

AMENDMENT TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II
RELATING TO IMPLEMENTATION OF THE REQUIREMENTS
OF THE GREAT LAKES WATER QUALITY GUIDANCE
IN THE GREAT LAKES BASIN

I. Background

1. The Great Lakes Water Quality Guidance (GLWQG) is found at 40 C.F.R. Part 132 and is the result of a six-year effort begun by the eight Great Lakes States and EPA in 1989 to develop more consistent water quality standards in the Great Lakes Basin.
2. The GLWQG establishes minimum water quality criteria (including for the first time criteria to specifically protect wildlife), antidegradation policies, and implementation procedures using a ecosystem approach for waters of the Great Lakes Basin within the States of Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin, including waters within the jurisdiction of Indian tribes. These procedures will be used to establish "consistent" water quality goals and to control point and nonpoint source discharges from industrial and municipal facilities within the Great Lakes Basin.
3. The New York State Department of Environmental Conservation (NYSDEC) has adopted certain methodologies, policies and procedures to meet the requirements of the GLWQG and has submitted them to EPA for review. In certain instances, these methodologies, policies and procedures will be implemented through the NYSDEC's SPDES permit program. EPA and NYSDEC are entering into this Amended Memorandum of Agreement (MOA) to ensure that the methodologies, policies and procedures implemented through the SPDES permit program within the Great Lakes System in New York State are consistent with the GLWQG found at 40 C.F.R. Part 132.
4. The duties in this MOA apply only to those portions of NYSDEC's SPDES permit program which concern discharges to the Great Lakes System in New York.

II. Technical Operational Guidance Series (TOGS)

1. The NYSDEC has used a series of documents, known as the Technical Operational Guidance Series (TOGS), as the basis for providing NYSDEC staff with the technical guidance necessary to implement the State's water quality protection program for over twenty years. Therefore, NYSDEC has elected to implement certain requirements of the

GLWQG through the continued use of these TOGS. NYSDEC has modified the applicable TOGS to be consistent with the requirements of the GLWQG.

2. The applicable State TOGS which have been modified by NYSDEC to comply with the requirements of the GLWQG, and will be used by the State to implement these GLWQG-based requirements are:
 - TOGS 1.1.3: Procedures for Derivation of Site-specific Standards and Guidance Values for Protection of Aquatic Life;
 - TOGS 1.1.4: Procedures for Derivation of Bioaccumulation Factors;
 - TOGS 1.1.5: Procedures for Deriving Ambient Water Quality Standards and Guidance Values for the Protection of Wildlife;
 - TOGS 1.2.1: Industrial Permit Writing;
 - TOGS 1.3.1: Total Maximum Daily Loads and Water Quality-Based Effluent Limits;
 - TOGS 1.3.2: Toxicity Testing in the SPDES Program;
 - TOGS 1.3.3: SPDES Permit Development for POTWs; and.
 - TOGS 1.3.9: Implementation of the NYSDEC Antidegradation Policy - Great Lakes Basin (Supplement to Antidegradation Policy dated September 9, 1985).

IIA. Purpose

1. The purpose of this MOA is to set forth the basic covenants and commitments between EPA Region II and the NYSDEC, with respect to NYSDEC's use of TOGS to issue SPDES permits in the Great Lakes Basin in conformance with the requirements of the GLWQG.
2. EPA Region II and the NYSDEC hereby agree that it is NYSDEC's full intention to implement its water quality program for waters of the Great Lakes System in a manner that is consistent with (as protective as) the GLWQG. SPDES permits issued in the Great Lakes Basin will follow the procedures included in the applicable State TOGS.

IIB. NYSDEC and EPA Responsibilities

1. Under this Amended MOA, NYSDEC agrees that in order to implement the requirements of the GLWQG, as found at 40 C.F.R. Part 132, it will issue SPDES permits in the Great Lakes Basin in accordance with the procedures included in the applicable State TOGS.

2. If for any reason, on a case by case basis, NYSDEC is unable, or does not believe it is appropriate, to follow the procedures included in the TOGS in issuing a SPDES permit in the Great Lakes Basin, NYSDEC shall submit such permit for review by EPA Region II, notwithstanding any other provision in the MOA that might waive EPA review. NYSDEC shall specifically note in its transmittal to EPA and in the fact sheet or statement of basis for the permit, its decision to depart from the TOGS and rationale for doing so.
3. Both NYSDEC and EPA understand that should NYSDEC not follow the TOGS in any particular case, EPA would have the authority to object to the SPDES permit pursuant to 40 C.F.R. 123.44(c)(3) and (c)(9).
4. Any revisions to the above referenced TOGS with respect to the GLWQG shall be submitted to EPA in accordance with 40 C.F.R. Section 123.62(a).

III. Variances

1. The NYSDEC has revised its regulations at 6 NYCRR §702.17 to enable the State to grant variances similar to those allowed in 40 C.F.R. Part 132, Appendix F, Procedure 2 of the GLWQG. To ensure that any variance granted pursuant to 6 NYCRR §702.17 is consistent with and as protective of water quality as variances that would be issued under 40 C.F.R. Part 132 Appendix F, Procedure 2, EPA and NYSDEC agree as follows:
2. Upon receipt of a complete SPDES application in accordance with 6 NYCRR 621, which includes a request for a variance, NYSDEC shall submit a copy of such request to Region II.
3. If NYSDEC determines that the variance request should be issued in accordance with the requirements of 6 NYCRR Part 702.17, it shall submit a draft permit and explanation of how the variance, if issued, will be as protective as a variance issued in accordance with 40 C.F.R. Part 132 Appendix F, Procedure 2, to EPA Region II on or before the date it notices said permit and variance request in the State's Environmental Notice Bulletin.
4. EPA Region II shall be granted at least 30 days, but no longer than the public comment period, to review and comment on NYSDEC's explanation that the variance would be as protective as a variance issued in accordance with the GLWQG.
5. In the event that EPA provides comments on the proposed application, NYSDEC shall consider EPA's comments to the explanation and proposed variance and prepare a written response to EPA's comments.
6. Upon submission of NYSDEC's response to EPA Region's comments on the explanation, EPA shall have 30 days to provide additional comments.

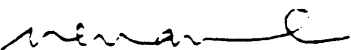
7. Nothing in this MOA obviates the NYSDEC's obligations to conform with the public notice, comment and hearing requirements contained in its regulations at 6 NYCRR Parts 621 and 624.
8. If EPA determines that the explanation provided by NYSDEC does not demonstrate that the granting of a variance pursuant to 6 NYCRR Section 702.17 would be as protective as that which would be required by 40 C.F.R. Part 132, Appendix F, Procedure 2, it may object to the issuance of such variance in the permit as being outside the guidelines and requirements of the Act. If EPA determines that the explanation supporting the issuance of the variance demonstrates the variance is as protective as that which would be required by 40 C.F.R. Part 132, Appendix F, Procedure 2, EPA will not object to the issuance of the permit or modification based solely on the grounds that the permit contains a variance to a water quality-based effluent limit.
9. In accordance with the Environmental Benefit Permit Strategy (EBPS), NYSDEC will give priority review for any permit containing a variance granted under 6 NYCRR Section 702.17 to assess whether there is new information which indicates that the standard in question is achievable.

IV. Effective Date

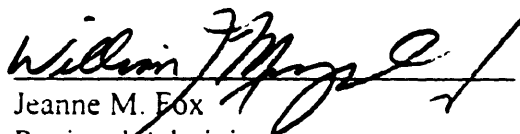
This MOA shall become effective upon the later of the date that all applicable TOGS have been approved by NYSDEC's Commissioner or the date that the revisions to NYCRR Parts 700-706 become effective. This MOA shall become void in the event that EPA Region II does not approve all or part of NYSDEC's submission in accordance with the GLWQG.

New York State Department of
Environmental Conservation

United States Environmental
Protection Agency



N.G. Kaul
Director, Division of Water



Jeanne M. Fox
Regional Administrator

Dated: Albany, New York

Dated: New York, NY

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