

Memorandum of Agreement  
Between The  
Division of Water Resources  
Of The  
Department of Environmental Management  
Of The  
State of Rhode Island  
And The

Regional Administrator, Region I  
U.S. Environmental Protection Agency

Regarding The Administration and Enforcement of  
The National Pollutant Discharge Elimination System (NPDES)

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I. In recognition of the Clean Water Act (CWA) with amendments through 1982, the NPDES regulations promulgated by the Environmental Protection Agency in 1983 (40 CFR Parts 122-123), the promulgated pretreatment regulations (40 CFR Part 403) and because the State of Rhode Island is requesting approval of a State program for National Pollutant Discharge Elimination System (NPDES) delegation, it is necessary to execute a Memorandum of Agreement (MOA) between the Chief of the Division of Water Resources and the Regional Administrator of the Environmental Protection Agency (EPA).

This MOA is the mechanism for specifying the details of EPA oversight of the State NPDES Program, which is provided for in the above-referenced regulations.

The State shall administer the RIPDES Program consistently with this MOA, CWA, applicable federal regulations, promulgated effluent guidelines and State law and regulations issued pursuant thereto.

Both parties are responsible for assuring that the requirements of the National Pollutant Discharge Elimination System are met. The parties agree to maintain a high level of cooperation and coordination between State and EPA staff to assure effective administration of the NPDES Program. In this partnership, the EPA shall provide to the State's Division of Water Resources (DWR) technical and legal assistance as herein specified and in accordance with the State/EPA agreement.

It is the goal of both DWR and EPA to minimize the flow of documents. To this end, both parties further agree to cooperate in the development of a data management system and other information retrieval and transmission systems which will allow for efficient implementations by the State of the RIPDES Program.

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EPA shall provide, on a continuing basis and in a timely fashion to DWR, information regarding proposed, revised, new promulgated, remanded, withdrawn or suspended federal regulations and to further advise the State of the results of cases pertaining to the NPDES Program in general which could affect the implementation of the Program by the State.

DWR is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits issued by the State and those issued by EPA and subsequently accepted and transferred to DWR. The annual State Section 106 Program Plan shall establish specific methods and priorities for the implementation of compliance monitoring, enforcement and pretreatment.

A hearing properly filed for by permittees in accordance with 40 CFR Part 124.74 may be conducted by the State except when EPA retains jurisdiction over the permit. EPA shall be responsible for issuing a final determination at the close of such hearings, and DWR shall retain its rights under Section 401 of CWA to certify or not certify any change in permits issued as a result of such hearings conducted by EPA.

If requested by either party, meetings will be scheduled between DWR and EPA to review specific operating procedures, resolve problems or discuss the administration of the NPDES Permit Program.

The EPA shall from time to time assess DWR's administration of the NPDES Program for consistency with CWA, this MOA and all applicable Federal regulations. Upon the promulgation by EPA of major new or amended regulations affecting the NPDES Program, DWR shall make appropriate corresponding changes in the State regulations. This assessment shall be accomplished through the review of permits, reports and enforcement actions.

submitted by DWR to EPA, in accordance with this MOA. The Regional Administrator may consider as a part of this assessment comments concerning DWR's administration of the NPDES Permit Program received from permittees, the public, and appropriate Federal and local agencies. Copies of any such comments received by the Regional Administrator shall be forwarded to the Chief. When these assessments are made, EPA shall submit a written report to the Chief advising him or her of their results and whether or not the State is satisfactorily administering the NPDES Program.

This MOA shall be reviewed jointly at least annually by DWR and the Regional Administrator during the preparation and evaluation of the annual program plan.

Either party may initiate action to modify this MOA. Modification shall be consistent with 40 CFR 123 of 1 April 1983.

Following two (2) years of administration by DWR, with satisfactory EPA assessment of such State administration, (*the "transitional period"*) EPA agrees to revise this MOA to lessen significantly EPA's oversight of the State, *insofar as it is consistent with 40 CFR 123*, and to reduce, where possible, the categories of dischargers subject to EPA review.

As a part of future annual State Section 106 Program Plans EPA and DWR shall agree upon a list of industrial and municipal facilities to be designated major dischargers during the succeeding fiscal year for the purpose of establishing priorities for permit issuance, compliance inspection frequency and transmission of information to EPA. The following list of major dischargers identifying 34 facilities will be used.

INDUSTRIAL FACILITIES

RI0000132	AMERICAN HOECHST CORP.	COVENTRY
RI0001139	BOSTITCH INC./TEXTRON	EAST GRE
RI0000043	BRADFORD DYEING	BRADFORD
RI0000051	BROWN & SHARPE MFG., CO.	NORTH KI
RI0001228	FALVEY LINEN SUPPLY	SCITUATE
RI0001180	GTE PRODUCTS CORPORATION	CENTRAL
RI0020508	IMPERIAL WALLPAPER MANUFACTURING CO.	ASHAWAY
RI0000191	KENYON PIECE DYEWORKS, INC.	CHARLEST
RI0001333	MOBIL OIL-E. PROVIDENCE REF.	EAST PRO
RI0000434	NARRAG ELEC-MANCHESTER ST.	PROVIDEN
RI0000493	NARRAG ELEC-SOUTH STREET	PROVIDEN
RI0020940	NIFE, INC.	LINCOLN
RI0000248	ORIGINAL BRADFORD SOAP WORKS	WEST WAR
RI0000281	RAYTHEON CO-SUB SIGNAL DIV	PORTSMOU

MUNICIPAL FACILITIES

RI0100072	BLACKSTONE VALLY SDC-BUCKLIN	EAST PRO
RI0100005	BRISTOL STP	BRISTOL
RI0100455	BURRILLVILLE	BURRILLV
RI0100145	CENTRAL FALLS	CENTRAL
RI0100013	CRANSTON WCF	CRANSTON
RI0100030	EAST GREENWICH STP	EAST GRE
RI0100048	EAST PROVIDENCE STP	EAST PRO
RI0100366	JAMESTOWN MUNI.	JAMESTOW
RI0100315	NARRAGANSETT BAY W.Q. MGMT. DI	PROVIDEN
RI0100188	NARRAGANSETT SCARBOROUGH HILLS	NARRAGAN
RI0100293	NEWPORT STP	NEWPORT
RI0100382	PAWTUCKET	PAWTUCKE
RI0100404	QUONSET POINT WTP	PROVIDEN
RI0100251	SMITHFIELD MTP	SMITHFIE
RI0100374	SOUTH KINGSTON-NARRAGANSETT TP	NARRAGAN
RI0100056	WARREN STP	WARREN
RI0100234	WARWICK STP	WARWICK
RI0100153	WEST WARWICK WPCF	WEST WAR
RI0100064	WESTERLY STP	WESTERLY
RI0100111	WOONSOCKET	WOONSOCK

## II. Permit Review and Issuance

### A. General

It is recognized by DWR and EPA that CWA and regulations adopted pursuant thereto provide that upon approval of a State program for NPDES, NPDES permits subject to such program will be issued by DWR and not by EPA. EPA, however, maintains an oversight role and may object to NPDES permits. Therefore, it is in the interest of EPA and DWR to reach an agreement which specifies the details of EPA oversight of NPDES permits to be issued by the State.

### B. Waiver of EPA Review of State-Issued NPDES Permits

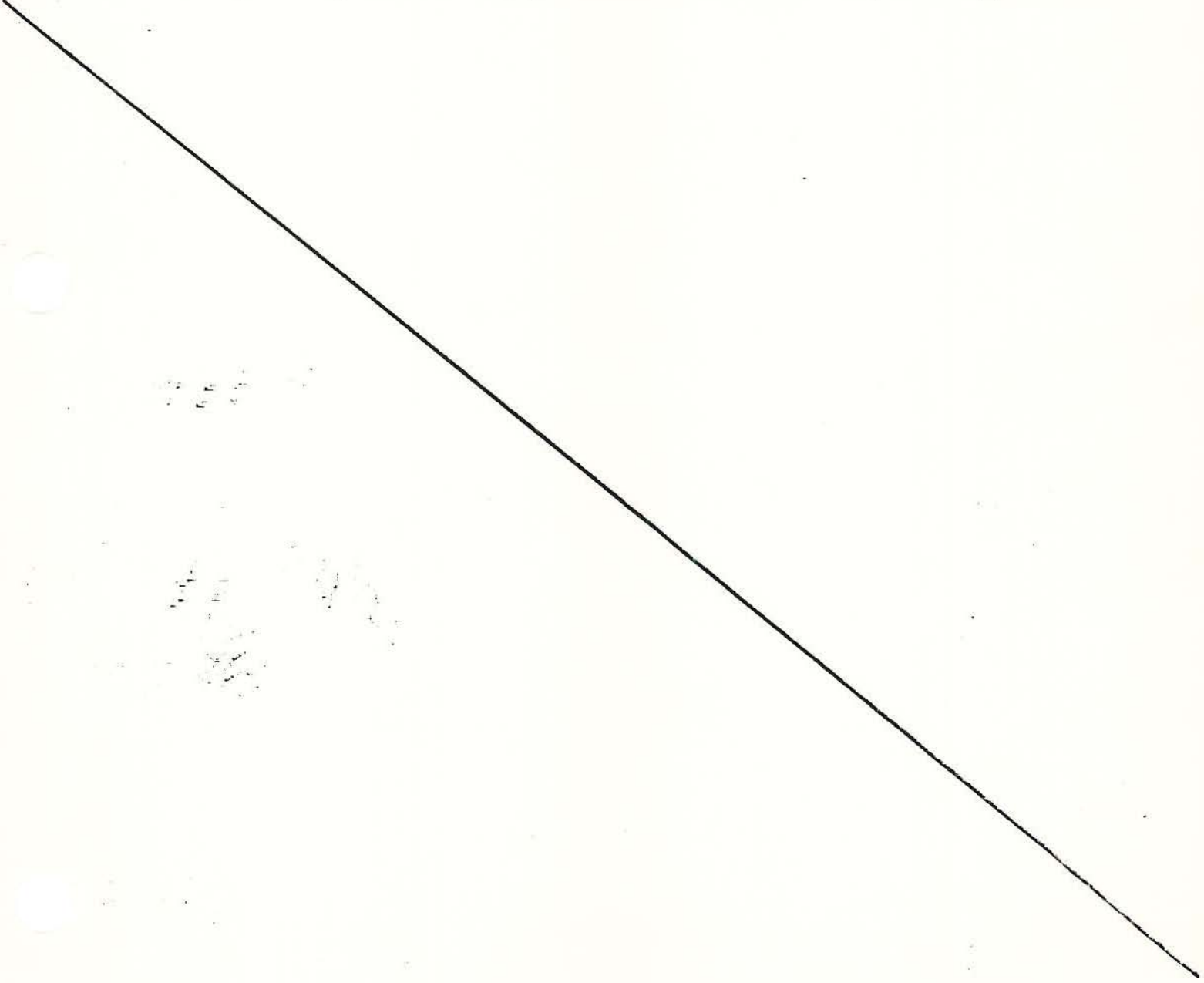
1. Except as hereinafter expressly provided, EPA waives the right to review, object to, or comment upon State-issued permits under 402(d), (3), (e) or (f) of CWA for all categories of dischargers. DWR will, however, routinely consult with EPA regarding all permits issued to or applications from dischargers of significant importance. Such dischargers shall include but not be limited to discharges from any major discharger or from any discharger within any of the industrial categories listed in Appendix D of the R.I. PDES Rules. In addition, no waiver of review shall be granted for the following discharges:

- a) Discharges into the territorial sea;
- b) Discharges which may affect the waters of a State other than the one in which the discharge originates;
- c) Discharges proposed to be regulated by general permits;
- d) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;
- e) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;



- f) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in Appendix D of the RIPDES Rules;
- g) Discharges from other sources with a daily average discharge exceeding 0.5 (one-half) million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived regardless of flow.

Whenever a waiver is granted DWR shall supply EPA with copies of final permits and upon EPA's request DWR shall supply copies of notices of permit actions and complete applications.



2. The Regional Administrator retains the right to terminate the foregoing waiver as to future permit actions, in whole or in part *at any time, by sending the Chief written notice of termination.*

C. Transmission of Information to DWR for Program Transfer

1. The Regional Administrator shall transfer all NPDES files to the Chief at the time of program approval, except those for which EPA maintains jurisdiction as delineated below or those documents involved in litigation that have not yet been filed in court, *and upon final resolution of these matters the Regional Administrator shall transfer the NPDES file to the Chief.*

2. All files transferred to the Chief shall be on hardcopy including pending permit applications and support files for permit issuance, which consist of all relevant information collected before approval of the State Program and not already in the possession of the Chief, and including the record of any proceedings, enforcement action, compliance reports, etc.

Pending permit application files shall be transferred to the Chief, subject to the following:

(a) Commencing immediately, the Regional Administrator shall begin preparation for transfer to DWR a list of all pending NPDES permit applications received by EPA. The list will include the name of each discharger, SIC Code, and shall state whether the application is:

- (1) administratively complete;
- (2) administratively incomplete or otherwise deficient;  
or
- (3) of undetermined status

(b) Upon receipt of the above list, DWR shall identify the order of priority to be used by EPA to transfer applications to DWR.

(c) Upon approval of the RIPDES Program, the Regional Administrator shall, prior to implementation of Rhode Island's NPDES Program, complete the transfer of all NPDES permit application files (including those for Federal installations), and any other data relevant to such applications collected by the Regional Administrator prior to approval of Rhode Island's Program.

(d) Subsequent to EPA's approval of Rhode Island's Program, the Regional Administrator shall forward all appropriate information received thereafter relating to the NPDES permit applications to DWR no later than fifteen (15) days after the receipt of such information.

(e) All NPDES permit applications in 2(a) (1) above shall be transferred without further actions by the Regional Administrator.

(f) All NPDES permit applications in 2(a) (2) above shall be transferred with a document specifying the information needed to make the application administratively complete or to correct other deficiencies.

(g) All NPDES permit applications in 2(a) (3) above shall have completeness determinations made by the Regional Administrator prior to transfer of the file to DWR with a document prepared by EPA and submitted to DWR which specifies whether

the application is complete or not. If not complete, such document shall specify the information needed to make the application administratively complete or to correct other deficiencies.

3. The retention of EPA jurisdiction over any permits may include the processing of any permit appeals, modification requests or variance requests; the performance of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the federally issued permit expires, EPA will retain jurisdiction until the matter is resolved, unless DWR and the Regional Administrator make some other arrangement.
4. Upon approval of the State Program, DWR shall become the sole permitting authority and the Administrator shall suspend the issuance of permits.
5. If an NPDES applicant or permittee contacts the Regional Administrator concerning an application or a permit, except in those situations covered in 4. above the Regional Administrator shall inform the applicant of DWR's role and refer all inquiries concerning the NPDES application or permit to DWR.
6. DWR shall not issue a permit on the basis of any application received from EPA resulting from this transfer which the Regional Administrator identifies as incomplete or otherwise deficient until the Chief receives information from the applicant sufficient to complete the application or correct the deficiency.

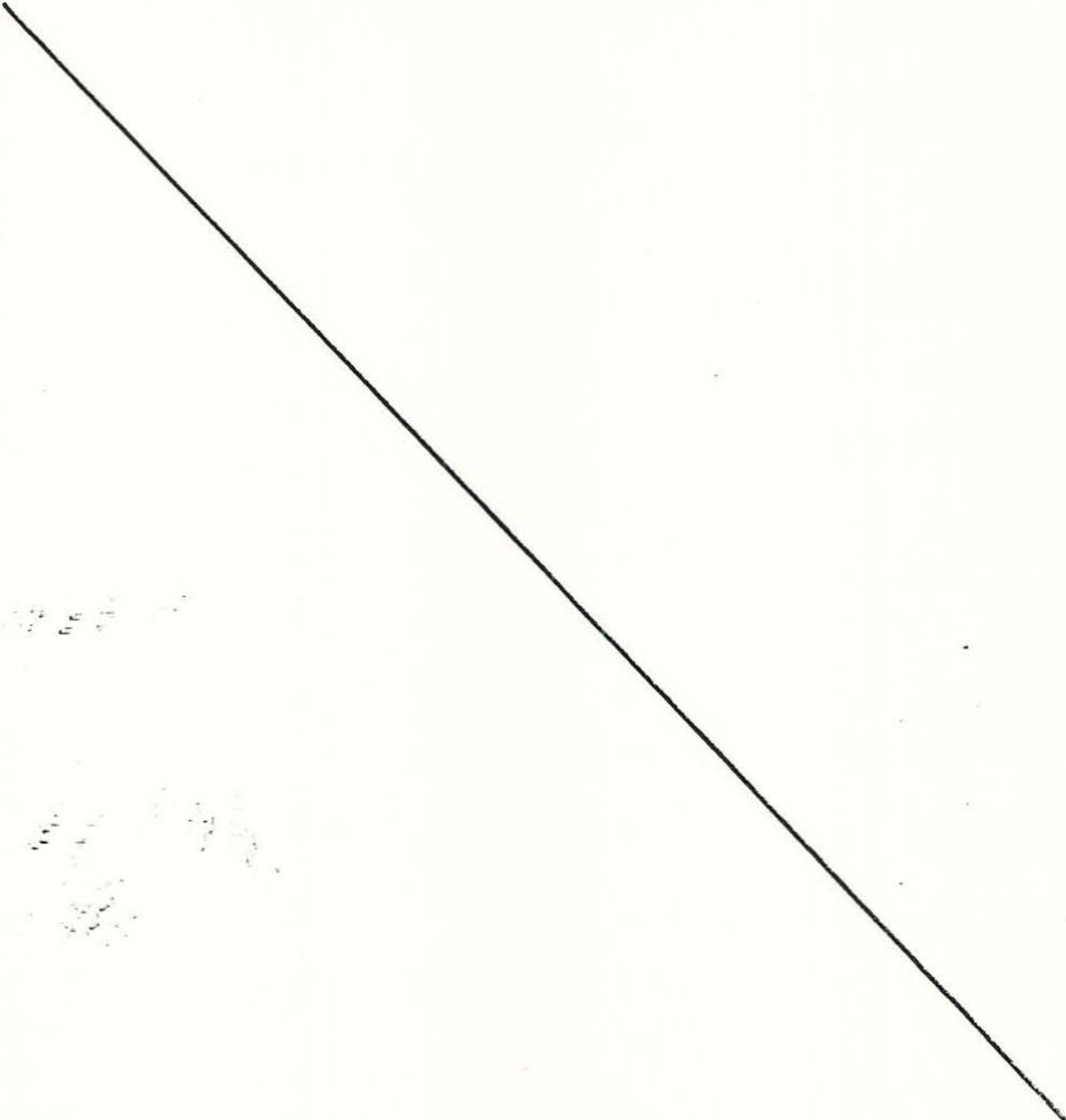
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7. The Regional Administrator will forward to the Chief copies of reports of all inspections performed by EPA and notify the Chief in writing of any enforcement action by EPA against a violator.
  8. Following an EPA audit or any other review of the State NPDES Program, the Regional Administrator will forward a draft report of such audit or review to the Chief for his comments before release of any final report.
  9. During the "transitional period" between EPA's and DWR's administration of the NPDES Program, EPA shall provide all forms necessary for program administration to DWR, including but not limited to DMR's permit applications. DWR shall notify EPA when provision of such forms by EPA is no longer necessary.

D. Transmission of Information to EPA

1. DWR shall transmit to the Regional Administrator:
  - (a) A copy of each draft permit, fact sheet and complete RIPDES permit application.
  - (b) Notice of every action taken by DWR related to permit issuance or enforcement.
  - (c) A copy of every permit issued by the State.
  - (d) Copies of permit forms as developed or significantly modified.
  - (e) Copies of Public notices regarding permit actions, unless waived.
2. DWR shall transmit a copy of each draft general permit, except those for separate storm sewers, to the Regional Administrator and the EPA director, Office of Water Enforcement and Permits.

3. The Chief shall transmit to EPA:

(a) Upon request of the Regional Administrator,  
notices from publicly-owned treatment works given in  
accordance with



40 CFR Part 122.42(b) and 40 CFR Part 403.

(b) A copy of any written comments presented pursuant to public notice of issuance of a draft permit and a summary of comments presented at any hearing on any draft permit, if:

- 1) The Regional Administrator requests the information; or
- 2) The proposed permit contains requirements significantly different from those contained in the draft permit; or
- 3) Significant comments objecting to the draft permit have been presented in writing or at a public hearing.

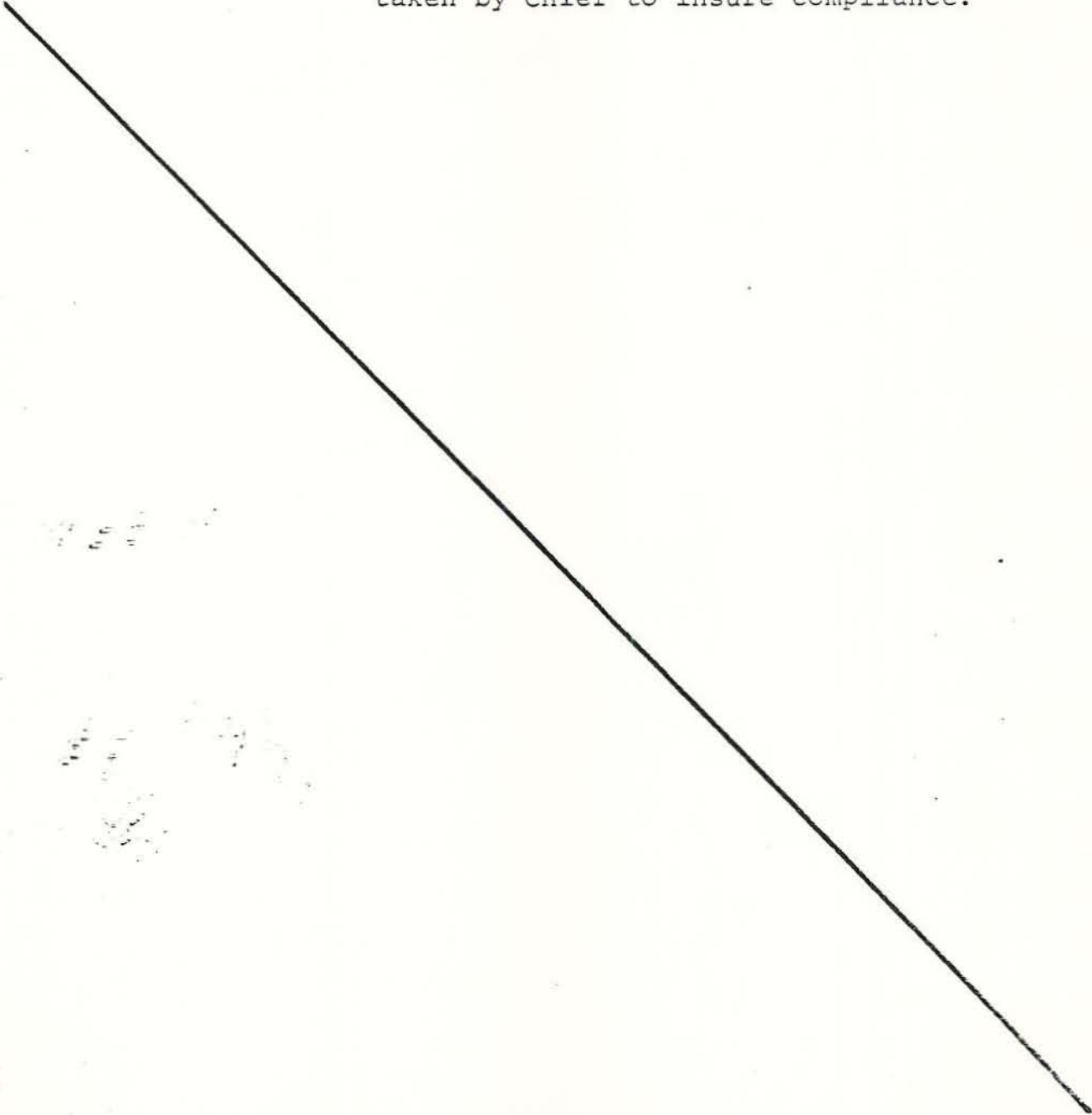
(c) DWR shall keep such records and submit to the Administrator such information as the Regional Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or 40 CFR Part 123.

4. Upon program approval, the Chief shall prepare summary quarterly and annual noncompliance reports on NPDES permittees and submit them to the Regional Administrator.

(a) The Quarterly Noncompliance Reports (QNCRs) shall:

- i. Be subcategorized as non-POTWs, POTWS and Federal permittees.
- ii. Be alphabetized by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be listed first.
- iii. For each entry, include in the following or-

der the following information:

- a. Name, location, and permit number of the non-complying permittee.
  - b. Brief description and date of each instance of noncompliance as described in 40 CFR § 123.45(a)(2) for that permittee.
  - c. Date(s) and brief description(s) of action(s) taken by Chief to insure compliance.
- 



d. Status of resolution of the noncompliance, and details which tend to explain or mitigate the instances of non-compliance.

(b) The QNCRs shall be submitted in accordance with the schedule required by EPA regulations effective at the time. Currently, this is prescribed by 40 CFR Part 122.45(c).

(c) Statistical reports shall be submitted on an annual basis by the Chief on minor NPDES permittees indicating the total number reviewed, the number of non-complying non-major permittees, the number of enforcement actions and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in 40 CFR Part 122.45(a)(2).

(d) A separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted and alphabetized by permittee name and permit number.

(e) These annual reports shall be prepared on a calendar year basis and completed no less than 60 days after the end of the calendar year.

5. The DWR will forward to EPA copies of compliance inspection reports on major dischargers and copies of correspondence to major dischargers regarding noncompliance.
6. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction.

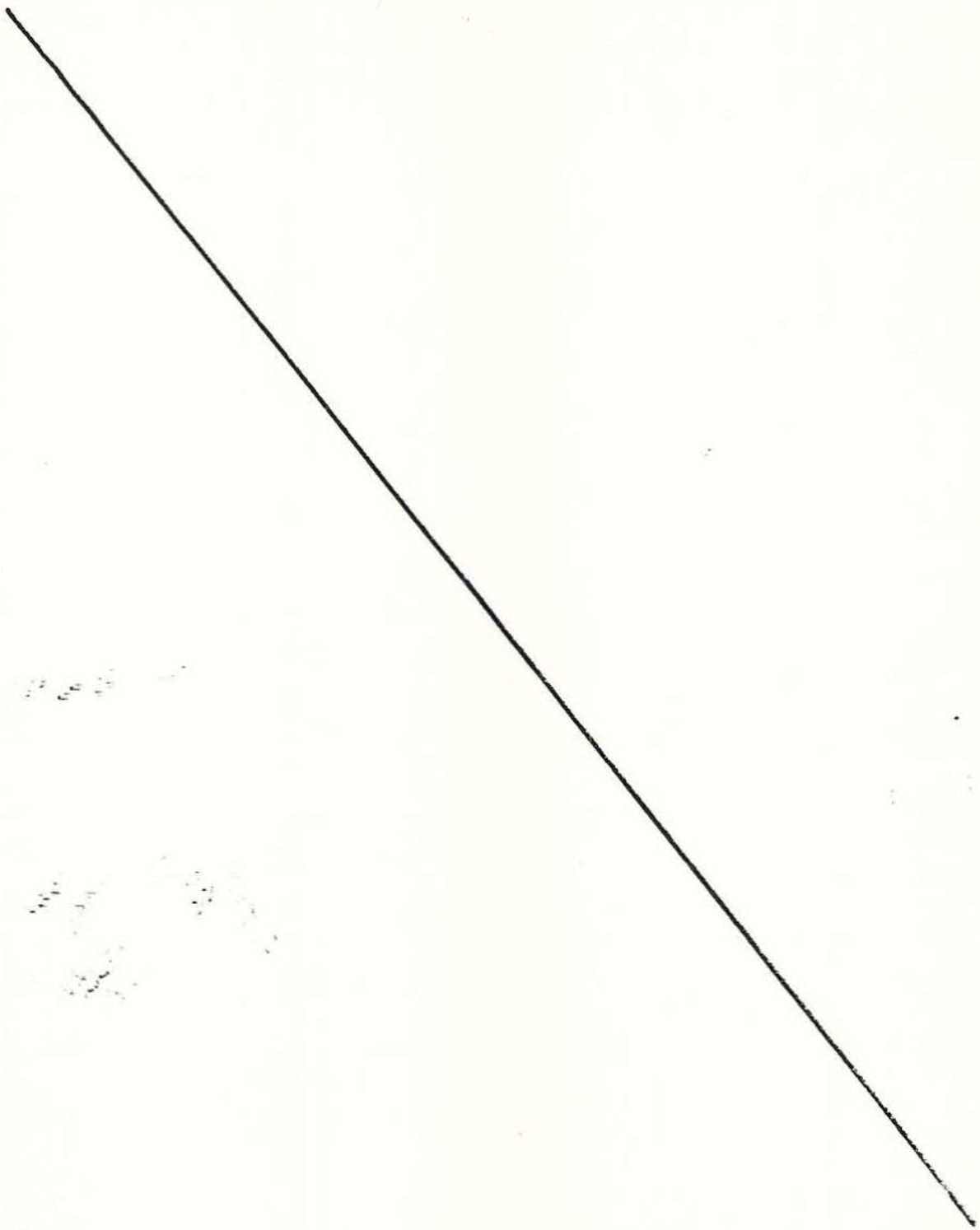
E. Processing of NPDES Applications

1. In accordance with Section D., a copy of each complete NPDES permit application shall be forwarded to the Regional Administrator with the draft permit and a fact sheet.
2. The Regional Administrator has up to thirty (30) days after receipt of the draft permit to make general com-

ments upon, objections to or recommendations with respect to the draft permit. EPA reserves the right to take 90 days to supply specific grounds for objection when a general objection is filed within 30 days.

3. In the event the Regional Administrator fails to provide the general objection, the application shall be deemed complete with respect to EPA.
4. In the case of draft general permits, EPA shall have 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. The written notification by the Regional Administrator or the Director, Office of Water Enforcement and Permits, as appropriate, shall include:
  - a. A statement of reasons for the objection to a general permit or the specific objection to other permits, (including the section of CWA or regulation thereunder that supports the objection), and
  - b. The actions that must be taken by the Chief to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).
6. The objection of the Regional Administrator or Director, Office of Water Enforcement and Permits to the issuance of a draft permit must be based upon one or more of the following grounds:
  - a. The permit fails to insure compliance with any applicable requirement of 40 CFR Part 123;
  - b. In the case of a draft permit for which notification

to the Administrator is required under section 402(b)  
(5) of CWA, the written recommendations of an affect-  
ed State



have been rejected by the permitted State for reasons that the Regional Administrator finds inadequate;

c. The procedures followed in the formulation of the draft permit failed materially to comply with procedures required by CWA or by regulations thereunder or by the MOA;

d. Any finding made by the Chief in connection with the draft permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

e. Any provision of the draft permit relating to record-keeping, reporting, monitoring, sampling or provision of any other information by the permittee are inadequate to assure compliance with permit conditions, including effluent standards and limitations required by CWA, by the guidelines and regulations issued under CWA, or by the draft permit;

f. In the case of any draft permit with respect to which applicable effluent standards or limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the draft permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or any regulations issued under CWA.

(The provisions of this subparagraph apply to determinations made pursuant to 40 CFR Part 125.3(c) (2) in the absence of applicable guidelines and best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, as the case may be.) The objection by the Regional Administrator shall take into consideration the draft per-

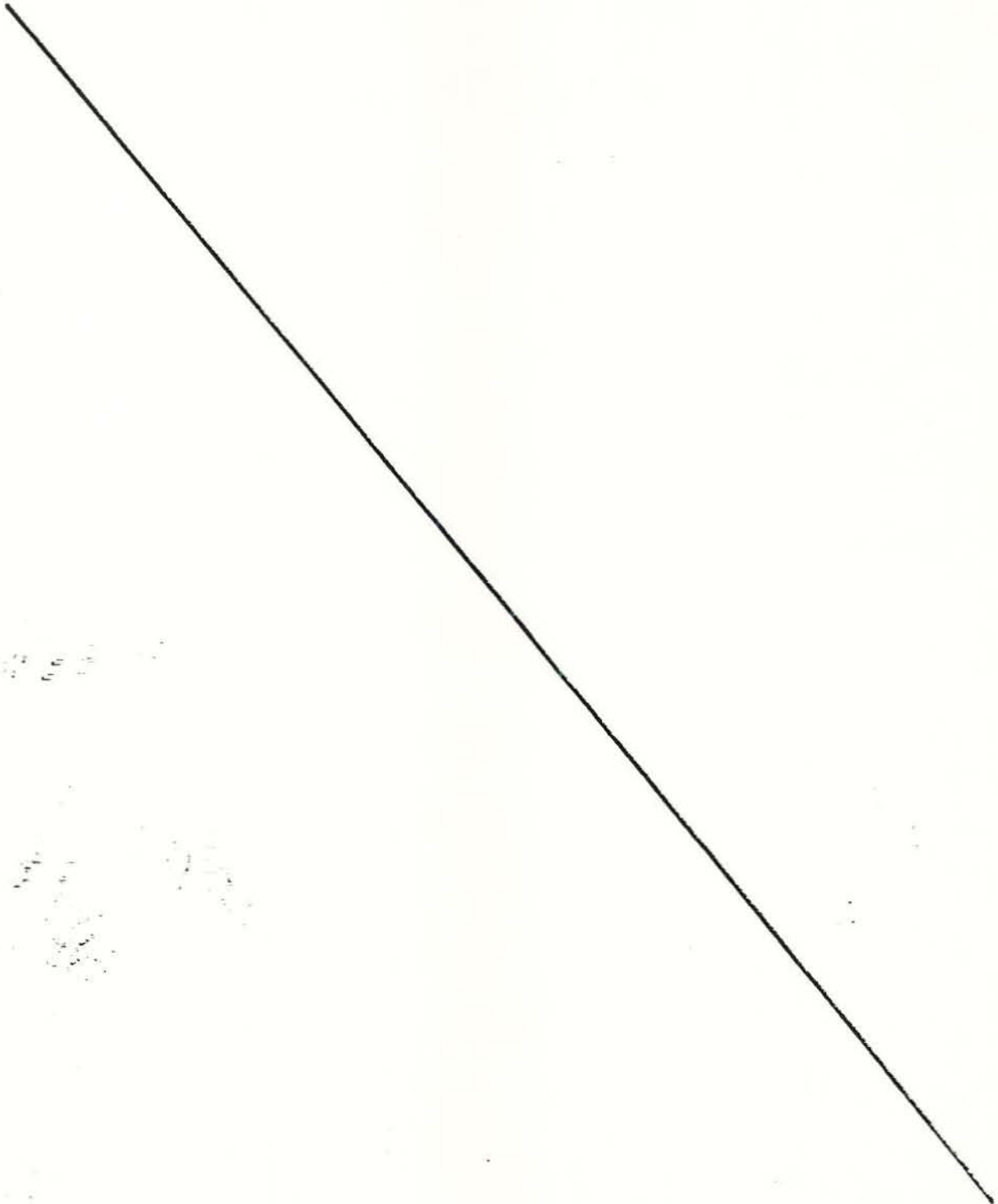
mit terms and conditions provided in accordance with Section II. F. of this MOA.

g. Issuance of any draft permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA.

7. Upon receipt of EPA's general objection, DWR shall promptly notify the applicant and advise that the time provided by the regulations for the Chief to act on the application may be extended, due to EPA's general objection to the permit.
8. Upon receipt of EPA's specific objection, DWR shall promptly notify the applicant that EPA has objected to the issuance of the permit and the time provided by the regulations for the Chief to act on the application will be extended. This notification will include all comments, recommendations and objections made by EPA to the draft permit and will request the applicant to provide the information necessary to comply with the recommendations or to remove the cause for EPA objection. If the cause for EPA objection was based on a procedural problem or on a judgment by DWR varying from that of the Regional Administrator, rather than on any provision of the application, the Chief shall advise the Regional Administrator of the procedural problem or of the difference in judgment, as the situation demands, and negotiate resolution of the problem prior to the issuance of a permit.
9. Prior to notifying the Chief of an objection based upon any of the grounds set forth above, the Regional Administrator:

a. Shall consider all data transmitted to the EPA by  
DWR;

b. May, if the information provided is inadequate to de-  
ter-



mine whether the draft permit meets the guidelines and requirements of CWA, request the Chief to transmit to the Regional Administrator the complete record of the permit proceedings before the Division of Water Resources, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within thirty (30) days of receipt of the DWR submission, it shall constitute an interim objection to the issuance of the permit and the full period of time specified (90 days) for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portion of the record.

10. Within ninety (90) days of receipt by the Chief of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. The public hearing, in accordance with the procedures of 40 CFR Part 124.12(c) and (d) shall be held, and public notice provided in accordance with 40 CFR Part 124.10, whenever requested by the State or interstate agency, which proposed the permit or if warranted by significant public interest based upon requests received.
11. A public hearing held in accordance with the above provisions shall be conducted by the Regional Administrator within sixty (60) days of the request by the State or interstate agency.
12. Following the public hearing, the Regional Administrator shall (a) reaffirm the original objection, (b) modify the terms of the objection, or (c) withdraw the objection, and



shall notify the State of this decision.

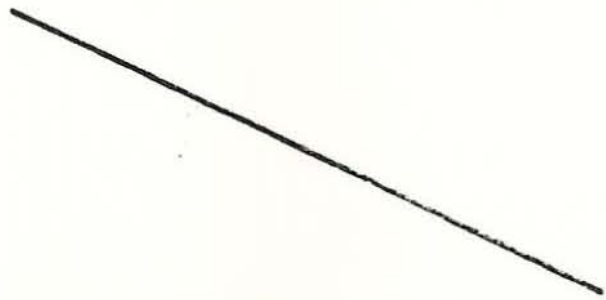
- 13. If after a hearing the Regional Administrator does not withdraw the objection, or if no hearing is held and the State does not submit a permit revised to eliminate the objection within thirty (30) days of the date of the receipt of the Regional Administrator's notification, the Regional Administrator may issue the permit in accordance with 40 CFR Parts 121, 122 and 124 and any other guidelines and requirements of CWA. EPA shall maintain *exclusive authority to issue the permit.*

(NOTE: In the case of draft general permits for dischargers other than separate storm sewers, the Director, Office of Water Enforcement and Permits should be substituted for Regional Administrator whenever it appears above in sections 11. E.6 through 13).

- 14. Upon the issuance of a permit by the Regional Administrator, the State may appeal said issuance of the permit to the Administrator, EPA Region I by filing notice within thirty (30) days with the Administrator. *The permit or conditions thereof will be stayed in accordance with 40 CFR §124.16.*

F. Formulation of Draft Permits

- 1. When the staff of DWR determines that an NPDES permit application is complete, a draft permit shall be prepared and put



out for public comment. Copies of the complete permit application and draft permit for all categories of dischargers, except those for which EPA had waived review, shall be forwarded to EPA.

2. On NPDES permits for POTWs, where construction is required to obtain compliance with Section 301(b) (1) of CWA, a compliance schedule for the construction of facilities shall be included in accordance with the provisions of Rule 20.
3. In acquiring permit information for privately-owned treatment works, pursuant to the NPDES rules, the Chief will require all users to be identified, except for residential users discharging only domestic waste.
4. All permits will contain conditions required by 40 CFR Part 122.41(a)(2), (j)(5), and (k)(2).
5. The types of samples required by 40 CFR Part 122.21 (g) (7) will be required by R.I. NPDES permit applicants.
6. DWR and EPA acknowledge that during the period of application review and formulation of the draft permit, cooperation between the two is essential. Therefore, EPA agrees to provide, when requested and to the extent possible, staff and resources to advise and assist the staff of DWR.
7. On NPDES permits up for reissuance for categories of dischargers where BAT guidelines are not finalized, EPA agrees to make the necessary EPA staff available, on specifically requested applications, to assist in development of permit terms and conditions and further,

agrees to provide personnel free of charge to act as expert witnesses in any related litigation.

8. EPA agrees to assist DWR in the determination of fundamentally different factors, (FDF) in accordance with Sections 301(b), 304, and 307(b) of CWA and any regulations promulgated pursuant thereto. The State may either deny an FDF or forward to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed request for an FDF variance.
9. EPA will supply to DWR prior to program approval current information on categories of dischargers both for which BAT guidance has been finalized and on categories still pending, and shall update such information as necessary.
10. At State request, EPA will endeavor to provide additional data from federal facilities or EPA Regions or other State programs to aid the State in administering the RIPDES program, when feasible.

#### G. Public Notice

1. DWR shall issue a permit only after public notice and opportunity for a public hearing.
2. DWR, upon its determination that an application is complete, shall prepare a draft permit and provide public notice and opportunity for a public hearing. Concurrent with the public notice, copies of the public notice, any required fact sheet and the draft permit shall be forwarded to the applicant and to EPA, except for those categories of dischargers over which EPA has waived re-

view.

3. The DWR shall consider all public comments received in preparing the final permit.

#### H. Permit Issuance

1. After the public notice period and, if required, a public hearing, the final permit shall be issued, unless (a) DWR proposes to issue a final permit which differs significantly from the draft permit reviewed by the Regional Administrator, (b) the Regional Administrator has objected to the draft permit, or (c) there is significant public comment on the draft permit.
2. If (a), (b), or (c) above should occur, a proposed permit shall be forwarded to EPA for review and the procedures of Section II.E. shall be followed.
3. If no comments or objections are provided by the Regional Administrator during the thirty (30) day period, the Chief shall issue the permit.
4. If comments or objections, based on the proposed permit, are received from the Regional Administrator within the thirty (30) day period, the Chief shall promptly notify the applicant and follow the procedures outlined in Section II.E., just as for a draft permit to which EPA has objected.

5. DWR shall not issue a RIPDES permit when the Regional Administrator has objected in writing.

6. All RIPDES permits shall include an expiration date not to exceed five (5) years from the date of issuance.

I. EPA Review of Permit Modifications

1. When DWR proposes to modify a permit, not subject to the waiver provisions of Section II.B., the draft permit shall be submitted to EPA, put out to the public and issued in accordance with the outlined procedures of Section II.E., F., G., and H.

J. Variance Requests

1. When the Chief receives a completed request for a variance in accordance with State regulations, he shall process the variance request in accordance with Rules 56 through 59 of the RIPDES Regulations.

2. If the Chief grants a variance request in accordance with Rules 56 through 59, the variance shall be included in a draft permit and the procedures of Part II.E., F., G., H., and I. of this Memorandum followed.

### III. Pretreatment

#### A. General

EPA and DWR recognize the necessity of controlling pollutants from indirect dischargers which affect the treatment processes of POTWs or which may contaminate sewage sludge. In recognition of this, EPA promulgated General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403, which ordered a State to develop a pretreatment program before applying for NPDES authority.

This section of the MOA specifies DWR's and EPA's responsibilities in carrying out the establishment and enforcement of National Pretreatment Standards (NPS) for new and existing sources pursuant to Sections 307(b) and (c) of the CWA and 40 CFR Part 403. *EPA and DWR recognize that EPA will oversee State pretreatment operations consistent with 40 CFR Part 403 of the general pretreatment regulations.*

Nothing in this section is intended to affect any pretreatment requirement, including any standards or prohibitions established by State law, so long as the State requirements are not less stringent than (1) any set forth in the NPS, or (2) other requirements or prohibitions established under CWA or applicable regulations.

#### B. State Program

1. DWR has primary responsibility for:

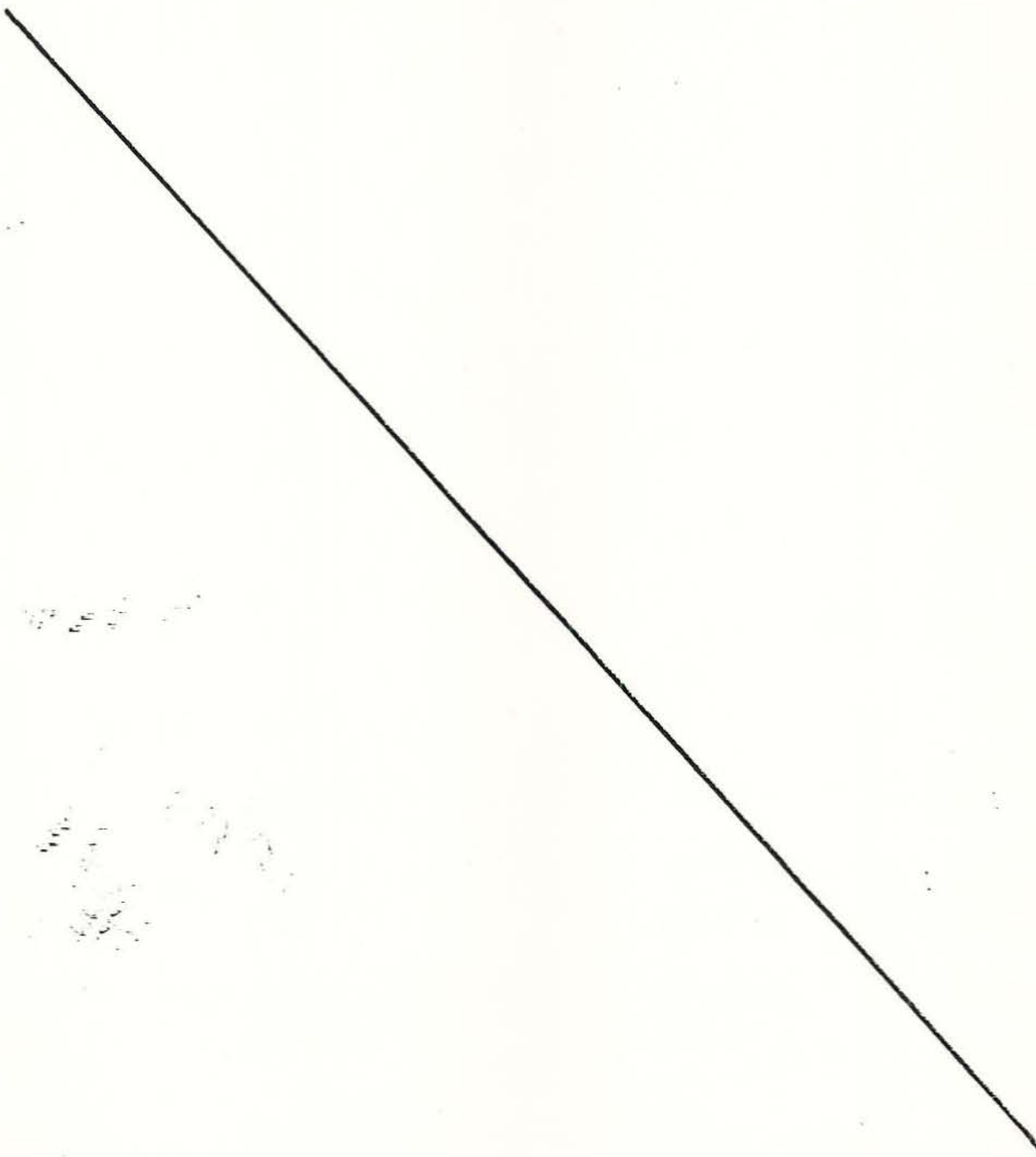
a. Enforcement against dischargers prohibited by 40 CFR Part 403.5;

b. Application and enforcement of any NPS established

by the Administrator in accordance with Section 307

(b) and (c) of CWA;

c. Review, approval, and oversight of Publicly-Owned Treatment Works (POTW) Pretreatment Programs to insure that NPS



are enforced in accordance with the procedures outlined in 40 CFR Part 403.11;

d. A Pretreatment Program as incorporated in permits issued to POTWs, as required in 40 CFR Part 403.8 and as provided in Section 402(b)(8) of CWA;

e. Review and approval of modifications of categorical NPS to reflect removal of pollutants by a POTW; and

f. Enforcement of conditions related to pretreatment in the POTW permit.

2. DWR shall carry out inspection, surveillance, and monitoring procedures which will determine (independently of information supplied by the POTW) compliance or non-compliance by the POTW with the pretreatment requirements of its permit.

DWR will also carry out inspection, surveillance, and monitoring procedures which will determine (independently of information supplied by industrial dischargers) if industrial dischargers are in compliance with the NPS. The number of inspections to determine compliance shall be *negotiated* as part of the annual Section 106 program plan process.

3. Upon request of the Regional Administrator, DWR shall supply EPA with copies of all notices from POTWs regarding any new introduction of pollutants from an indirect discharger and any substantial change in the volume or character of pollutants being introduced to the POTW.

#### C. NPS Categorical Standards

DWR shall review requests from industrial dischargers



or POTWs for industrial subcategory determinations received after the effective date of a NPS. DWR shall make a written determination as to whether the industrial discharger does or does not fall within that particular subcategory, in accordance with 40 CFR Part 403.6.

The EPA Enforcement Division Director waives the right to review the Chief's determinations.

#### D. Categorical NPS Credit Removal

DWR shall review and either approve or disapprove POTW applications for removal credit in accordance with 40 CFR Part 403.7. The Regional Administrator waives the right to review and object to POTW submissions requesting removal credit.

#### E. POTW Pretreatment Program Approvals

1. Following determination by DWR that the submission of a request for a local POTW Pretreatment Program meets all appropriate requirements of 40 CFR Parts 403.9 and 403.11, the Chief shall provide a thirty (30) day public notice of the submission and opportunity for a public hearing. If written comments received are insufficient to warrant a public hearing, DWR shall approve the submission.
2. DWR agrees that those POTWs that do not have an approved pretreatment program shall, as a condition of their RIPDES permit, be required to have a compliance schedule for the development of a pretreatment program and that

such compliance schedule will require compliance by July 1, 1983.

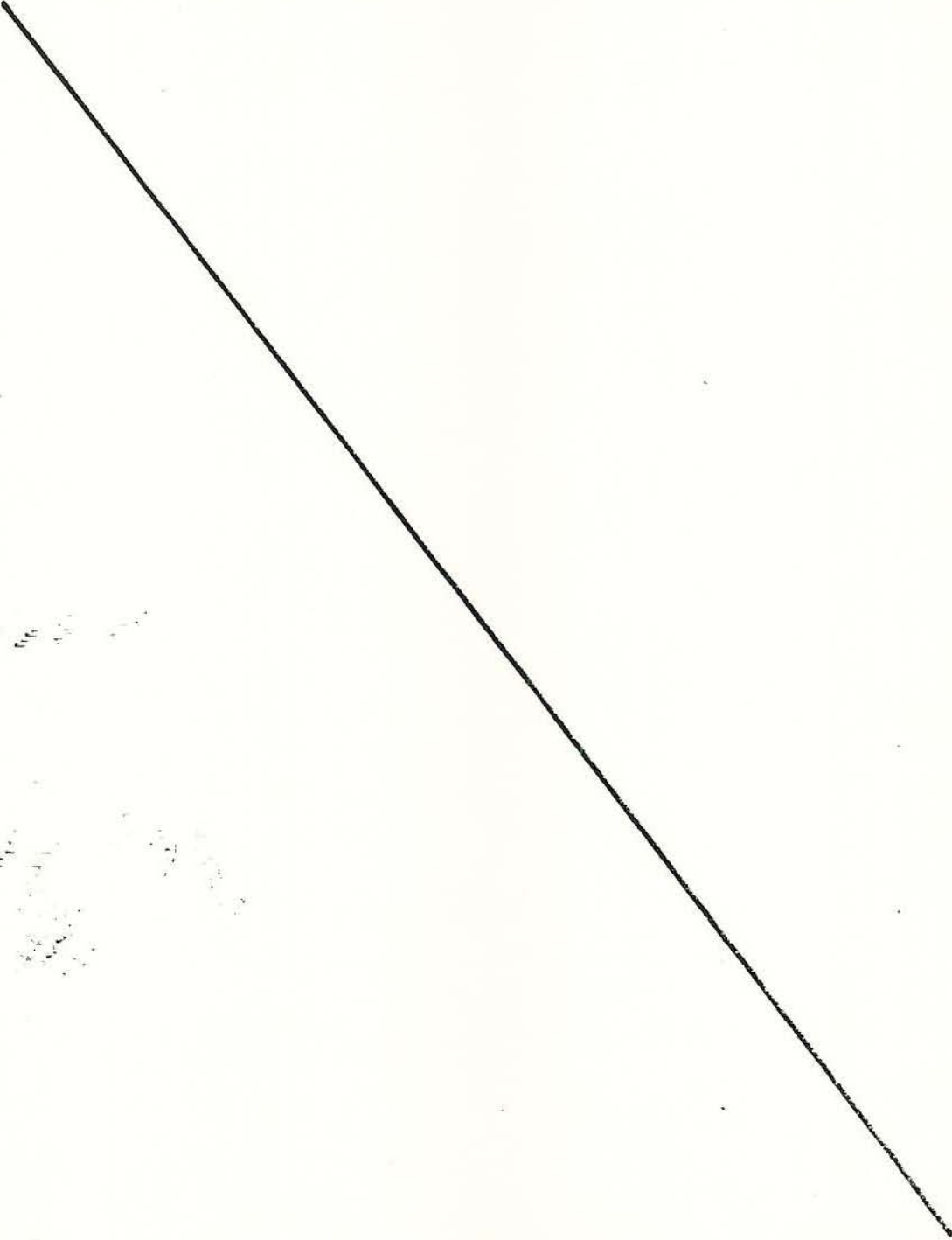
#### IV. Compliance Monitoring and Inspection

The State will expand its compliance monitoring capability to cover the entire State. The State will conduct a number of inspections to administer the program.

Inspections should be of the following types:

- A. Compliance Sampling Inspection (CSI) - The DWR's Monitoring Section conducts these. Reports are to be sent to EPA for review. EPA agrees to do joint inspections for one year following program approval.

B. Compliance Evaluation Inspection (CEI) - DWR's Monitoring Section shall perform this function. This is a new responsibility for them and will require training. EPA agrees to do joint inspections of training for one year following program approval.



C. Performance Audit Inspection (PAI) - DWR currently has a QA Officer whose projected responsibility will include PAIs.

D. Routine Periodic Facility Inspections - conducted by Field Operations Inspections.

E. Bioassays - DWR will add staff and utilize contract services for NPDES Compliance work and general effluent categorization. Joint inspections (EPA & DWR) and/or independent EPA inspections shall be coordinated with DWR's Permit Section. *EPA will normally notify DWR at least seven days prior to conducting an independent inspection.* Requests by EPA for specific site monitoring will be processed as they are now, although they will be performed by DWR. DWR shall give precedence to EPA's requests whenever feasible. Copies of inspections conducted by EPA independently of DWR shall be forwarded to DWR for inclusion in State files in a timely manner.

The Division shall inspect every major facility at least once a year utilizing a CSI, CEI or PAI. The number and type of other inspections will be determined by the Division, depending upon the need to assess permit compliance. DWR agrees to do 10% of the minor facilities and all major facilities each year. DWR also agrees to do all 92-500 (CWA) funded facilities yearly.

## V. Enforcement

### A. General

It is recognized by DWR and EPA that an effective enforcement program is necessary to obtain compliance with the requirements of the NPDES program. It is therefore necessary that these agencies coordinate their enforcement activities. A wide range of criminal, administrative and judicial actions may be brought by Federal and State laws to insure compliance. With the exceptions covered by II.C.3. and 4., the State will have the primary responsibility for taking appropriate enforcement actions against persons in violation of NPDES requirements. EPA shall therefore forward to DWR in a timely fashion all information as to such possible violations which comes to EPA's attention.

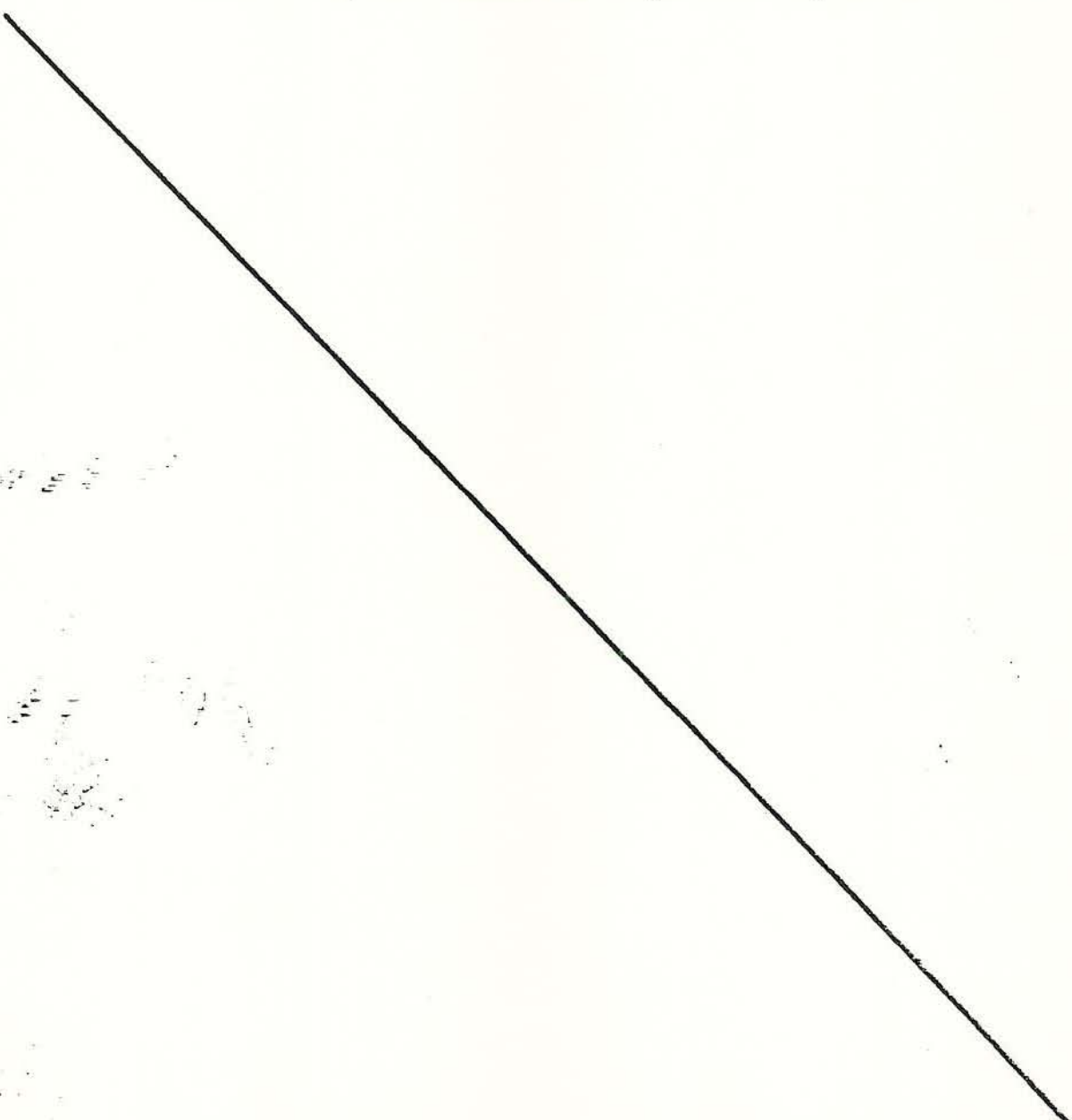
### B. State Enforcement Action

DWR shall ensure that all appropriate enforcement proceedings are initiated within thirty (30) days after notification by the Regional Administrator of an alleged violation. Appropriate enforcement proceedings may include but not be limited to a warning letter, notice of violation, administrative order, action for injunctive relief, or any other enforcement measures that DWR considers appropriate. Any civil penalty assessed, sought or agreed upon by the Chief shall be appropriate to the violation. The Regional Administrator shall be advised, from time to time, on the progress of any such ensuing enforcement proceedings. The Regional Administrator may participate in any enforcement proceedings and/or shall

provide staff assistance upon request by the Chief.

C. EPA Notification to DWR

This MOA shall not be construed to limit the authority of the EPA to take action pursuant to Section 309 of CWA if the State has not taken action within 30 days, but to coordinate enforcement activities, EPA shall notify DWR if practicable if



it institutes an enforcement proceeding of any kind against an alleged violator.

D. EPA Enforcement Action

In the event the EPA pursues enforcement action against an NPDES violator, the EPA shall, if practicable, notify DWR prior to commencing action and allow DWR to join with EPA in such action.

E. Danger to Health

DWR will ensure that any pollution source or combination of sources which is presenting an imminent and substantial danger to the health or welfare of persons, is immediately subjected to appropriate enforcement proceedings, including but not limited to a request for injunctive relief.

F. Laboratory Assistance

The EPA will provide, through the Boston Field Office, laboratory assistance for DWR field inspectors in Rhode Island. This will include sample analysis and support as needed.

VI. Confidentiality of Information

A. Any information obtained or used in the administration of the RIPDES program shall be available to EPA upon request without restriction.

B. If the information has been submitted to the State under a claim of confidentiality, the State will submit that claim to EPA when providing information under this section. The claim of confidentiality shall be treated in accordance with the requirements of 40 CFR Part 2.

C. The Chief shall deny any claim of confidentiality related to effluent data, application forms, or permits under the R.I. PDES program.

D. EPA shall furnish to the State the information in its files submitted under a claim of confidentiality which the State determines necessary to implement its program. EPA shall furnish information submitted to EPA under a claim of confidentiality, which the State needs to implement its program, subject to the conditions in 40 CFR Part 2.



## VII. Term of Agreement

This Memorandum of Agreement will take effect upon program approval by the Administrator of the EPA, pursuant to Section 402(b) of CWA and will remain in effect until revised or terminated in writing by the parties involved.

DWR and EPA agree that the RIPDES program cannot be approved until after administrative regulations have been adopted and are fully effective.

Dated 13 Sept 84

By James W. Fester  
James W. Fester, Chief  
Division of Water Resources

Dated 13 Sept 84

By Robert L. Bendick, Jr.  
Robert L. Bendick, Jr., Director  
Department of Environmental Management

Dated September 17, 1984

By Michael R. Deland  
Michael R. Deland, Regional Admin.  
Environmental Protection Agency