with the DEPARTMENT because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.

B. Enforcement and Compliance Monitoring of the Sewage Sludge Program. The enforcement procedures, compliance monitoring activities, and inspection sections, and all agreements contained

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therein, within this MOA shall also apply to sludge use and disposal practices.

C. Sludge Violation Report. Annually, the DEPARTMENT will submit a sludge violation report containing information on incidents of noncompliance occurring within the previous year by Class I sludge management facilities.

Section VIII. Reporting and Transmittal of Information on AZPDES Regulated Facilities

Whenever either the DEPARTMENT or EPA requests information concerning a specific discharger and the requested information is available in the files of the DEPARTMENT and/or EPA, that information will be provided to the other party within a reasonable time. The DEPARTMENT and EPA shall handle information with claims of confidentiality as provided in Sections III.A.8. and III.B.6. of this AGREEMENT, respectively.

A. DEPARTMENT to EPA

1.	A copy of all permit applications, except those for which EPA has waived review.	Within five (5) days of receipt
2.	Copies of all draft permits and permit modifications, including fact sheets or statements of basis, except those draft permits for which EPA has waived review.	When placed on public notice.
3.	Copies of all public notices except those for which EPA has waived review.	As issued.
4.	Copies of all issued and modified NPDES permits, and proposed permits (if required by Section IV.C.3.) of this AGREEMENT).	As issued.
5.	Copies of all permit applications and public notices for which EPA has waived review.	Upon request.
6.	A listing of issued, expired, and pending permits, including NPDES permit number, permittee's name, facility location, date signed, effective date, and expiration date.	Quarterly by the 10th working day after the completion of the quarter.
7.	Copies of any applicant's NOI to be covered by a general permit.	Upon request.
8.	A copy of settlements and decisions in permit appeals.	As issued
9.	A list of major facilities scheduled for compliance inspections.	With submission of annual program plan.
10.	Proposed revisions to the schedule of compliance inspections.	As needed.
11.	A list of compliance inspections performed during the previous quarter.	Quarterly by the 10th working day after the completion of the quarter.
12.	Copies of all compliance inspection reports, report forms, data, and transmittal letters to major permittees.	Within thirty (30) days of completion of inspection.
13.	Copies of all compliance inspection reports, report forms, data, and transmittal letters to other permittees.	Upon request.

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14.	For all major dischargers, a quarterly noncompliance report, as specified in 40 CFR 123.45(a).	Quarterly, as specified in 40 CFR 123.45(c).
15.	For all major dischargers, a semi-annual statistical summary report as specified in 40 CFR 123.45(b).	Semi-annually at the same time, as the first and third quarter QNCRs (federal fiscal year)
16.	For minor dischargers, an annual noncompliance report as specified in 40 CFR 123.45(c).	Within sixty (60) days of the end of the calendar year, as specified in 40 CFR 123.45(c).
17.	Copies of all enforcement actions against violators (including letters, notices of violation, administrative orders, judicial filings and settlements.)	As issued.
18.	Copies of court decisions/actions affecting the permit issuance, compliance and enforcement process.	Within fifteen (15) days of receipt by the DEPARTMENT.
19.	Information of any situation posing a substantial endangerment to the health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the U.S.	Immediately.
20.	Copies of correspondence required to carry out the pretreatment program as specified in section VI of this AGREEMENT.	As issued or received.
21.	Annual sludge violation report as provided in Section VII.C. of the AGREEMENT.	August 15.

B. EPA to DEPARTMENT

1.	Copies of all NPDES pretreatment and sludge management program files not already transferred to the DEPARTMENT.	Within thirty (30) days of program authorization, or if EPA has retained jurisdiction, within thirty (30) days of relinquishment of EPA primary jurisdiction. EPA shall ensure that all files are complete prior to transfer to the DEPARTMENT.
2.	A list of compliance inspections EPA intend to conduct jointly with the DEPARTMENT as part of its program oversight	Annually
3.	Proposed revisions to the schedule of compliance inspections.	As needed.
4.	Copies of all compliance inspection reports, report forms, data, and transmittal letters to permittees.	Within thirty (30) days of completion of inspection.

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5.	Copies of all enforcement actions against violators (including letters, notices of violation, administrative orders judicial filings and settlements).	As issued.
6.	A review of the AZPDES program, including pretreatment and sludge management, based on DEPARTMENT reports, meetings with DEPARTMENT officials, comments received from the public, and file audits.	As performed.
7.	Assistance in obtaining PCS retrievals and prompt notice of changes in PCS procedures.	As needed, thirty (30) days in advance of change in PCS procedures.
8.	Copies of court decisions/actions affecting the permit issuance, compliance and enforcement process.	Within fifteen (15) days of receipt by EPA.
9.	A list of major dischargers located in Arizona who have multi-state interests and noncompliance or violations in other States and identification of the type of noncompliance.	Annually.

C. Transfer of Files from EPA to State upon Program Approval. In accordance with a mutually agreed upon schedule EPA will deliver to the DEPARTMENT all permit files requested by the DEPARTMENT. Permit files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions, and other pertinent information and correspondence. For pending permit applications, files shall contain all relevant information including but not limited to application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all files are complete prior to delivery to the DEPARTMENT.

Section IX. Program Review

The DEPARTMENT and EPA are responsible for assuring that the AZPDES is consistent with all requirements of this AGREEMENT, the annual State Program Plan, and applicable sections of the CWA and the regulations promulgated thereunder, including 40 CFR 122 through 40 CFR 125. To fulfill this responsibility:

A. EPA shall review the information transmitted from the DEPARTMENT to assure that all the requirements of Section VIII of this AGREEMENT are met.

B. EPA shall meet with DEPARTMENT officials as set forth in the annual State Program Plan to review the DEPARTMENT's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures.

C. The DEPARTMENT shall meet with EPA officials as requested by EPA, to conduct an audit which shall consist, in part, of examining in detail the DEPARTMENT files and documentation of selected facilities to determine whether:
   1. Permits are processed and issued consistently with federal requirements;
   2. Capability exists to discover permit violations when they occur;
   3. DEPARTMENT compliance reviews are timely;

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4. DEPARTMENT selection of enforcement actions is appropriate;
5. DEPARTMENT enforcement actions are both timely and effective; and
6. DEPARTMENT public participation policies, practices, and procedures are satisfactory.

The DEPARTMENT shall be notified thirty (30) days in advance of the audit so that appropriate DEPARTMENT officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the DEPARTMENT when available.

D. Prior to taking any action to propose or effect any substantial amendment, recission, or repeal of any statute, regulation, rule, directive or policy which has been approved by EPA in connection with the AZPDES program, or prior to taking any action to propose or enact any statute, regulation, rule, directive, or policy which affects the implementation of the AZPDES program, including the state water quality standards, the DEPARTMENT shall notify EPA and shall transmit the text of any such change to EPA, for review and approval. The DEPARTMENT shall also keep EPA fully informed of any proposed legislative or court action which acts to amend, rescind or repeal any part of its authority to administer the AZPDES program or which may affect its ability to implement the AZPDES program. The DEPARTMENT agrees to monitor bills proposed in the Arizona Legislature, and to promptly notify EPA of any legislative action which proposes to repeal or enact any statute, regulation, rule, directive, or policy, including the state water quality standards which may affect implementation of the AZPDES, as soon as the DEPARTMENT becomes aware of any such proposed action. Notification under this paragraph and the following paragraph shall be given to the Regional Administrator. EPA reserves the right to initiate procedures for withdrawal of approval of the AZPDES program in the event that the state legislature enacts any legislation which is inconsistent with and less stringent than the CWA or the regulations promulgated thereunder.

E. If an amendment, recission, or repeal of any statute, regulation, rule, directive or policy described in paragraph D above shall occur for any reason, including action by the Arizona Legislature or a court, the DEPARTMENT shall within ten (10) days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

F. If there are revisions to the CWA and the regulations which implement it, the DEPARTMENT shall seek any amendments to its statutes, rules, or program authorization that are necessary to preserve and maintain compliance with NPDES program requirements within the shortest possible time frame, but in no event longer than the time frames set out in 40 CFR 123.62(e). During the negotiation of the annual Performance Partnership Agreements, the DEPARTMENT and EPA shall determine whether there needs to be any revisions made to the AZPDES program as a result of any changes to the CWA or the regulations promulgated thereunder. Included in the Performance Partnership Agreement and in the annual State Program Plan shall be a list of the revisions that have been made by the State as a result of that determination, or, if such revisions have not yet been made, a timetable for implementing such revisions.

G. EPA may initiate withdrawal proceedings under 40 CFR 123.64 on its own initiative or in response to a petition from an interested person alleging failure of the DEPARTMENT to comply with the requirements of 40 CFR 123, as set forth in 40 CFR 123.63. EPA shall notify the DEPARTMENT in writing of these inconsistencies or other deficiencies prior to the initiation of withdrawal

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proceedings. The DEPARTMENT shall respond in writing within thirty (30) days. EPA shall inform the DEPARTMENT in writing, within thirty (30) days of its determination, whether noted inconsistencies or deficiencies have been rectified. If they have not been corrected, EPA may proceed with withdrawal proceedings pursuant to 40 CFR 123.64.

Nothing in this AGREEMENT shall be construed to limit EPA authority to take action under the Clean Water Act.

Nothing in this AGREEMENT shall be construed to require the DEPARTMENT to take any action which is not authorized by State law.

Nothing in this AGREEMENT shall be construed to authorize the DEPARTMENT to take any action that is less stringent than or inconsistent with the Clean Water Act.

Section X. Computation of Time

In computing any period of time prescribed by this AGREEMENT, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends until the next day which is not a Saturday, Sunday, or legal holiday. When the period is less than seven days, intermediate Saturdays, Sunday or legal holidays shall be excluded in the computation.

Section XI. Approval and Effective Date

This Memorandum of Agreement shall take effect upon approval by the Regional Administrator of the Environmental Protection Agency - Region 9.

In witness whereof, the parties execute this agreement.

FOR THE STATE OF ARIZONA:

Jacqueline E. Schafer, Director
Arizona Department of Environmental Quality

June 4, 2002
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Wayne Nastri, Regional Administrator
EPA, Region 9

December 5, 2002
Date

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ATTACHMENT A

1. The following permits have been public noticed, but not issued:

NPDES PERMIT NUMBER	FACILITY NAME
AZ0024490	Tempe, Town Lake Seepage Recovery
AZ0023051	Somerton
AZ0023281	MHC Avondale (amendment)
AZ0021807	Sedona Venture
AZ040###	Small MS4s

2. Permits under enforcement action at the time of AZPDES program approval (MOA Section III.C.2):

NPDES PERMIT NUMBER	FACILITY NAME
Facilities covered by Administrative Orders:	
AZ0020346	Williams
AZ0023469	Glendale
AZ0023051	Somerton
AZ0023256	Orchard Ranch
AZQ023256	Villages at Lynx Creek
AZR05*###, MSGP*	Asarco - Trench Camp January Adit
AZR05*###, MSGP*	BHP Solitude Tailings/ Copper Gulch
AZR05*###, MSGP*	ASARCO Mission Mine
Pretreatment IU	Sturm Ruger, Prescott

*Multisector General Permit

Facilities covered by Administrative Penalty Orders:	
AZ0020516	Phelps Dodge Christmas Mine
Facilities covered byFederal Civil Action:	
AZ0000035	ASARCO Ray Mine

3. Permits under appeal at the time of AZPDES program approval (MOA Section III.C.3)

NPDES PERMIT NUMBER	FACILITY NAME
AZ0024112	Carlota Copper

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ATTACHMENT A (Cont.'d)

4. Permits for facilities located on and discharging to "private lands" within Indian Country.

NPDES PERMIT NUMBER	FACILITY NAME
AZ0021610	Cameron Trading Post

5. Permits for facilities located on and discharging to Indian Country.

NPDES PERMIT NUMBER	FACILITY NAME	
MAJORS:		
AZ0020290	Navajo Tribal Utility Authority	Tuba City WWTF
AZ0021555	Navajo Tribal Utility Authority	Window Rock WWTF
AZ0022179	PeabodyWestern Coal Co	Black Mesa Complex
MINORS:		
AZ0024597	Asarco, Inc	Mission Complex
AZ0022829	White Mountain Apache Tribe	Sunrise Day Lodge
AZ0022837	White Mountain Apache Tribe	Sunrise Hotel
AZ0022845	White Mountain Apache Tribe	Hondah Casino Enterprise
AZ0022934	White Mountain Apache Tribe	McNary Sewer System
AZ0024058	White Mountain Apache Tribe	Whiteriver Sewage Lagoons
AZ0024511	White Mountain Apache Tribe	Canyon Day Community
AZ0022195	Navajo Tribal Utility Authority	GanadoWWTF
AZ0022471	Navajo Tribal Utility Authority	Kaibeto STP
AZ0022802	Navajo Tribal Utility Authority	Rough Rock WWTF
AZ0110043	US Bureau of Indian Affairs	Nazlini Boarding School
AZ0021920	Navajo Tribal Utility Authority	Many Farms WWTF
AZ0110094	US Bureau of Indian Affairs	Teec Nos Pos Brding School
AZ0110167	US Bureau of Indian Affairs	Hunters Point Brding School
AZ0110183	US Bureau of Indian Affairs	Seba Dalkai Boarding School
AZ0020265	Navajo Tribal Utility Authority	Chinle WWTF
AZ0024228	Navajo Tribal Utility Authority	Pinon WWTF
AZ0022560	US Bureau of Indian Affairs	Keams Canyon Sewage Lag
AZ0020281	Navajo Tribal Utility Authority	Kayenta WWTF

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ADDENDUM
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF ARIZONA AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

This Addendum to the Memorandum of Agreement dated June 4, 2002 (hereinafter ADDENDUM) clarifies the policies and procedures relating to public participation in enforcement cases, and defines the manner in which the Arizona Department of Environmental Quality (hereinafter DEPARTMENT) will administer the requirements at 40 CFR 123.27(d). This ADDENDUM also clarifies the Department's intentions concerning the application for program approval for the Sewage Sludge/Biosolids Management program.

Section I. Public Participation in Enforcement

The federal regulation at 40 CFR 123.27(d) requires any State administering a National Pollutant Discharge Elimination System Program to provide for public participation in the State enforcement process by allowing intervention as of right in any civil or administrative action to obtain certain remedies specified at 123.27(a)(1)(2) or (3) by any citizen having an interest which is or may be adversely affected. The Department agrees that it shall not oppose applications for intervention by citizens under Arizona Rules of Civil Procedure, Rule 24(a)(2), on the grounds that the applicant's interest is adequately represented by the State. The Department shall not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule or regulation.

Section II. Sewage Sludge/Biosolids Management Program

The Department clarifies in this ADDENDUM that it is not seeking the United States Environmental Protection Agency's review of the Sewage Sludge/Biosolids Management Program application at this time. The Department will submit the application for the Sewage Sludge/Biosolids Management Program at a later time.

Section III. Approval and Effective Date

This ADDENDUM shall take effect upon approval by the Regional Administrator of the United States Environmental Protection Agency Region 9.

In witness whereof, the parties execute this agreement.

FOR THE STATE OF ARIZONA:

Jacqueline E. Schafer, Director
Arizona Department of Environmental Quality

July 8, 2002
Date

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Wayne Nastri, Regional Administrator
EPA, Region 9

December 5, 2002
Date