



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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EPA, REGION
OFFICE OF REGIONAL ADMIN

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THE ADMINISTRATOR

Governor Pierre S. du Pont
Governor of Delaware
Dover, Delaware 19901

Dear Governor:

It is with great pleasure that I am today approving a revision to the National Pollutant Discharge Elimination System (NPDES) program Memorandum of Agreement between Delaware and the Environmental Protection Agency.

Congratulations to you and your staff. We look forward to working with you and the State Department of Natural Resources and Environmental Control in continued efforts toward the prevention and control of water pollution in the State of Delaware.

Sincerely yours,

Lee L. Verstandig

Lee L. Verstandig
Acting

Enclosure

cc: John E. Wilson, III
Secretary
Delaware Department of Natural
Resources and Environmental Control

✓ Peter N. Bibko
Regional Administrator
Environmental Protection Agency
Region III

MEMORANDUM OF AGREEMENT BETWEEN
THE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL FOR THE STATE OF DELAWARE
AND THE
REGIONAL ADMINISTRATOR, REGION III
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. GENERAL

A. Purpose

This Memorandum of Agreement ("MOA") establishes the terms, responsibilities and procedures in which the National Pollutant Discharge Elimination System ("NPDES") permit program will be operated by the Delaware Department of Natural Resources and Environmental Control ("DNREC" or "State"). Incorporated herein by reference are the applicable provisions of 40 C.F.R. Part 123. This MOA replaces the original Memorandum of Understanding dated April 1, 1974.

B. Principles

1. The State shall administer its permit program, consistent with this MOA, the Clean Water Act ("CWA"), regulations, effluent guidelines and priorities established annually in the State Section 106 Program Plan.
2. The Regional Administrator will assess the State's administration of its program on a continuing basis for consistency with the CWA, this MOA, the State Section 106 Program Plan and all applicable federal laws, regulations and policies.
3. The applicable portions of law relating to this MOA are 7 Del. C. Chapter 60, regulations adopted thereunder and 40 C.F.R. Parts 122, 123, 124 and 125 promulgated pursuant authority contained in Section 301(a) of the CWA. The terms used in this MOA have the same meaning as is in 40 C.F.R. Section 122.3.
4. It is recognized that the CWA, 33 U.S.C. § 1251 et seq., allows for the establishment of State discharge standards more stringent than those set by federal law.

5. Adequate implementation of both Delaware Statutes and Regulations and the CWA and implementing regulations require a high degree of cooperation between the State and EPA.

6. As stated in the CWA, the primary responsibility to prevent, reduce and eliminate pollution rests with the State, provided the State's program also promotes and fulfills the objectives and requirements of the CWA, and implementing regulations.

7. The State is responsible for NPDES permit issuance, modification, reissuance, compliance monitoring and enforcement of all permits in the State where authorized to do so.

8. Submission of information by the State to the Regional Administrator shall be accomplished in a manner consistent with this MOA, the State's Section 106 Program Plan, applicable portions of 40 C.F.R. Part 123 and other procedures hereinafter agreed upon.

9. The State shall provide access to files necessary for evaluating the State's administration of the NPDES program and will provide specific information.

10. NPDES permits, permit applications, and effluent data related to NPDES permits will be made available to the public. All information obtained or used by the State under its NPDES permit program shall be made available to EPA upon request. If the information has been submitted to the State under a claim of confidentiality, the State in providing such confidential information, shall inform EPA of such claim.

II. PERMIT REVIEW AND ISSUANCE

1. The State is responsible for expeditiously drafting, circulating, issuing, modifying, reissuing and terminating NPDES permits, and shall do so in accordance with 40 C.F.R. Sections 123.7(a) and (d), 123.74 and 123.75.

2. The DNREC shall transmit a copy of the NPDES permit portion of the State permit application, including supplemental information, to the Regional Administrator promptly after such application is determined to be complete, unless it is waived.

3. EPA will enter the required information into the national data bank Permit Compliance System (PCS).

4. The Regional Administrator shall have 30 days to comment upon, object to or make recommendations in writing with respect to the NPDES permit application. EPA shall make its best effort to provide its comments or recommendations in writing within 20 days. Failure of EPA to provide its written comments, objections or recommendations regarding the NPDES permit application within 30 days shall constitute a waiver. The State director shall acquire any necessary additional information and forward it to the Regional Administrator.

5. The DNREC shall transmit to the Regional Administrator (and, in the case of general permits for other than separate storm sewers, to the EPA Director, Office of Water Enforcement) a copy of each draft NPDES permit and fact sheet or statement of basis at the time of issuance of public notice of such draft permit, unless it is waived. In the case of draft permits for possible new sources under Section 306 of the CWA, the State shall submit a copy of its findings as to whether the source is a new or existing source with the draft permit.

6. The Regional Administrator shall have 30 days to comment upon, object to, or make recommendations with respect to a draft permit. Whenever EPA files a general objection to a draft permit within 30 days, the Regional Administrator shall have 90 days from receipt of the draft permit to supply the specific grounds for an objection, and the terms and conditions which should be included in the permit. Notwithstanding the above, EPA will make its best effort to supply the specific grounds for a general objection within 30 days of filing such general objection. It is in the best interest of the Regional Administrator and the State to reach agreement on all the terms and conditions to be contained in a draft permit prior to State public notice.

7. If (a) the State proposes to issue a permit which is different from the draft permit submitted for EPA review, (b) EPA has objected to the draft permit, or (c) there is substantial public comment on the draft permit, the State shall transmit a copy of the following to the Regional Administrator:

- (i) the proposed permit;
- (ii) the comments and recommendations of another State whose waters may be affected by issuance of the permit;
- (iii)

written comments and hearing records; (iv) the response to comments prepared pursuant to 40 C.F.R. Section 124.17; and (v) the written explanation, if any, to an affected State explaining the reasons for failure to accept any of its written recommendations.

8. The Regional Administrator shall have the right to further comment on, object to or make recommendations with respect to the proposed permit submitted to EPA pursuant to paragraph II.7. in accordance with the procedures described in paragraph II.6.

9. The Regional Administrator waives the right to comment on, object to or make recommendations with respect to the sufficiency of permit applications, draft permits and final permits for discharges or proposed discharges except as follows:

- a. Discharges which may affect the waters of another State;
- b. Discharges proposed to be regulated by general permits;
- c. Discharges from publicly owned treatment works with a daily average discharge exceeding one million gallons;
- d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons;
- e. Discharges from any major discharger as determined by EPA in conjunction with the State;
- f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 C.F.R. Part 122;
- g. Discharges from any other source with a daily average discharge exceeding 0.5 million gallons, except discharges of non-process waste water; and
- h. Discharges into the territorial sea or contiguous zone.

10. The Regional Administrator retains the right, as provided in 40 C.F.R. § 123.6(g), to terminate the

foregoing waiver, in whole or in part, as it applies to future permits at any time by sending the DNREC written notice of such termination.

11. The DNREC shall transmit a copy of every issued NPDES permit to the Regional Administrator and each state whose waters may be affected, no later than 30 days after the issuance of such permit.

12. The DNREC shall notify the Regional Administrator whenever the State intends to terminate an issued NPDES permit and shall upon request transmit a copy of any permit which is proposed to be modified, or revoked and reissued to the Regional Administrator with any proposed changes clearly identified.

13. The procedures set forth above in paragraphs II.5, II.6, II.7 and II.8 shall be followed with respect to modifications by the DNREC of any issued NPDES permit, except those waived in accordance with paragraph II.9 and minor modifications as described in 40 C.F.R. § 122.17.

14. The DNREC will immediately notify EPA upon receipt of an administrative or judicial appeal of a permit. If the terms of any permit are affected in any manner by administrative or court action, the DNREC shall immediately notify the Regional Administrator of such revision and shall transmit a copy of such permit to the Regional Administrator with changes clearly marked. The Regional Administrator shall have 30 days to make written objection to, comments on or recommendations with respect to such changed permit.

III. COMPLIANCE AND ENFORCEMENT

The State agrees to maintain a vigorous enforcement program, including a program to assess compliance by dischargers and to take timely and appropriate enforcement action where such action is warranted. Enforcement action may also include voluntary compliance where appropriate. Discharges endangering public health shall receive immediate and paramount attention.

A. Compliance Monitoring

1. The State shall operate a timely and effective compliance monitoring program including a tracking component for the purpose of determining compliance with permit conditions and pretreatment requirements.

The State shall keep complete records. The State agrees to use EPA standard discharge and monitoring report forms.

2. The State shall operate a timely review system to determine if: (a) the self-monitoring reports required by permits are submitted; (b) the submitted reports are complete and accurate; and (c) the permit conditions and pretreatment requirements (when applicable) are met.

3. The State and EPA shall have an enforcement conference at least quarterly either in person or by telephone to decide priorities for initiating enforcement action. Further procedures will be specified in the annual State Section 106 Program Plan.

B. Compliance Inspection

1. The State shall conduct field activities to determine the status of compliance with permit requirements including sampling and nonsampling inspections.

2. The State and Regional Administrator will develop a list of permittees to be the subject of State compliance inspections pursuant to a neutral inspection plan consistent with the annual State Section 106 Program Plan. The list may be modified with concurrence of both parties. EPA or the State may determine that additional compliance inspections are necessary to assess permit compliance. EPA retains the right to perform compliance inspections at any time on any permittee in the State, but will notify the State at least 10 days in advance of the inspection to give the State an opportunity to participate and will keep the State informed of its plan and results. The State shall be responsible for preparing a report listing noncomplying permittees on a regular basis in accordance with 40 C.F.R. Section 122.18(a).

3. Reports on compliance inspections for major permittees shall be available for review by the DNREC and the Regional Administrator within 30 days of completion of the inspection report. The State shall thoroughly review each report to determine what, if any, enforcement action shall be initiated. Where the results of the inspection(s) indicate that the discharger is in violation, the State shall initiate

appropriate action within 90 days from the date of the inspection to achieve compliance.

4. The State shall conduct compliance inspections, the number, types, schedules and frequency of which will be established in accordance with the State Section 106 Program Plan. The types of inspections which may be conducted are:

- a. Compliance Evaluation Inspection (CEI);
- b. Performance Audit Inspection (PAI);
- c. Compliance Sampling Inspection (CSI); and
- d. Compliance Biomonitoring Inspection (CBI).

A description of each of the above 4 types of compliance inspections is included as Attachment A to this MOA and will be included in the State Section 106 Program Plan.

C. Action Against Violators

1. The State is responsible for taking timely and appropriate enforcement action against persons in violation of pretreatment requirements (when applicable), compliance schedules, effluent limitations, reporting requirements, other permit conditions and other NPDES program requirements.

2. The State has primary responsibility for administering and enforcing its NPDES program and shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations. If EPA determines that the State has not taken timely and appropriate enforcement action against a violator, EPA shall notify the State, i.e., Notice of Violation or letter, prior to taking enforcement action against a violator. Such notification shall identify the nature of the violation, the reasons why an enforcement action is necessary and give the State 30 days to take appropriate enforcement action. No later than 30 days after receipt of notification from EPA, the State shall respond in writing to EPA detailing the enforcement action, if any, it has taken and why such action, or inaction, is appropriate. If EPA determines that the State's action or inaction is not appropriate, EPA may proceed against a violator with

any or all of the enforcement options available under Section 309 of the CWA and will notify the State of such enforcement action. Notification of federal enforcement action against a violator may be made orally and shall be followed by written notification to the State. No notification of any type shall be required when EPA is exercising its emergency power under Section 504 of the CWA.

3. EPA recognizes the ability and right of the State to exercise its discretion in taking enforcement action regarding State requirements which are more stringent than federally imposed requirements.

4. The State agrees to employ the principles set forth in 40 C.F.R. § 123.9(c) or successor regulation in the assessment and compromise of the amount of any civil penalty for violation of the requirements of the CWA.

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

IV. PRETREATMENT

The State intends to assume primary responsibility for a pretreatment program upon EPA approval of the same. If the State assumes a pretreatment program, the State will apply and enforce the applicable pretreatment requirements set forth in 40 C.F.R. Part 403, Sections 307 and 402 of the CWA and the EPA-approved pretreatment program. EPA will overview and provide guidance to the State pretreatment operations to ensure compliance with federal requirements.

V. REPORTING AND TRANSMITTAL OF INFORMATION

A. The State shall submit the following to EPA:

| <u>ITEM DESCRIPTION</u> | <u>FREQUENCY OF SUBMISSION</u> |
|--|---|
| 1. A copy of all permit applications, except those for which EPA has waived review as specified in paragraph II.9. | Promptly after receipt of a complete application. |

2. Copies of all draft NPDES permits placed on public notice, including public notices and fact sheets or statement of basis, except those for which EPA has waived review as specified in paragraph II.9. When placed on public notice.
3. A copy of all issued, proposed and modified NPDES permits; As issued.
4. A list of facilities scheduled for compliance inspections; With submission of the Section 106 (CWA) plan.
5. Proposed revisions to the scheduled compliance inspections; As needed.
6. A list of compliance inspections performed during the previous two quarters. March and October of each year.
7. Copies of all compliance inspection reports and data transmittal letters to all major permittees; Within 30 days of completion of the inspection report.
8. Copies of all compliance inspection reports and data transmittal letters to all other permittees; As requested.
9. For major dischargers, a quarterly noncompliance report as specified in 40 C.F.R. § 122.18(a) and further qualified in EPA Guidance; Quarterly, as specified in 40 C.F.R. § 122.18(a)
10. Discharge Monitoring Reports for all dischargers.* As requested.
11. Copies of all enforcement actions against NPDES violators (including notices of violation, administrative orders, initial determinations, and referrals to the Attorney General); and As issued.

* The State intends to enter DMR data for major dischargers directly into PCS. When the State begins to do so, DMRs for any permittee will be sent to EPA only upon request.

12. Copies of correspondences required to carry out the pretreatment program. As issued or received.

B. EPA shall transmit the following to the State:

| <u>ITEM DESCRIPTION</u> | <u>FREQUENCY OF SUBMISSION</u> |
|---|--|
| 1. A list of compliance inspections EPA intends to conduct jointly with the State as part of its State Overview Plan; | Annually by September 30 for the next 12 months. |
| 2. Proposed revisions to the EPA schedule of compliance inspections; | As needed. |
| 3. Copies of all EPA compliance inspection reports and data; | Within 30 days of inspection. |
| 4. Notification of the commencement and nature of any Federal enforcement actions being taken; and | As initiated. |
| 5. A review of the State's administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits. | As needed. |

VI. PROGRAM REVIEW

A. To fulfill its responsibility for assuring the NPDES Program requirements are fulfilled EPA shall:

1. Review the State program information submitted by the State;
2. Meet with State officials from time to time to observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes;
3. Examine the files and documents at the State Agency regarding selected facilities to determine:
(i) whether permits are processed and issued consistent with federal requirements; (ii) whether the State is able to discover permit violations when they occur;

(iii) whether State reviews are timely; and (iv) whether State selection of enforcement actions is appropriate and effective. EPA shall notify the State in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems. EPA need not reveal to the State in advance the file and documents to be examined. A draft copy of the examination report shall be transmitted to the State for comment prior to being finalized;

4. When appropriate, hold public hearings on the State's operation of the NPDES program; and

5. Review the State's public participation policies, practices and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulation, or directive which the State director has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, and prior to the adoption of any new regulation or directive, DNREC shall notify the Regional Administrator and shall transmit the text of any such change to the Regional Administrator. (See, 40 C.F.R. Section 123.13 which provides that the change may entail a program revision, which will not become effective until approved by the Administrator).

C. If an amendment, recision or repeal of any statute, regulation, directive or previously EPA approved form related to the NPDES program shall occur for any reason, the DNREC shall within 10 working days of such event notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

D. Prior to the approval of any test method other than those specified as required for NPDES permitting, DNREC shall obtain the approval of the Regional Administrator.

E. The DNREC shall seek such legislation, adopt such regulations, and take such further actions which may be necessary to preserve and maintain compliance with all NPDES program requirements.

VII. MODIFICATION

This MOA shall take effect immediately upon approval by the Administrator. Any party to this MOA may initiate action to modify this MOA. Before this MOA may be modified, however, any

proposed revisions must be put in writing and signed by all the parties.

VIII. INDEPENDENT EPA POWERS

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Section 308, 309, 311, 402, 504 or other sections of the CWA.


IX. COMPUTATION OF TIME

In computing any period of time prescribed by this MOA 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 end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time is less than 7 days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

For the purposes of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until receipt by EPA.

In witness whereof, the parties have executed this agreement the day and year first above written.

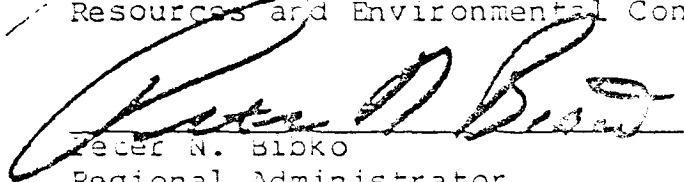
Date: 10-28-82



John E. Wilson, III
Secretary, Department of Natural Resources and Environmental Control

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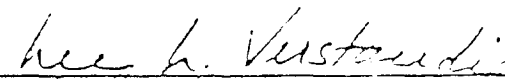
Date: _____



Peter W. Bisko
Regional Administrator,
Region III
United States Environmental Protection Agency

Date: May 4, 1983

Approved by:



Lee L. Verstandig
Acting Administrator
United States Environmental Protection Agency

ATTACHMENT A

a) Compliance Evaluation Inspection (CEI)

A CEI is non-sampling in nature and is designed to verify permittee compliance with applicable NPDES permit requirements and compliance schedules. The inspection is based on record reviews and observations such as walk-through evaluations of waste source and wastewater treatment facilities, and visual observations of effluents, receiving waters, etc. All CEI's shall be performed in accordance with the NPDES Compliance Evaluation Inspection Manual (U.S. EPA Office of Enforcement, 1976, updated 1980).

b) Performance Audit Inspection (PAI)

The PAI focuses on quality assurance of the permittee's self-monitoring program by evaluation of permittee performance and/or simulation of all the steps in the NPDES self-monitoring process from sample collection and flow measurement through laboratory analyses, data workup, and reporting. The PAI includes the basic objectives and tasks of a CEI and applies to both chemical and biological self-monitoring programs.

c) Compliance Sampling Inspection (CSI)

During the CSI a representative sample(s) of a permittee's effluent is collected and chemically analyzed. The results of the analyses are used to verify the accuracy of the permittee's self-monitoring program and reports, gather evidence for enforcement proceedings, and determine the quantity and quality of effluents. In addition, a CSI includes the same objectives and tasks as a CEI. The State shall perform CSIs in accordance with the NPDES Compliance Sampling Inspection Manual (U.S. EPA Office of Enforcement, 1977).

d) Compliance Biomonitoring Inspection (CBI)

A CBI evaluates the biological effect of permittee's effluent discharge(s) on test organisms through the utilization of acute toxicity bioassay techniques. This inspection includes the same objectives and tasks as a CEI. The State shall perform CBIs in accordance with the Interim NPDES Compliance Biomonitoring Inspection Manual (U.S. EPA Office of Enforcement, 1979).

AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

The Memorandum of Agreement between the United States Environmental Protection Agency, Region III (hereinafter EPA) and the State of Delaware, Department of Natural Resources and Environmental Control (hereinafter Department or DNREC) is hereby amended to include DNREC and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination system (hereinafter NPDES) general permits as follows:

The DNREC has the responsibility for developing and adopting an NPDES General Permit Program. After identifying dischargers appropriately regulated by the General NPDES Permit Program, the DNREC will develop effluent limitations and prepare a draft General NPDES Permit Program. Each section of the General NPDES Permit Program will be accompanied by a development document setting forth the principal facts and methodologies considered during regulation development and will be transmitted to the following EPA offices:

Water Management Division Director
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Director, Office of Wastewater Enforcement and Compliance
U.S. EPA (WH-546)
Washington, DC 20460

EPA will have up to ninety (90) days to review the draft General NPDES Permit Program and subsequent Amendments and provide comments, recommendations and objections to the DNREC. In the event EPA does object to the General NPDES Permit Program or Amendments, it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The DNREC has the right to a public hearing on the objection in accordance with 40 C.F.R. §123.44. Upon receipt of EPA's objections, the DNREC may request a public hearing. If EPA's concerns are not satisfied and the DNREC has not sought a hearing within 90 days of the objection, exclusive authority to issue the General NPDES Permit passes to EPA.

If EPA raises no objections to the General NPDES Permit Program or Amendments, it will be publicly noticed in accordance with Delaware's Water and Air Resources Act, 7 Del. C. Chapter 60 and the requirements of 40 C.F.R. §124.10, including publication in a newspaper of general circulation in the County affected by the permit and a daily newspaper of general circulation throughout the state of Delaware. The DNREC will issue and administer NPDES General Permits in accordance with 7 Del. C. Chapter 60 and the requirements of 40 C.F.R. §122.28.

General NPDES Permits will apply to a discharger for a term of no longer than five years.

The DNREC also has the responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

All specific DNREC commitments regarding the issuance and enforcement of General NPDES Permits will be established annually in negotiating the subagreement between the State and EPA related to DNREC's Water Quality Program activities and the Delaware-EPA Agreement process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the DNREC General NPDES Permit Program application by the Regional Administrator of EPA Region III.

STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

Date: Sept. 16, 1992

By:

Edwin H. Clark, II
Edwin H. Clark, II
Secretary

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: OCT 22 1992

By:

Edwin B. Erickson
Edwin B. Erickson
Regional Administrator
U.S. EPA, Region III

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