

A.R.S. § 41-1091(B) substantive policy statement:

“This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.”

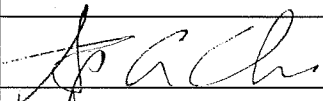

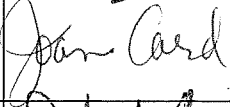

PUBLIC WATER SYSTEM POINT-OF-USE COMPLIANCE PROGRAM MANUAL	Document No.	3009.000
	Revision No.	
	Effective Date	6/26/05

1.0 Revision History

1.1 Revision Table: N/A

Date	Rev. No.	Change	Ref. Section

1.2 Approval Signatures

Title	Name	Signature	Date
Director	Stephen Owens		6/26/05
Deputy Director	Patrick Cunningham		6/23/05
Affected Division Director(s)	Joan Card		6-23-05
CBPO	John Calkins		6/28/05

2.0 Purpose

Rules promulgated under the Safe Drinking Water Act allow the use of POU treatment as a safe, reliable and economical means of achieving compliance with drinking water maximum contaminant levels. Neither federal nor state law provide guidance or clarify how public water systems shall implement POU treatment programs, including , but not limited to, determining compliance sampling requirements, customer participations rates, POU device maintenance schedules, etc. This policy provides that guidance in order to ensure a consistent and equitable application of ADEQ's existing POU rules.

3.0 Persons Affected

- 3.1 Public Water Systems
- 3.2 ADEQ Drinking Water Section
- 3.3 Delegated County Staff

4.0 Policy.

Please see the attached Arizona Point of Use Compliance Program Manual

ARIZONA POINT OF USE COMPLIANCE PROGRAM GUIDANCE



Janet Napolitano, Governor
Stephen A. Owens, ADEQ Director

July 2005

Publication # TM 05-02

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INTRODUCTION

Arizona Department of Environmental Quality (ADEQ) safe drinking water rules allow public water systems to employ point-of-use (POU) treatment devices as a means for compliance with drinking water maximum contaminant levels (MCL). This guidance document is designed to assist water systems choosing POU as their means of compliance in structuring a program that will meet ADEQ's requirements. ADEQ recognizes that POU will be an attractive compliance option for many small water systems. ADEQ supports the use of POU where appropriate, provided the program established by a water system provides the level of public health protection required in the Safe Drinking Water Act (SDWA).

POU COMPLIANCE PROGRAM OVERVIEW

A POU compliance program differs fundamentally from a centralized treatment compliance program. Under the POU program the water system is required to install a POU device that will treat only the water intended for direct consumption, typically installed at a single tap such as the kitchen sink. Centralized treatment treats all of the water produced by the public water system. Since only a very small percentage of the total water use is for direct consumption, typically 1-3 percent, a POU compliance program can result in significant cost savings for smaller water systems.

Arizona Administrative Code (AAC) regulation R18-4-222 governs the use of POU devices in Arizona public drinking water systems. Additionally, federal law 42 U.S.C. 300g-1(b)(4)(E)(ii) contains requirements that must be met by water systems using POU devices as a means of compliance. Any water system choosing to use POU as their means to comply with an established drinking water maximum contaminant level (MCL) will be required to meet all of the requirements of the State regulation and federal law.

Federal law requires that the POU device be owned, controlled, and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the MCL. Federal law also requires that the POU device be equipped with mechanical warnings to ensure that customers are automatically notified of operational problems and that the device be independently certified as conforming to an American National Standards Institute standard if one exists. Finally a POU device cannot be used to comply with a MCL or treatment technique requirement for a microbial contaminant.

A.A.C. R18-4-222 outlines additional requirements a water system must meet when using a POU compliance program. Specifically, Arizona regulations require the water system to develop and have approved a written monitoring plan, obtain ADEQ approval of the design of the POU device, install a sufficient number of devices to ensure every person served by the system is protected, and that the rights and responsibilities of persons served by the water system convey with title upon sale of property.

This guidance describes these requirements in greater detail and is designed to lead water systems through the analysis and decision making process for determining if a POU compliance program is right for you. Following this guidance will assist Arizona water systems in ensuring their POU compliance program meets all federal and State requirements and is therefore acceptable to ADEQ.

DETERMINING IF POU WILL WORK FOR YOUR SYSTEM

When considering POU as a compliance strategy, water systems must fully understand and weigh the obligations that come with implementing such a program. Factors to consider when determining the appropriateness of POU for your water system include:

- The number of service connections on your system
- The type of service connections on your system
 - Single family homes
 - Apartments
 - Restaurants
 - Office buildings
 - Medical offices
 - Commercial or Industrial
- The cost of central treatment versus POU
- The additional sampling you will be required to conduct and the associated expense of the sampling
- The ability to gain entrance into your customers' households and businesses
- The maintenance frequency and associated workload
- The record keeping requirements
- The willingness of your customers to accept a POU compliance program
- The ability of the water system to gain authority to make participation in the program a condition of service
- Any liability associated with such a program

A system must also consider that ADEQ will not authorize a system to implement a POU compliance program that does not have a minimum of 75% initial water customer participation at the inception of the program. The system must then reach 100% water customer participation using the tools outlined in this guidance document and/or as outlined in an order and schedule issued by ADEQ.

The establishment of a POU program raises challenging issues for a water system, including increased liability and private property access issues. A water system may be wise to seek legal counsel to determine its best course of action.

WATER WASTING CONCERNS FOR A POU PROGRAM

When considering POU technologies, many water systems and their customers face concerns about potential water losses related to typical POU devices. In a desert state these concerns are valid and need to be addressed. Different POU technologies have different treatment methods and characteristics, including water loss.

POU devices that use absorption technology use treatment media that chemically filter out contaminants by attracting them to the media. These units typically do not require backwashing and therefore do not result in water loss.

POU Reverse Osmosis (RO) units typically use two to four gallons of water to produce one gallon of drinking water. The fluctuation in efficiency is due to many factors that continually change within the RO system, including incoming water pressure, backpressure produced by the storage tank and age and condition of the RO membrane itself.

This can sound like a large amount of wasted water when proposing to install 100 or more units. It is important to educate your customers on the water use patterns within a service connection that comprise the total monthly usage. Industry data shows between 1% and 3% of the total volume of water used at a connection is for drinking and cooking purposes. This usage percentage holds true for “typical” households; households that have larger than normal water usage due to irrigation or other activities will have a lower percentage of the total water usage being used for drinking and cooking.

This can be compared with centralized treatment, which has a backwashing cycle associated with it. Central treatment facilities will regularly backwash to either regenerate treatment media or to redistribute the filter bed. Whatever the purpose for backwashing, the plant will be using water that is not then delivered to customers, thus a certain amount of water wasting will occur.

MANAGEMENT OF A POU COMPLIANCE PROGRAM

Management of a POU program will be significantly different than management of a central treatment plant. The majority of work will center on administrative activities and testing. In a central treatment plant the emphasis also includes a fair degree of technical and operational knowledge, elements not as onerous in POU compliance programs. Systems considering a POU compliance program should evaluate the management factors associated with the program including:

- Maintaining a log of installed units
- Tracking the useful life of the units
- Staggering unit or component change-out
- Executing unit or component change-out

- Maintaining testing records for each unit
- Coordinating with customers to schedule testing and maintenance
- Educating customers on the goals and functions of a POU program

POU SYSTEM REQUIREMENTS

A POU system is considered a complete water treatment device that includes all components needed to connect it to a public water system under a POU compliance program. Additionally, the POU system must be certified by an American National Standards Institute (ANSI) accredited body under one of the National Sanitation Foundation (NSF)/ANSI water treatment unit standards. Currently recognized ANSI accredited certification organizations are:

- I. NSF
- II. Water Quality Association (WQA)
- III. Underwriters Laboratory (UL)

Currently recognized NSF/ANSI standards are:

- I. NSF/ANSI Standard 44
- II. NSF/ANSI Standard 53
- III. NSF/ANSI Standard 55
- IV. NSF/ANSI Standard 58

The water system must provide documentation from the treatment device manufacturer showing the treatment device is certified for the reduction of the specific contaminant(s) that the water system will be controlling. POU manufacturers are aware of this certification requirement and should be able to readily provide this documentation.

PERFORMANCE INDICATOR DEVICE REQUIREMENTS

Each POU device must have a performance indication device (PID) which alerts the user when the unit is no longer meeting treatment standards. The point of use device certification must include certification of the PID. The PID must provide an automatic and effective means to warn the customer when the system is no longer operating effectively. The PID cannot include an automatic shutoff function. Automatic shutoff can result in the customer by-passing the unit and receiving untreated water directly from the tap.

The PID must be capable of providing a visual or auditory alert and must be calibrated to signal the customer prior to the POU device reaching its exhaustion stage. This will allow the water system sufficient time to receive notification from customers of the PID alert and perform maintenance to return the device to effective operation prior to the dispensing of water not meeting a drinking water standard.

CUSTOMER PARTICIPATION REQUIREMENTS

Customer participation most likely represents the largest challenge to water systems selecting a POU compliance program. For a successful POU program it is necessary that the water system be permitted to enter the household or place of business of each customer to install, test, and maintain the POU device. Customer consent to allow the water system to install and regularly maintain the POU is the key to a successful POU program. ADEQ anticipates that some systems will encounter difficulties in obtaining access approval from every customer. A comprehensive education program will likely serve to assist water systems in obtaining acceptance from all customers.

In an effort to gain a better understanding of POU compliance strategies ADEQ participated in two pilot POU compliance programs. A component of these pilot studies was to survey the participating customers to determine their overall satisfaction with the device. Overwhelmingly customers supported the program and commented positively on benefits ancillary to the removal of the target contaminant. These comments included money savings in no longer purchasing bottled water, the convenience of not having to transport bottled water to their households, and the belief that treating only the portion of water used for drinking and cooking was wise.

In one of the communities tested there were a number of customers who were not willing to permit the water system entry into their households to carry-out the necessary installations. A well planned and comprehensive customer education program at the very beginning will assist you in gaining the largest number of willing participants at the outset of your program. In instances where one or more customers have indicated they are unwilling to allow access to the water system, the water system will have to pursue alternative means to gain access to be eligible for ADEQ approval of a POU compliance program.

The SDWA establishes water quality standards that must be met for all customers. If a customer refuses to allow POU installation, that customer will not be receiving the same protection as those who have. In these instances it will be necessary for the water system to demonstrate they are taking a variety of actions to address this issue. These actions may include one or more of the following:

- Obtaining legal authority to make installation of the POU device a condition of water service.
- Obtaining access authority to customers' households through a homeowners association or Covenants, Conditions and Restrictions (CC &Rs), ordinances, or other legal authorities specific to the individual water system.
- Obtaining legal authority to make installation of the POU device mandatory upon a transfer of ownership (real estate transactions).

- Monthly notification to the refusing customer(s) informing them the water they are drinking does not meet SDWA standards and is posing a health risk using the language provided in appendix 2 while the customer's consent is being obtained.

Different water systems may have different powers and authorities to regulate the delivery of water to customers depending on each system's legal authority and the regulating authorities governing the water system. For example, a water system regulated by the Arizona Corporation Commission (ACC) would seek authorization to require the acceptance of the POU as a condition of service. A municipality or town may be able to write an ordinance or rule to condition service on the acceptance of a POU device. A domestic water improvement district may also have the ability to condition service on the acceptance of a POU device. A water system's ability to require POU installation as a condition of receiving service is for the water system to determine.

LEGAL AUTHORITY TO MAKE INSTALLATION OF THE POU DEVICE A CONDITION OF WATER SERVICE

Because a water system must obtain 100% POU customer compliance, the water system must determine what authorities it has to achieve complete customer compliance. After a customer fails or refuses to allow the installation of a POU, despite the water system's best efforts to obtain the customer's voluntary compliance, the water system must determine whether it has the legal authority to "require" the customer to accept the POU.

A system may consider whether it has the authority to shut off a customer's water service due to a failure to accept a POU, similar to the authority to shut off a customer's water for non-payment. As stated, whether a water system has this authority is for the water system to determine. ADEQ cannot provide advice regarding a system's authority to require POU installation or to terminate service based upon a customer's failure to allow POU installation. ADEQ recommends a water system obtain legal advice to determine its authority in such matters. ADEQ cannot and is not making any representations that any water system has any such authority.

Water service shut-off to a customer who fails or refuses to authorize a POU, if this authority is available to a water system, would be sought after other methods of achieving compliance had been tried without success. Additionally, a water system would not terminate service until after the customer receives clear notice and opportunities to comply with the POU program prior to any termination of service. The Arizona Corporation Commission has an established procedure for providing notice of termination of service to a customer that may be useful as guidance for non-ACC regulated systems.

Another tool that may assist a water system to obtain 100% compliance is for the water system to seek homeowner compliance through petitioning to amend a housing development's Covenants, Conditions and Restrictions (CC&Rs) to require POU installation and maintenance by the water system.

OBTAINING LEGAL AUTHORITY TO MAKE INSTALLATION OF THE POU DEVICE AVAILABLE UPON A TRANSFER OF OWNERSHIP (REAL ESTATE TRANSACTIONS)

A water system may decide to seek to require POU installation and maintenance a mandatory requirement that binds new homeowners by making the requirement part of the sale of the home or commercial real estate. Such a requirement is a “restrictive covenant” which passes in the “chain-of-title” to the property and should be written to bind the current landowner and future landowners to allow POU installation and maintenance. Placing a restrictive covenant in the chain-of-title to a home or commercial real estate requires the written *consent* of the landowner. To be permanent and binding, a water system would need a restrictive covenant and also an easement to be able to enter the property to install and service the POU device. Although this would provide certainty, obtaining these on an individual basis from customers will likely be time-consuming and difficult to obtain.

MONTHLY NOTIFICATION TO THE REFUSING CUSTOMER(S) INFORMING THEM THE WATER THEY ARE DRINKING DOES NOT MEET SDWA STANDARDS AND IS POSING A HEALTH RISK USING THE LANGUAGE PROVIDED IN APPENDIX 2

While a water system is seeking to obtain the consent of a customer to install and maintain a POU, the water system should issue a monthly notification to that customer informing them the water they are drinking does not meet SDWA standards and is posing a health risk using the language provided in Appendix 2. It is important to remember that a customer's waiver does not excuse the requirement on the water system to provide water that meets the MCLs and all other drinking water requirements.

COMPLIANCE STATUS OF WATER SYSTEM USING POU PROGRAM

A water system implementing a POU program will be considered to be in compliance with ADEQ drinking water rules relating to compliance with the MCLs, which the POU program is designed to correct, only when a POU device has been installed at every connection. As stated, water systems wishing to implement a POU compliance program that have not gained 100% participation from their customers will need prior ADEQ approval before initiating the program. These water systems may be required to complete Appendix 3 and include it when submitting their application (Appendix 1) for ADEQ program approval. Appendix 3 is a standardized enforceable order/consent agreement and compliance schedule that includes required actions and milestones the water system must meet as well as required notification to non-participating customers during the period they do not have a POU treatment unit installed. Water systems not completing the required actions within the specified time frames will be in violation of their enforceable order/consent agreement and subject to penalty. If the water system is on a

compliance schedule and is meeting the required milestones, the system will be not be considered to be in violation with those drinking water requirements.

Any water system that does not have a POU device installed at every service connection and is not meeting milestones of a compliance schedule, or has not entered into an enforceable order/consent agreement with a compliance schedule with ADEQ, will be considered out of compliance and will be subject to enforcement.

It is imperative that a water system fully evaluate and plan for the course of action necessary to achieve 100% participation when considering a POU program. Because non-compliance would necessitate installation of centralized treatment, failure to install POU devices in all service connections within the designated time frame can result in a significantly more expensive financial investment.

POU PROGRAM MONITORING REQUIREMENTS

It will be necessary for the water system to test the water from each POU device over a specified period of time to ensure the device is working properly. Compliance monitoring will use a combination of methods. First, the water system must collect a water sample from the POU device for analysis at a certified laboratory. The water system must also perform on-site testing of the POU devices using test strips. The water system will be required to complete a sample plan and include it in their application for approval of the POU compliance program. The water system will then be required to follow the sample plan upon Department approval. The sample plan will include the following:

General Testing Requirements

Developing a community sample plan: On a map, the water system should divide its distribution system into three sections so that 1/3 of the service connections are located in each section. This map must be submitted with a POU compliance program application. The water system will be required to collect a sample from 1/3 of the system's total service connections every three years with 10% of those samples going to a licensed certified laboratory for analysis and 23% of those samples being conducted with a field testing kit. Analytical results obtained through the use of certified laboratories are required to be submitted, on approved reporting forms, to ADEQ pursuant to A.A.C. R18-4-104. All records for chemical analyses, including field tests, shall be maintained by the water system for a minimum of 10 years pursuant to A.A.C. R18-4-103. The water system will be required to repeat the testing of a 1/3 or the systems' total connections every three years for a nine year period. The following schematic illustrates this sampling procedure:

<i>9 year Compliance Cycle</i>		
<i>3-year Compliance Period</i>	<i>3-year Compliance Period</i>	<i>3-year Compliance Period</i>
Sample 10% to Laboratory Sample 23% field test kit	Sample 10% to Laboratory Sample 23% field test kit	Sample 10% to Laboratory Sample 23% field test kit

Identification of devices to sample

The water system will be required to develop a sampling plan that ensures not only that each device is tested over the nine year compliance cycle, but also ensures units are tested in various areas of the distribution system in order to provide assurance that units are working properly. When developing the sampling plan, develop a map of the system's distribution system that divides the distribution system into three sections with each having an equal number of connections. Then indicate which connections will be sampled and in which sampling round they will be tested. The water system must ensure an equal number from each section is included in each sampling round. For example, each section of the sampling map should contribute 11% of the total samples to be collected for each three year compliance period.

If test strips are used for testing the devices, the water system will need to ensure that the number of devices tested using the test strip does not exceed 23% of the total 33% to be tested every three years. Also, when using test strips for arsenic the water system must use the ITS *Arsenic Quick II Test Kit*, part number 481303. ITS can be contacted at (803) 329-9712 or www.sensafe.com.

APPLICATION FOR POU PROGRAM APPROVAL

Water systems considering a POU program must complete an application packet and submit it to ADEQ for approval. This packet must include all of the following information:

1. POU program application form (see Appendix 1)
2. Manufacturer certification of effectiveness
3. Description of PID and how it will warn users
4. Customer participation information with schedule for reaching 100% participation, if applicable
5. Installation schedule including parties responsible for installation and their qualifications
6. Preliminary maintenance schedule
7. Monitoring plan showing sections
8. Customer education and outreach plans

All POU Programs must be approved by ADEQ prior to installation.

POU PROGRAM INSTALLATION REQUIREMENTS

It will be necessary for the water system to obtain ADEQ approval prior to installing POU devices. Proper installation of the POU devices, in the correct location, is critical if the water system is to meet compliance requirements.

The water system will be responsible for the installation of the individual POU devices. The water system owner will need to ensure individuals installing POU devices are qualified to complete this work. Examples of qualified people include certified operators, licensed plumbers and manufacturer or vendor representatives. Only those qualified individuals identified in the application packet will be permitted to perform the work under the ADEQ approved program.

Generally, the water system will legally own the POU devices, and the water system always will be responsible for, the installation, operation and maintenance of the POU devices. The water system will need to ensure that, in the event of a transfer of ownership of the property, the POU device will stay with the property. The water system may enter in to a rental agreement with a POU vendor, however the water system shall maintain responsibility for the device including maintenance and recordkeeping requirements.

In the event a resident already has a water treatment device in their dwelling or business, the water system may offer to replace the existing POU device with the new one used by the water system's POU program. If the customer refuses, the water system should provide for the following:

- The customer's device should be certified by an accredited organization for the reduction of the contaminant of concern
- The customer's device should have, or be fitted with, a performance indication device that meets the requirements for the POU program
- The water system must obtain legal ownership of the device by obtaining the customer's consent to the transfer of ownership and pay compensation as necessary
- The water system will be responsible for the proper operation and maintenance of the POU device
- If the customer's device does not adequately treat the contaminants of concern, and cannot be retrofitted, the water system should inform the customer and obtain consent to install and maintain the new water treatment device.

Special installations (such as routing treated water to ice makers or additional faucets) must be performed by the water system. The water system must ensure individual homeowners and other users do not modify or alter the system after the installation.

POU PROGRAM OPERATION AND MAINTENANCE REQUIREMENTS

It is the responsibility of the water system to maintain and service the individual POU devices. In no instances may the water system allow individual homeowners to perform maintenance on the units unless that individual is identified as a qualified person in the program application or has been approved in writing by ADEQ.

POU device maintenance must be performed in accordance with the manufacturer's specifications. Failure to follow these specifications will be considered non-compliance.

POU RECORD KEEPING REQUIREMENTS

The water systems must maintain records related to the POU for a minimum of ten years according to A.A.C. R18-4-103. These records must be available for inspection at the water system:

- POU maintenance records and purchase orders
- Annual on-site test kit results
- Results from certified laboratory analysis
- Outreach efforts, including notifications to customers not participating in the program

POU DEVICES AND SYSTEM CLASSIFICATION

Systems adding a POU program are adding a treatment technology. If the system is currently graded as a "distribution system" (as outlined in A. A. C. R18-5-115), the addition of a POU program would change the system's classification to a "treatment system" as well. Systems installing POU treatment will require operators with the appropriate grade of Water Treatment Certification as outlined in A. A. C. R18-5-115.

However, POU technology is a stand alone technology and will be treated as such when ADEQ is determining system characteristics. That is, a POU device will not be assigned points based on the underlying technology used to treat the water (e.g. adsorption, RO), but will be graded as a separate technology. In addition, once the POU program has been established, the number of individual POU devices installed will not impact the overall grade of the system. Additional units would not result in additional points being assigned to the system's overall grade.

APPENDIX 1

Point-of-Use Water Treatment Application Checklist:

- POU Program Application (attached)
- Manufacturer Certification of Effectiveness
- Detailed Description of Performance Indication Device (PID)
- Customer Participation Information (e.g. schedule for reaching 100% participation)
- Installation Schedule (including parties responsible for installation and their qualifications)
- Preliminary Maintenance Schedule
- Monitoring Plan Showing Sections
- Customer Education and Outreach Plans

Application for Approval to Use Point-of-Use Water Treatment

(Please submit to the ADEQ Water Quality Division at 1110 W. Washington St., Phoenix, AZ 85007)

System ID	System Name	System Location (city / area)	Number of Hook ups*
Type of POU device used			
Manufacturer of Device			
Model Number of Device			

	<u>Contaminant</u>	<u>Action Level</u>
<input type="checkbox"/> Arsenic		0.010 mg/L
<input type="checkbox"/> Copper		1.3 mg/L
<input type="checkbox"/> Fluoride		2.0 mg/L
<input type="checkbox"/> Lead		0.015 mg/L
<input type="checkbox"/> Radium		5 pCi/L
<input type="checkbox"/> Other		_____

Verified ANSI Certification on device?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Who is installing the Units?
What Type of performance indication device does the unit have?	<input type="checkbox"/> TDS Monitor (for RO units) <input type="checkbox"/> Timer <input type="checkbox"/> Total Flow	<input type="checkbox"/> System Operator <input type="checkbox"/> Water System Employee <input type="checkbox"/> Water corporation work group <input type="checkbox"/> Local Water Dealer <input type="checkbox"/> Other _____

For timer and flow meters, please provide details regarding how the performance indicator will warn the user when the system is not performing: _____

Provide overview of the maintenance requirements for the POU devices planned to be installed: _____

I hereby certify that the information provided in this application is accurate and correct to the best of my knowledge.

Authorizer Name: _____ Signature _____
 Phone Number _____ Date _____

*Do not include transient dwellings. Refer to ADEQ POU guidelines for further information regarding transient dwellings.

APPENDIX 2

The following is the mandatory notification and public health language that must be included in monthly billings to customers who have not agreed to the installation of a POU device.

The insert water company name has employed a Point-of-Use compliance program to meet the Safe Drinking Water maximum contaminant level (MCL) for arsenic. Because you have declined to allow a POU device to be installed, we are required to provide the following warning regarding the quality of water people in your household are receiving.

“The United States Environmental Protection Agency has determined that some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer. The current level of arsenic you are consuming in your drinking water is insert most recent arsenic result. The insert water company name water company is actively pursuing alternatives to enable installation of a POU device at your household.”

APPENDIX 3

Attached please find a standardized enforceable order/consent agreement and compliance schedule.



BEFORE THE DIRECTOR OF THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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In the Matter of:) **CONSENT ORDER WITH CIVIL**
) **ADMINISTRATIVE PENALTY**
Drinking Water System located at [Street)
Address of Facility] [City where Facility) **Docket No.** _____
Located], Any Arizona County, Arizona)
)
[ADEQ Identification Number for Facility])
)
)

To: Public Water System Owner/Operator in [his/her/its] capacity as [Owner and / or Operator] of Drinking Water System located at 123 Desert Row, Any Arizona Town, Any Arizona County, Arizona.

RECITALS

Public Water System Owner/Operator acknowledges that no promise of any kind or nature whatsoever, was made to induce [him/her/it] to enter into this Consent Order, and Public Water System Owner/Operator has done so voluntarily.

By entering into this Consent Order, Public Water System Owner/Operator does not admit to any civil or criminal liability, or waive any right including but not limited to the assertion of any defense available to Public Water System Owner/Operator under applicable law. Further, Public Water System Owner/Operator does not admit, and both the Arizona Department of Environmental Quality (“ADEQ”) and Public Water System Owner/Operator retain the right to controvert in any subsequent proceeding except a proceeding to implement or enforce this Consent Order, the validity of any Findings of Fact or Conclusions of Law contained in this Consent Order.

Initial _____

1 The undersigned representative of Public Water System Owner/Operator certifies that
2 [he/she] is fully authorized to execute this Consent Order on behalf of Public Water System
3 Owner/Operator and to legally bind Public Water System Owner/Operator to this Consent Order.

4 Public Water System Owner/Operator admits to the jurisdiction of the Director of ADEQ.

5 Except as to the right to controvert the validity of any Findings of Fact or Conclusion of
6 Law contained in this Consent Order in a proceeding other than to enforce this Consent Order,
7 Public Water System Owner/Operator consents to the terms and entry of this Consent Order and
8 agrees not to contest the validity or terms of this Consent Order in any subsequent proceeding.

9 **THEREFORE, IT IS HEREBY ORDERED** as follows:

10 **I. JURISDICTION**

11 The Director of ADEQ has jurisdiction over the subject matter of this action and is authorized
12 to issue this Consent Order pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 49-354 and
13 41-1092.07(F)(5).

14 **II. FINDINGS**

15 **THE DIRECTOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND**
16 **CONCLUSIONS OF LAW:**

17 A. Findings of Fact

18 1. Public Water System Owner/Operator owns and/or operates Drinking
19 Water System located at 123 Desert Row, Any Arizona Town, Any Arizona County, Arizona.

20 [List of facts that are the basis for the Consent Order]

21 B. Conclusions of Law

22 1. Drinking Water System is a public water system as defined in A.R.S. § 49-
23 352(B) and A.A.C. R18-4-101.

1 make installation of the POU device a condition of service through
2 modification of the Covenants, Conditions, and Restrictions (CC&R) of
3 the Homeowners Association within 180 days of failing to obtain
4 condition of service authority through 1 & 2 above.

5 4. If the Public Water System is unable to obtain the authority to make
6 installation of the POU device a condition of service through a local
7 ordinance or modification to CC&Rs, the Public Water System will seek
8 the authority to make installation of the POU device a condition of service
9 upon transfer of ownership of the property through the establishment of a
10 Restrictive Covenant within 180 days of failing to obtain condition of
11 service authority through 1, 2 & 3 above.

12 5. If the Public Water System is unable to obtain the authority to make
13 installation of the POU device a condition of service through 1, 2 , 3 or 4
14 above, the water system will submit an application for an Approval to
15 Construct for a centralized arsenic treatment facility for each Point of
16 Entry requiring arsenic treatment to ADEQ within 180 days of failing to
17 obtain condition of service authority through 1, 2, 3, & 4 above.

18 19 **IV. STATUS REPORTS**

20 A. Public Water System Owner/Operator agrees to submit a written status report to
21 ADEQ every thirty (30) calendar days beginning thirty (30) days from the effective date of this
22 Consent Order, until termination of this Consent Order. Each written status report shall describe
23 what measures have been taken under Section III, of this Consent Order, and shall certify when
24 compliance with the requirements of Section III of this Order has been achieved. Each report
25 shall be accompanied by evidence of compliance including, as appropriate, submittal of

1 documents, photographs or copies of any other supporting information that Public Water System
2 Owner/Operator deems necessary.

3 B. ADEQ will review the status reports and relay any disputes in writing to Public
4 Water System Owner/Operator. Public Water System Owner/Operator shall incorporate all
5 required modifications, changes or other alterations, as requested by ADEQ, within a reasonable
6 time specified by ADEQ.

7 **V. CIVIL ADMINISTRATIVE PENALTY**

8 A. Public Water System Owner/Operator shall pay a civil administrative penalty to
9 the State in the amount of [Narrative Amount] (\$[Numeric Amount]) within [Number of Days]
10 of the effective date of this Consent Order.

11 B. All payments made to the State under this Consent Order shall be by check made
12 payable to "State of Arizona" and shall be delivered or mailed to:

13 [Chief Financial Officer], Chief Financial Officer
14 Arizona Department of Environmental Quality
15 1110 West Washington Street
16 Phoenix, Arizona 85007-2935
17 Attention: Accounts Receivable

18 together with a letter tendering the check. The letter shall identify this Consent Order by the
19 parties and docket number. A copy of the check shall also be sent to ADEQ pursuant to Section
20 IX.

21 C. Public Water System Owner/Operator shall pay interest and penalties on any
22 amount not paid by the due date at the rate established pursuant to A.R.S. § 49-113. If [Public
23 Water System Owner/Operator fails to pay the full amount of the civil administrative penalty as
24 required by this Consent Order, ADEQ may terminate this Consent Order and take action to seek
25 penalties for any and all violations covered by this Consent Order.

1 **VI. COMPLIANCE WITH OTHER LAWS**

2 A. This Consent Order does not encompass issues regarding releases, contamination,
3 sources, operations, facilities or processes not expressly covered by the terms of this Consent
4 Order, and is without prejudice to the rights of the State of Arizona or Public Water System
5 Owner/Operator, arising under any federal or Arizona environmental statutes and rules with
6 regard to such issues.

7 B. Nothing in this Consent Order shall constitute a permit of any kind, or a
8 modification of any permit of any kind, or an agreement to issue a permit of any kind under
9 federal, state or local law, or relieve Public Water System Owner/Operator in any manner of
10 [his/her/its] obligation to apply for, obtain, and comply with all applicable permits. Nothing in
11 this Consent Order shall in any way alter, modify or revoke federal, state, or local law, or relieve
12 Public Water System Owner/Operator in any manner of [his/her/its] obligation to comply with
13 such laws. Compliance with the terms of this Consent Order shall not be a defense to any action
14 to enforce any such permits or laws.

15 **VII. FORCE MAJEURE**

16 A. Public Water System Owner/Operator shall perform all the requirements of this
17 Consent Order according to the time limits set forth herein, unless performance is prevented or
18 delayed by events which constitute a *force majeure*. *Force majeure*, for the purposes of this
19 Consent Order, is defined as any event, arising from causes beyond the control of Public Water
20 System Owner/Operator or its authorized representatives which delays or prevents the
21 performance of any obligation under this Consent Order and which could not have been
22 overcome or prevented by Public Water System Owner/Operator. The financial inability of
23 Public Water System Owner/Operator to comply with the terms of this Consent Order, shall not
24 constitute a *force majeure*.

1 B. In the event of a *force majeure*, the time for performance of the activity affected
2 by the *force majeure* shall be determined by ADEQ and extended for a period no longer than the
3 delay caused by the *force majeure*. The time for performance of any activity dependent on the
4 delayed activity shall be similarly extended. In the event of a *force majeure*, Public Water
5 System Owner/Operator shall notify ADEQ in writing within five (5) calendar days after Public
6 Water System Owner/Operator or [his/her/its] agents become aware of the occurrence. The
7 written notice provided to ADEQ shall describe in detail the event, the anticipated delay, the
8 measures taken and to be taken by Public Water System Owner/Operator to prevent or minimize
9 delay, and a proposed timetable under which those measures will be implemented. Public Water
10 System Owner/Operator shall take all reasonable measures to prevent or minimize any delay
11 caused by the *force majeure*. Failure of Public Water System Owner/Operator to comply with
12 any requirements of this paragraph for a particular event, shall preclude Public Water System
13 Owner/Operator from asserting any claim of *force majeure* for that event.

14 **VIII. SITE ACCESS**

15 ADEQ may at any time, upon presentation of credentials to authorized personnel on duty,
16 enter upon the premises at the Facility for the purpose of observing and monitoring compliance
17 with the provisions of this Consent Order. This right of entry shall be in addition to, and not in
18 limitation of or substitution for, ADEQ's rights under applicable law.

19 **IX. CORRESPONDENCE**

20 All documents, materials, plans, notices, or other items submitted as a result of this
21 Consent Order shall be transmitted to the addresses specified below:

22 To ADEQ:

23 Arizona Department of Environmental Quality
24 Water Quality Division
25 Attention: [ADEQ Contact and Title]
1110 West Washington Street
Phoenix, Arizona 85007-2935

1 Telephone: [Telephone Number of ADEQ Contact]
2 Email: [Email]

3 To Public Water System Owner/Operator:

4 [Name of Responsible Party or Designee]
5 [Address of Responsible Party or Designee]
6 [Telephone Number of Responsible Party or Designee]

7 Submissions to ADEQ as a result of this Consent Order shall be deemed submitted upon receipt.

8 **X. RESERVATION OF RIGHTS**

9 A. This Consent Order is based solely upon currently available information. If
10 additional information is discovered, which indicates that the actions taken under this Consent
11 Order are or will be inadequate to protect human health, safety, or the environment, or to
12 conform with applicable federal or state laws, ADEQ shall have the right to require further
13 action.

14 B. ADEQ shall have the right: to disapprove of work performed by Public Water
15 System Owner/Operator that fails to comply with this Consent Order; to take enforcement action
16 for any and all violations of this Consent Order; and to take enforcement action for any and all
17 violations of A.R.S. Title 49, or the rules promulgated thereunder, occurring after the entry of
18 this Consent Order.

19 **XI. SEVERABILITY**

20 The provisions of this Consent Order are severable. If any provision of this Consent
21 Order is declared by a court of law to be invalid or unenforceable, all other provisions of this
22 Consent Order shall remain in full force and effect.

23 **XII. RELEASE**

24 Pursuant to A.R.S. § 49-354(G), upon payment of the full amount of the civil
25 administrative penalty in Section V, Public Water System Owner/Operator and [his/her/its] past,
present, and future directors, officers, members, employees, agents, and successors and assigns

1 are released from any and all civil penalty liability to the State, for the violations covered by this
2 Consent Order.

3 **XIII. MODIFICATIONS**

4 Any modifications of this Consent Order shall be in writing and must be approved by
5 both Public Water System Owner/Operator and ADEQ.

6 **XIV. EFFECTIVE DATE**

7 The effective date of this Consent Order shall be the date this Consent Order is signed by
8 ADEQ and Public Water System Owner/Operator. If such signatures occur on different dates,
9 the later date shall be the effective date of this Consent Order.

10 **XV. PARTIES BOUND**

11 No change in ownership, corporate status, or partnership status relating to the subject of
12 this Consent Order will in any way alter the responsibilities of Public Water System
13 Owner/Operator under this Consent Order. Public Water System Owner/Operator will be
14 responsible, and will remain responsible, for carrying out all activities required under this
15 Consent Order.

16 **XVI. TERMINATION**

17 The provisions of this Consent Order shall be deemed satisfied and this Consent Order
18 shall be terminated upon receipt of written notification from ADEQ that Public Water System
19 Owner/Operator has demonstrated, to the satisfaction of ADEQ, that all of the terms of this
20 Consent Order have been completed. Any denial of a request for termination from Public Water
21 System Owner/Operator will be in writing and describe which terms of the Consent Order have
22 not been completed to the satisfaction of ADEQ. ADEQ reserves the right to terminate this
23 Consent Order unilaterally at any time for any reason. Any termination will include a written
24 explanation of the reason(s) for termination.

25 **ISSUED** this ___ day of _____, 200__.

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[Name of Division Director], Director
Water Quality Division
Arizona Department of Environmental Quality

CONSENT TO ORDER

The undersigned, on behalf of [Name of Responsible Party/ Facility], hereby acknowledges that [he/she] has read the foregoing Consent Order in its entirety, agrees with the statements made therein, consents to its entry and issuance by the Arizona Department of Environmental Quality, agrees that Public Water System Owner/Operator will abide by the same and waive any right to appeal therefrom.

DATED this ___ day of _____, 200_.

[Signatory for Responsible Party]
[Title of Signatory]

1 **ORIGINAL** of the foregoing administrative decision was sent certified mail, return receipt
requested, this ___ day of _____, 200_, to:

2
3 Public Water System Owner/Operator
[Address of Responsible Party]

4 **COPY** of the foregoing administrative decision was filed this ___ day of _____, 200_,
with:

5
6 **COPIES** of the foregoing administrative decision were sent by regular/interdepartmental mail,
this ___ day of _____, 200_, to the following:

7
8 Arizona Department of Environmental Quality
Office of Special Counsel
9 Attention: [Hearing Administrator], Hearing Administrator
1110 West Washington Street
10 Phoenix, Arizona 85007-2935

11 [Chief Counsel, Environmental Enforcement Section, Office of the Attorney General]

12 [Program Manager(s), ADEQ]

13 [County Health Department]

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