

Attachment I-C

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF MONTANA

DEPARTMENT OF HEALTH

AND ENVIRONMENTAL SCIENCES

AND

THE UNITED STATES ENVIRONMENTAL

PROTECTION AGENCY

REGION VIII

## INTRODUCTION

The Regional Administrator of Region VIII of the Environmental Protection Agency (hereinafter referred to as the Regional Administrator), and the Director of the State of Montana Department of Health and Environmental Sciences (hereinafter referred to as the Director), have entered into this Memorandum of Agreement to delineate the responsibilities of Region VIII of the Environmental Protection Agency and the State of Montana Department of Health and Environmental Sciences (hereinafter referred to as the Department), for the ongoing operation of the National Pollutant Discharge Elimination System (hereinafter referred to as NPDES), as described in Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to as the Act), and the Federal regulations promulgated thereunder, published at 40 CFR 124. The agreement establishes policies and procedures for the transfer of the NPDES Permit Program from Region VIII of the Environmental Protection Agency to the Department; the manner in which the 40 CFR 124 guidelines will be implemented and specified areas of cooperation, standards of performance and guidelines for the achievement of the goals set forth in the Act.

## POLICIES

1. It shall be the policy of Region VIII of the Environmental Protection Agency and the Department to fully coordinate and cooperate in the issuance of waste discharge permits under the NPDES.
2. As provided in Section 101(f) of the Act it shall be the Policy of Region VIII of the Environmental Protection Agency and the Department to minimize paper work and interagency decision procedures, and to make the best use of available manpower and funds, so as to prevent duplication of effort and unnecessary delays.
3. It is recognized that the primary responsibility for the issuance of NPDES permits in the State of Montana is with the Department; that the Environmental Protection Agency will provide policy guidance, financial and technical assistance, and aid in the issuance of permits; and that both



the Department and the Environmental Protection Agency share the responsibility for enforcement actions necessary for the protection and enhancement of the State's waters.

4. Based on the approval of State authority pursuant to Section 402, the Director, with the assistance of the Permits Branch, Enforcement Division of the Environmental Protection Agency, under existing State statutes and regulations, shall process and issue National Pollutant Discharge Elimination System waste discharge permits which are consistent and compatible with the Act and with regulations and guidelines promulgated thereunder. The Regional Administrator, through the Permits Branch, shall provide written agreement with, objection to, or recommendation on, each NPDES permit to be issued. The Director shall not issue any NPDES permit to which the Regional Administrator has objected.
5. Region VIII of the Environmental Protection Agency, with technical assistance from the Department, shall have the responsibility for issuance of NPDES permits for point source discharges from Federal facilities, to include point sources located within the boundaries of Indian reservations.
6. It shall be the goal of the Department, with assistance from Region VIII of the Environmental Protection Agency, to issue NPDES permits to all significant dischargers in the State of Montana by December 31, 1974. The Department and the Permits Branch shall strive to meet the goals set out in this document and progress in achieving these goals will be reviewed by the Director and Region VIII of the Environmental Protection Agency on a monthly basis commencing the end of the first full month after the State assumes the permit program.



## AGREEMENTS

1. TRANSMITTAL OF DATA FROM THE ENVIRONMENTAL PROTECTION AGENCY TO THE DEPARTMENT.
  - a. Within 30 days from the date of approval of the State of Montana's NPDES permit program, the Regional Administrator, through the Permits Branch, shall transmit to the Department all NPDES and Refuse Act applications and/or other relevant data which the Regional Administrator has in his possession and which he has not already transmitted to the Department.

In effecting this transfer, the Regional Administrator will see that copies of all forms and data transmitted are retained by the Environmental Protection Agency.

- b. The Regional Administrator will, at the time of transmittal, identify any application, pursuant to (a) above, which he considers to be incomplete and will request the Department to secure the missing information. Copies of all information thus secured will be provided to the Regional Administrator, Attention: Permits Branch, upon receipt by the Department.
    - c. Within 30 days from the date of approval of the State of Montana's NPDES Permit Program, the Regional Administrator will provide the Department with a list of those applicants in the State of Montana which have been determined by the Environmental Protection Agency to not require NPDES permits. The Regional Administrator will send any applications or information that he has in his possession relative to the facilities on this list to the Department. The Department will inform the Regional Administrator of any facilities on this list to which the State issues a NPDES permit.



- d. The Regional Administrator will also transmit copies of any fact sheets, public notices, proposed permit conditions and summary of rationale sheets drafted by the Environmental Protection Agency for facilities applying for NPDES permits in the State of Montana.
2. TRANSMITTAL OF DATA FROM THE DEPARTMENT TO THE REGIONAL ADMINISTRATOR.
    - a. The Department shall review all NPDES and Refuse Act applications and data transmitted by the Regional Administrator for completeness and sufficiency, and shall provide the Regional Administrator with a listing of those applications which are considered to be incomplete or otherwise deficient for preparation of a permit. The Regional Administrator will provide the necessary information to complete the application, or will inform the Director that the information must be requested from the applicant.
    - b. After final approval of the Montana NPDES permit program, the Department will assume initial responsibility for determining that applications submitted to the Department after that date are complete. When the Department determines that the NPDES forms received from the applicant are complete, two copies of the forms, with a cover letter indicating that the forms are complete, will be promptly transmitted to the Regional Administrator, Attention: Permits Branch. If the Regional Administrator concurs with the Department, one copy will be used for processing into the National Data Bank and the other copy will be placed in the Region VIII NPDES Permit files. If the Regional Administrator does not concur that the application is complete, he shall, within 20 days, notify the Director by letter and indicate in which respects the application is deficient. The Director will send the Regional Administrator any necessary information to complete the application and, if the Regional Administrator so requests, shall not issue the NPDES permit until notice is received from the Regional Administrator that the information is sufficient.



- c. It shall be the responsibility of the Regional Administrator to provide a copy of all NPDES forms and data, whether received by the Environmental Protection Agency before final approval of the Montana NPDES Permit Program or provided by the Department pursuant to paragraph (b) of this section, to the National Data Bank.
- d. The Permits Branch, Enforcement Division, Region VIII, Environmental Protection Agency, will review all NPDES applications to identify any discharges less than 50,000 gallons per day which are not minor discharges.
- e. The Regional Administrator does not waive his rights to receive copies of all NPDES forms received by the Department. However, the Regional Administrator may, at his option, expressly waive any and all of his rights to receive NPDES portions of State permit forms with respect to any particular discharge or any size or type of discharge or with respect to discharges to particular navigable waters or parts thereof at any time in the future.
- f. The Department shall transmit, upon request by the Regional Administrator, copies of any notices submitted by publicly owned treatment works to the Department prepared in accordance with 40 CFR 124.45(d) and (e) of the State Guidelines or equivalent State requirements.

3. PREPARATION OF PROPOSED PERMITS.

- a. Region VIII of the Environmental Protection Agency, through the Permits Branch, Enforcement Division, shall provide technical assistance to the Department in the interpretation of effluent guidelines and other Federal regulations; preparation and issuance of public notice, fact sheets and permits; and review of all proposed NPDES permits for compliance with Federal regulations.



- b. The Department will provide the Permits Branch's State Assignee with an internal draft and summary of rationale for proposed NPDES permits, fact sheets and public notices. The State Assignee will promptly review, these internal drafts and comment, if necessary, within 10 days. The Director will consider these comments as the proposed permits, fact sheets and public notices are finalized.
  - c. For each permit prepared subject to this agreement, the Department will specify maximum and average quantitative limitations for the level of pollutants in the authorized discharge in terms of weight, where applicable.
  - d. For each permit prepared subject to this agreement, the Department will require that the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.
  - e. If the Director makes a tentative determination to deny a permit, he shall notify the applicant of such intent and provide a copy of the determination to the Regional Administrator.
4. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS.
- a. The Regional Administrator will have 30 days from the time he receives the proposed NPDES permit from the Director within which to object to, as provided for in Section 402(d)(2) of the Act, comment upon or make a recommendation with respect to the proposed NPDES permit. Upon request of the Regional Administrator, the Director will provide the Regional Administrator with additional time for review, provided that the total review period shall not exceed 90 days. The Regional Administrator shall notify the Director in writing within the time periods set forth



above if the Environmental Protection Agency objects to or concurs with the issuance by the Director of the NPDES permit as proposed, failure to so notify the Director within the specified time period shall be considered as concurrence by the Regional Administrator.

- b. If a public notice, required by 40 CFR 124.32, is issued, the Department will transmit one copy of the NPDES public notice, fact sheet (if one is required) and proposed NPDES permit to the Regional Administrator, Attention: Permits Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements or documents which are part of the proposed permit.
- c. The Department will transmit to the Regional Administrator, Attention: Permits Branch, copies of all written comments received on any public notice for a proposed NPDES permit from any source.
- d. If a proposed NPDES permit issued with a public notice is modified as a result of comments received by the Department during the 30-day comment period or as a result of significant adverse comment at a public hearing, the Department will transmit a revised copy of the proposed NPDES permit to the Regional Administrator, Attention: Permits Branch, and shall specify the reasons for the modification.

The Regional Administrator shall be provided 30 days from the time he receives the proposed NPDES permit, as revised, within which to object, comment upon or make recommendations with respect to any such revision.

- e. The Director will consider all written comments by the Regional Administrator prior to final issuance of an NPDES permit. Modifications recommended by the Regional Administrator, including requests for additional monitoring, may be incorporated into final NPDES permits.



by the Department. No NPDES permit to which the Regional Administrator objects will be issued by the Director.

- f. The Regional Administrator does not waive his right, in any respect, to review all NPDES permits proposed to be issued to any point source dischargers in the State of Montana. However, the Regional Administrator may, at his option, expressly waive any or all of his rights to receive, review, object to or comment upon proposed NPDES permits for classes, types or sizes of dischargers within any category of point source.

5. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS.

The Department will transmit to the Regional Administrator, Attention: Permits Branch, a copy of every issued NPDES permit together with any and all terms, conditions and requirements of the NPDES permit.

6. MODIFICATIONS, SUSPENSIONS AND REVOCATIONS OF NPDES PERMITS.

When the Director finds it necessary or advisable to modify, suspend or revoke a NPDES permit in whole or in part for cause or for any other reason, the Regional Administrator will have up to 30 days to review and comment on the proposed change. No modification, suspension or revocation of a NPDES permit to which the Regional Administrator objects will be made.

7. MONITORING, RECORDING AND REPORTING.

- a. The Department shall carry out monitoring activities to determine compliance with permits, to validate self-monitoring reports, and as necessary to provide support for enforcement actions against NPDES permit violators. Procedures for carrying out such activities shall be as mutually agreed upon by the Director and the Regional Administrator and in accordance with regulations as promulgated in 40 CFR 124 and 40 CFR 35. As a minimum, the Department will monitor each major discharge



on a yearly basis and each minor discharge on a random basis.

- b. The Department will inspect the facilities of dischargers, including, where appropriate, effluent sampling and examination of monitoring records, reports, equipment and methods. The compliance monitoring program shall be conducted in accordance with 40 CFR 35, Appendix A.
- c. All compliance monitoring samples shall be collected, preserved, analyzed and validated by a quality control program in accordance with requirements of 40 CFR 35 Appendix A and 40 CFR 136.
- d. Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, to be monitored, or (3) contains toxic pollutants for which an effluent standard has been established pursuant to Section 307(a) of the Act, will require monitoring by the permittee for at least the following:
  - (1) Flow (in gallons per day); and
  - (2) All of the following pollutants:
    - A. Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
    - B. Pollutants which the Department finds, on the basis of information available to it, could have significant impact on the quality of State waters;



- C. Pollutants specified by the Administrator of EPA, in regulations issued pursuant to the Act, as subject to monitoring; and
  - D. Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.
  - e. The Regional Administrator may make the request specified in (d)(2) above at any time before an NPDES permit is issued.
  - f. The Director will insure that the Regional Administrator, Attention: Permits Branch, receives two (2) copies of all NPDES reporting forms submitted to the Department. If the Regional Administrator, acting through the Permits Branch, determines that the NPDES reporting forms are complete, he shall keep one copy on file in the Permits Branch and will use the second copy for processing into the National Data Bank. If the Regional Administrator determines that the NPDES reporting forms submitted to the Department are not complete or are otherwise deficient, he shall specify to the Director in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director shall require the permittee to supply such additional information as the Regional Administrator specifies.
  - g. The Director will evaluate data submitted by NPDES permittees in NPDES reporting forms and other forms supplying monitoring data for possible enforcement or remedial action.
  - h. The Director will promptly notify the Regional Administrator of any actual or threatened endangerment to the health or welfare of persons resulting from the discharge of pollutants.
8. PUBLIC ACCESS TO INFORMATION.

Any individual or organization that applies for an NPDES permit from the Department shall be notified in writing, at the time the application forms are provided, of the following:



- a. A copy of each NPDES form submitted by the applicant will be provided to the Regional Administrator, without exception;
- b. The Regional Administrator will be free to make his own determination as to the confidentiality of the information contained in the NPDES forms thus submitted;
- c. Information contained in State forms or State annexes to NPDES forms will not be sent to the Regional Administrator and any confidential information therein will be handled in accordance with Section 69-4822, R.C.M. 1947.

In addition, every permit issued by the Department and any NPDES reporting forms utilized by the Department, shall contain a paragraph informing the permittee that all information contained therein or required to be submitted thereby, will be provided to the Regional Administrator without exception, and that the Regional Administrator will be free to make his own determination as to the confidentiality of such information.

The Regional Administrator will adhere to the requirements of 40 CFR 124.35 in handling any determination of confidentiality and will keep the Director fully informed of his decisions.

#### 9. ENFORCEMENT

- a. The Department will have the responsibility for taking appropriate enforcement actions against persons in violation of NPDES permit conditions and will receive the assistance of the Enforcement Division, Region VIII, Environmental Protection Agency upon request.
- b. The Regional Administrator will be advised of any enforcement action that is proposed to be taken by the Department, whether such enforcement action is administrative, criminal or civil in nature or a combination thereof.



- c. The Department will advise the Regional Administrator of progress in enforcement proceedings and related matters. The Regional Administrator will receive a copy of any administrative or judicial orders or directives related to compliance and will be advised of any violations of orders or directives and of proposed enforcement actions to be undertaken. Upon request of the Director, the Regional Administrator or his designee will appear at administrative enforcement hearings and provide staff assistance in any public hearing related to enforcement.
  
- d. Whenever the Regional Administrator, under authority in Section 309, makes a finding of a violation of a waste discharge permit, the Director and the person in alleged violation will be notified. The Director will promptly respond to such notification by advising the Regional Administrator of the action proposed with respect to such violation. The Regional Administrator generally intends to undertake direct enforcement action, under Section 309(a)(3), only when the Department does not take appropriate enforcement action. However, if direct enforcement action is proposed, the Regional Administrator shall promptly advise the Department of the nature of the action and any progress made in the proceedings and related matters.

10. TRANSFER OF INFORMATION CONCERNING WELL DISPOSAL.

The Regional Administrator shall distribute to the Director any policies, technical information or requirements specified by the Administrator in regulations issued pursuant to the Act concerning control of disposal of pollutants into wells.



11. PERFORMANCE AND GOALS.

The Director in the administration of the NPDES permit program on behalf of the State, shall use his best efforts to attain the performance goals which have been set pursuant to Section 106 of the Act, and to conform to the Environmental Protection Agency's permit issuance strategy aimed at the issuance of permits to all significant discharges by December 31, 1974.

To this end, the Department will issue at least 20 permits per month for the remainder of calendar year 1974 and will prepare draft permits for all point source discharges covered by the Act by December 31, 1974.

12. CHANGES IN STATE STATUTES, RULES, DIRECTIVES, FORMS OR STANDARD TEST METHODS.

- a. Prior to taking any action to propose any substantial amendment, rescission or repeal of any statute, rule, directive or form which has been submitted to the Regional Administrator in connection with approval of the State's NPDES program, and prior to the adoption of any new form not so submitted the Director or his designee shall notify the Regional Administrator and shall upon request, transmit the text of any such change or such new form to the Regional Administrator. The Regional Administrator shall have 20 days to assess such proposed change or such proposed new form as to its effect upon the State's qualification to conduct the NPDES program and to notify the State whether or not the proposed change or use of the proposed new form would disqualify the State from participation in the NPDES.
- b. If an amendment, rescission or repeal of any statute, rule, directive or form described in paragraph (a) above shall occur for any reason, including action by the Montana legislature or a court, the Director or his designee shall, within 20 days of such event, notify the Regional Administrator and shall upon request transmit a copy of the text of such revision to the Regional Administrator.



- c. Prior to his approval of any test method other than those specified by a standard permit or form, the Director or his designee shall obtain the approval of the Regional Administrator.
- d. In order to facilitate the provisions of paragraph (a) and (b) of this Section, the Director or his designee shall identify each form used in the Montana NPDES Permit Program by a series number and the date of the latest version or revision of such form.

13. FURTHER ASSURANCES

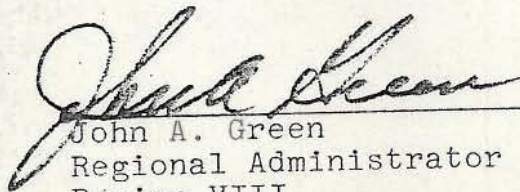
The Director or his designee shall develop and promote legislation, and rules and take all further actions which may be needed in order to preserve and maintain any authorities, programs or commitments described in this agreement or contained elsewhere in the State's description of its NPDES program submitted to the Administrator.

14. EFFECT, RESCISSION AND MODIFICATION

This agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the Federal Act and shall remain in effect for the duration of such approved program or until this agreement is rescinded by mutual agreement of the parties. This agreement may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods of administration and enforcement of the NPDES permit program.

In witness whereof, the parties have executed this agreement.

Approved

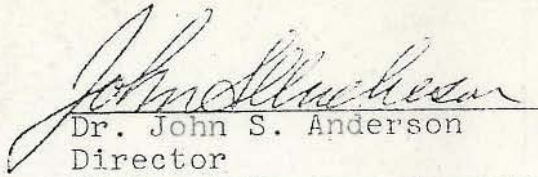
  
John A. Green  
Regional Administrator  
Region VIII

3/8/74  
Date

U.S. Environmental Protection Agency



Approved

  
Dr. John S. Anderson

3-11-74  
Date

Director  
State of Montana Department of  
Health and Environmental Sciences

Approved

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Russell E. Train  
Administrator  
U.S. Environmental Protection Agency

\_\_\_\_\_  
Date





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

JUN 24 1981

OFFICE OF ENFORCEMENT

Honorable Ted Schwinder  
Governor of Montana  
State Capitol  
Helena, Montana 59601

Dear Governor:

It is with great pleasure that I am today approving the State of Montana's request to assume authority to administer the NPDES permit program for Federal facilities.

Your State is the 19th to request and receive approval for administration of this important program. The transfer of programs such as this to State management is, as you know, a major thrust of President Reagan's domestic policy.

Once again congratulations to you and your staff. We look forward to working with you and the Department of Health and Environmental Science in continued efforts toward the prevention and control of water pollution in the State of Montana.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Richard D. Wilson".

Richard D. Wilson  
Acting Assistant Administrator  
for Enforcement

Enclosure

cc: Montana Department of Health  
and Environmental Science