

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF NORTH DAKOTA

STATE DEPARTMENT OF HEALTH

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 North Dakota State Department of Health, or his designee (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 North Dakota State Department of Health (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 paperwork and inter-agency 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 for the issuance of NPDES permits in the State of North Dakota 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, or his designee, 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, or his designee, 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 North Dakota by June 30, 1975. 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 North Dakota'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 North Dakota's NPDES Permit Program the Regional Administrator will provide the Department with a list of those applicants in the State of North Dakota 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 North Dakota.



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 Department that the information must be requested from the applicant.
- b. After final approval of the North Dakota 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 Department by letter and indicate in which respects the application is deficient. The Director, or his designee, 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 North Dakota 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.
  - g. Upon acquisition by the Department of the capability to prepare data in a format suitable for direct entry into the Environmental Protection Agency water information system, all information and data transmitted under this section will be prepared for such direct entry prior to submittal to the Environmental Protection Agency.
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, or his designee, will consider these comments as the proposed permits, fact sheets, and final 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, or his designee, 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, or his designee, 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, or his designee, 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 Department in writing within the time periods set forth above if the Environmental Protection Agency objects to or concurs with the issuance by the Department of the NPDES permit as proposed, failure to so notify the Director, or his designee, 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 notices 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, or his designee, shall 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, or his designee.
  - 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 discharges in the State of North Dakota. 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, or his designee, 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, or his designee, 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 a 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, or his designee, in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director, or his designee, shall require the permittee to supply such additional information as the Regional Administrator specifies. Upon acquisition by the Department of the capability, all data submitted under this section will be submitted in a form suitable for direct entry to the Environmental Protection Agency water information system.
- g. The Director, or his designee, shall evaluate data submitted by NPDES reporting forms and other forms supplying monitoring data for possible enforcement of remedial action.



- h. The Director, or his designee, 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 69-28-04 of the North Dakota Century Code and Regulation R-61-28-111(c).

9. ENFORCEMENT.

- a. The Department shall be responsible 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. Whenever the Regional Administrator makes a finding of violation of a waste discharge permit, he shall notify the Director, or his designee, and the person in alleged violation pursuant to the provisions of Section 309(a)(1). The Director, or his designee, shall advise the Regional Administrator of the action proposed with respect to such violation as provided in the aforesaid statute. As a general rule, Federal enforcement action will be initiated only when the Department fails to institute appropriate enforcement action against the violator. If the Director, or his designee, proposes to initiate enforcement action, he shall advise the Regional Administrator of the nature of such proposed action.



- c. The Department will advise the Regional Administrator of all progress in enforcement proceedings and related matters. The Regional Administrator may proceed with any remedy available under Section 309 in any case in which the State has proposed enforcement action and progress on such case has become unduly delayed or prolonged. The Regional Administrator will receive a copy of any pleadings, administrative, or judicial orders, or directives related to enforcement proceedings, and will be advised of any violations of orders or directives and of proposed enforcement actions to be undertaken. Upon the request of the Director, or his designee, the Regional Administrator, or his designee, will appear at administrative enforcement hearings and provide assistance in any public hearing related to enforcement.

10. TRANSFER OF INFORMATION CONCERNING WELL DISPOSAL.

The Regional Administrator shall distribute to the Director, or his designee, 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, or his designee, 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 10 permits per month for the first 6 months of calendar year 1975, or until all permits are issued, but will have prepared draft permits for all point source discharges covered by the Act by June 30, 1975.

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 North Dakota 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 North Dakota 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.

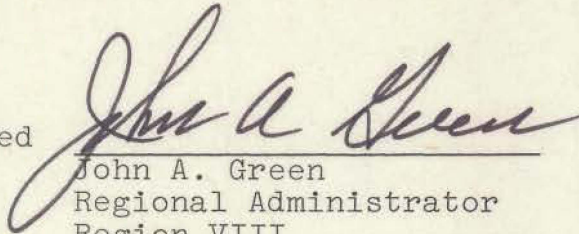
This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the Federal Act and shall remain in effect for the duration of



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

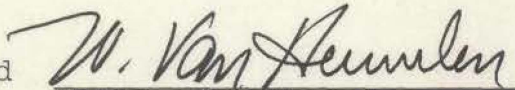
  
John A. Green  
Regional Administrator  
Region VIII

U.S. Environmental Protection Agency

5/5/75

Date

Approved

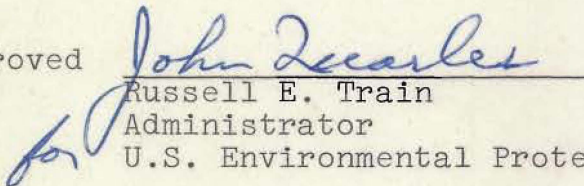
  
Willis Van Heuvelen

Executive Officer  
North Dakota State  
Department of Health

3/14/75

Date

Approved

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

June 13, 1975

Date



AMENDMENT TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN  
NORTH DAKOTA STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Memorandum of Agreement between the United States Environmental Protection Agency, Region VIII (hereafter EPA) and the North Dakota State Department of Health is hereby amended to include North Dakota State Department of Health and Consolidated Laboratories (hereafter Department) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) permits for federal (excluding Indian) facilities.

The Department has the authority to administer the NPDES Program for federal facilities, with the exception of Indian facilities. EPA shall retain all authority for Indian facilities.

The administration of the NPDES Program for federal (excluding Indian) facilities by the Department shall be in the same manner for all other facilities. All specific state commitments regarding the issuance and enforcement of federal permits will be determined through the annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the Department's federal permit program application by the administrator of EPA Region VIII.



Gene A. Christianson, Chief  
Environmental Health Section  
North Dakota State Department of Health  
and Consolidated Laboratories

9-19-89

Date



James J. Scherer, Regional Administrator  
U. S. EPA, Region VIII  
United States Environmental Protection Agency

1-18-90

Date



AMENDMENT TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN  
NORTH DAKOTA STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

The Memorandum of Agreement between the United States Environmental Protection Agency, Region VIII (hereafter EPA) and the North Dakota State Department of Health is hereby amended to include North Dakota State Department of Health and Consolidated Laboratories (hereafter Department) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) general permits as follows:

The Department has the responsibility for developing and issuing NPDES general permits. After identifying dischargers appropriately regulated by a general permit, the Department will collect sufficient effluent data to develop effluent limitations and prepare the draft general permit.

Each draft general permit will be transmitted to the following EPA offices:

Water Management Division Director  
U.S. EPA, Region VIII  
Denver Place, Suite 500  
999 18th Street  
Denver, CO 80202-2405

Director, Office Water Enforcement and Permits\*  
U.S. EPA (EN-335)  
401 M Street SW  
Washington, DC 80460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the Department. Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development. In the event EPA does object to a general permit it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The state has the right to a public hearing on the objection. Upon receipt of EPA's objection, the state may request a public hearing to resolve the issues. If EPA's concerns are not satisfied and the state has not sought a hearing within ninety (90) days of the objection, exclusive authority to issue the general permit passes to EPA. See 40 CFR Subsection 123.44.

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\*General permits for discharges from separate storm sewers need not be sent to EPA headquarters for review.




If EPA raises no objections to a general permit, it will be publicly noticed in accordance with Chapter 61-28, North Dakota Century Code (hereafter NDCC), Rule 33-16-01, North Dakota Administrative Code (hereafter NDAC), and Code of Federal Regulations (hereafter CFR), 40 subsection 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. The Department will issue general permits in accordance with Chapter 61-28, NDCC, Rule 33-16-01, NDAC, and 40 CFR subsection 122.28.

The Department may require any person authorized by a general permit to apply for, and obtain an individual NPDES permit. In addition, interested persons, including dischargers otherwise authorized by a general permit, may request that a facility be excluded from general permit coverage. Dischargers wishing exclusion must apply for an individual NPDES permit within ninety (90) days of publication of the general permit or within 180 days of when the discharge is to occur. The applicability of a general permit will automatically terminate upon the effective date of the individual permit. Finally, a discharger with an effective or continued individual NPDES permit may seek general permit coverage by requesting its permit to be revoked.

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

All specific state commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the Department's general permit program application by the administrator of EPA Region VIII.



Gene A. Christianson, Chief  
Environmental Health Section  
North Dakota State Department of Health  
and Consolidated Laboratories

9-19-89

Date



James J. Scherer, Regional Administrator  
U. S. EPA, Region VIII  
United States Environmental Protection Agency

1-18-90

Date



Auth. 9-16-05

**NATIONAL PRETREATMENT PROGRAM**  
  
**ADDENDUM TO THE**  
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE**  
**NORTH DAKOTA DEPARTMENT OF HEALTH**  
**AND THE**  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION VIII**

**Section I. General**

The Memorandum of Agreement (MOA) between the North Dakota Department of Health (Department) - Division of Water Quality and the Regional Administrator of the United States Environmental Protection Agency (EPA), approved on or around June 13, 1975 and modified on or about January 18, 1990, is hereby modified to define Department and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to §§ 307 and 402(b) of the Clean Water Act (Act) as follows.

**Section II. Policies**

The Department has the primary responsibility for the implementation of the National Pretreatment Program in North Dakota and will administer the National Pretreatment Program in accordance with § 402 of the Act, U.S.C. § 1251 *et. seq.*, applicable state legal authority, applicable federal regulations, the State/EPA Performance Partnership Agreement (PPA), the North Dakota Pretreatment Program Description, this MOA, and any other State/EPA agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.

**Section III. Program Implementation Responsibilities**

The Department has primary responsibility for ensuring:

- a. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with §§ 307(b) and (c) of the Act and State standards;
- b. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6);
- c. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the North Dakota Pollutant Discharge Elimination System (NDPDES) rules, N.D.A.C. Ch. 33-16-01;



- d. Incorporation of Publicly Owned Treatment Works (POTW) pretreatment program conditions in NDPDES permits issued to POTWs as required in 40 CFR § 403.8 and as provided at § 402(b)(8) of the Act;
- e. Identification of POTWs requiring local pretreatment programs;
- f. Incorporation of requirements for development and implementation of local limitations in NDPDES permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at § 402(b)(8) of the Act consistent with the latest Revision of the Region 8 Strategy for Local Limits Development;
- g. Review and approval or denial of POTW pretreatment program submittals in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18, except that no POTW pretreatment program shall be approved if EPA objects to program approval per the provisions of 40 CFR § 403.11;
- h. Process and publish, where appropriate, all pretreatment program approvals and program modifications in accordance with the requirements of 40 CFR § 403.11 and 40 CFR § 403.18;
- i. Incorporation of applicable Pretreatment Standards, including prohibited discharges and categorical standards and requirements, local limitations, State standards, and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12, into permits issued to Significant Industrial Users not regulated by approved POTW pretreatment programs;
- j. Inspection, surveillance, and monitoring procedures consistent with the annual workplan, which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW NDPDES permit; oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11, and 403.12; and audits of approved pretreatment programs conducted at least once per five years;
- k. Inspection, surveillance, and monitoring procedures which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements;
- l. The Department shall utilize EPA Region VIII's standard operating procedures for Pretreatment Program audits and Pretreatment Compliance Inspections until such time as the Department develops specific procedures that are approved by EPA;
- m. Initiating an enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes, but is not limited to, violations identified through inspection activities, monitoring, or surveillance activities.



The Department shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and EPA about violations. If EPA determines that the Department has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under § 309 of the Act after notice to and consultation with the Department. Prior to proceeding with a formal enforcement action, EPA shall notify the Department as specified in procedures already established for the NPDES Program.

The Department agrees to employ a state penalty policy corresponding to the spirit of the EPA Civil Penalty Policy as established in the Memoranda of the Assistant Administrator for Enforcement (February 11, 1986) or any revisions thereto, and Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program as established in the Memoranda of the Director of Water Enforcement and Permits (December 22, 1988) or any revisions thereto. EPA will supply the Department with a copy of these memoranda and any subsequent additions or revisions thereto;

- n. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6(a). The Department shall forward a copy of its decision to EPA. EPA may modify the Department's category determination within 60 days of EPA's receipt thereof. All final determinations shall be provided to the POTW and industrial user, and the Department or EPA, as appropriate;
- o. Review POTW removal credit submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7 and 403.11. Where the state intends to approve a removal credit application, the state shall provide the removal credit application, the state's analysis, and any supporting material to EPA for review as allowed for under 40 CFR § 403.7(e)(6);
- p. The Department shall review requests for Fundamentally Different Factor (FDF) variances in accordance with those procedures established at 40 CFR § 403.13. The Department may make an initial finding on any FDF variance requests, and in cases where the Department supports the variance, submit its findings together with the request and supporting information to EPA for final review. The Department shall not approve or in any way implement an FDF variance without the written approval of EPA. The Department may deny requests for FDF variances without EPA review;
- q. The Department shall utilize EPA Region VIII's standard operating procedures for industrial waste surveys, local limits development, and POTW annual reports, until such time as the Department develops specific procedures that are approved by EPA;



- r. The Department shall make every effort to ensure that the pretreatment coordinator or designee attend and represent the Department at the EPA Region VIII annual pretreatment conference.

EPA is responsible for assuring that the Pretreatment Program is consistent with all requirements of this MOA, the PPA, and applicable sections of 40 CFR § 403. EPA responsibilities shall include the following:

- s. Provision of technical assistance to the Department concerning program implementation issues such as local limits development, categorical standards implementation, trucked and hauled waste, Fundamentally Different Factor (FDF) variances, Category Determinations, Removal Credits, and other technical and procedural guidance and strategies;
- t. EPA may perform annual state Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements, procedures, activities, and program resources. Pretreatment Program audits will take place at the offices of the Department at such times as are mutually agreed by EPA and the Department. EPA will prepare and transmit to the Department a report summarizing the results of the Pretreatment Program audit which identifies any deficiencies noted as a result of the audit and any associated remedies;
- u. PA may perform quarterly review of annual commitments in the PPA to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
  - (i) Review of any information transmitted from the Department to assure that all the requirements of this MOA are met;
  - (ii) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
  - (iii) Examination of selected Department files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness, and efficacy of enforcement actions.
- v. EPA may conduct oversight inspections to evaluate the Department compliance inspection program as mutually agreed in the PPA. Additionally, EPA may determine that pretreatment inspections or monitoring beyond those performed by the Department are necessary or appropriate. The EPA shall notify the Department of such



determination. EPA may request the state to conduct such inspections or monitoring or, should the state decline, EPA may perform the inspection or monitoring alone without state participation. Should the state choose not to conduct additional inspections or monitoring, EPA will fully inform the state of such inspections or monitoring. EPA shall provide notice to the state fourteen (14) days prior to an inspection or monitoring of a POTW. Exceptional circumstances, such as incipient endangerment of public health, environmental damage, or potential criminal wrongdoing, may preclude such notice. When inspection or monitoring is conducted solely by the EPA, a copy of any inspection reports or sampling results will be forwarded to the Department within 45 days of completing the inspection;

- w. EPA will perform ongoing review of state pretreatment compliance and enforcement actions. Such review may result in direct EPA enforcement actions, upon closure of the state action, where indicated. Any such action will conform with the procedures specified at Section III (m) of this agreement as set forth previously;
- x. EPA may at any time review the Pretreatment Program's public participation policies, practices, and procedures.

#### **Section IV. Reporting and Transmittal of Information**

The Department shall provide the following information to EPA:

- a. A copy of all inspection reports prepared by the Department as part of the Pretreatment Program to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. All Department inspections will be entered into the Pretreatment Permit and Enforcement Tracking System (PPETS) database of the Permit Compliance System (PCS);
- b. A copy of each annual report submitted by approved pretreatment programs to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8. This requirement is not applicable where EPA and the state require the POTWs to submit copies to both agencies as a part of the annual report reporting requirement;
- c. The Department will enter all appropriate PPETS data into the PCS system (for audits, Pretreatment Compliance Inspection, annual reports, and any other required report or action as defined by EPA);
- d. When a public notice, as required in the Pretreatment Regulations, is issued, the Department will transmit a copy of the public notice to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. The state need not provide a copy of the submittal being approved except in the case of local limits. In this case, the state shall provide a copy of the submittal to EPA;



- e. Where the Department approves a non-substantial pretreatment modification, the Department shall send a copy of the approval letter to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8;
- f. Upon request, copies of all notices received from POTWs relating to a changed introduction of pollutants to the POTW;
- g. A copy of any enforcement action against a POTW with an approved pretreatment program or against an industrial user located in an approved pretreatment program's jurisdiction to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8.

EPA will provide the following information to the Department:

- h. Upon approval of the State of North Dakota's Pretreatment Program, the EPA shall transmit to the Department all data relevant to North Dakota concerning the Pretreatment Program which has not already been transmitted to the Department;
- i. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those industries which are located in North Dakota and have been directly regulated by EPA as the Control Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these industries. Prior to transmittal of Control Authority status for these industries to the state, EPA will complete any enforcement activities against these industries open at the time of program approval;
- j. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those POTWs which are located in North Dakota and have been directly regulated by EPA as the Approval Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these POTWs. Prior to transmittal of Approval Authority status for these POTWs to the state, EPA will complete any enforcement activities against these POTWs open at the time of program approval.

#### **Section V. Program Revision**

Either party to this MOA may initiate program revisions when necessitated by changes to federal or state statute. Procedures for program revision shall comply with the provisions set forth at 40 CFR § 123.63.

#### **Section VI. Miscellaneous**

The Department and EPA will communicate, through the PPA, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The annual workplan will contain, at a minimum, the following:



- a. A list of permits to be issued by the Department to POTWs and industrial users subject to Pretreatment Standards and requirements; and
- b. A list of POTWs and industrial users to be audited or inspected with projected time frames.

#### **Section VII. Other Provisions**

Nothing in this agreement is intended to affect any Pretreatment Standard or Requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are not less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the Act or federal regulations.

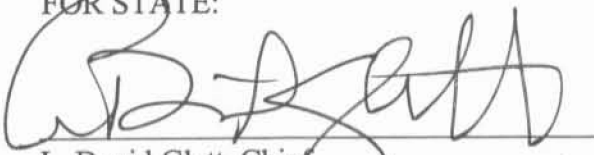
Nothing in this Amendment shall be construed to limit the authority of the EPA to take action pursuant to §§ 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et. seq.).

#### **Section VIII. Approval and Effective Date of Agreement**

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

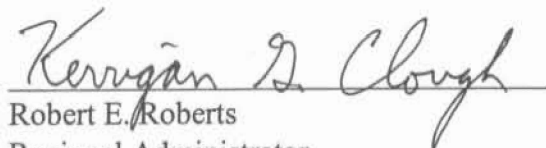
In witness thereof, the parties execute this agreement.

FOR STATE:

  
L. David Glatt, Chief  
Environmental Health Section  
North Dakota Department of Health

9/5/05  
(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
Robert E. Roberts  
Regional Administrator  
Region VIII

9/8/05  
(Date)



MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF NORTH DAKOTA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8



## **I. INTRODUCTION**

On June 13, 1975, the Administrator of the Environmental Protection Agency, the Regional Administrator of Region 8 of the Environmental Protection Agency (hereafter, Regional Administrator), and the Director of the North Dakota State Department of Health entered into a Memorandum of Agreement (hereafter, the 1975 Agreement) to delineate the responsibilities of Region 8 of the Environmental Protection Agency (hereafter, Region 8) and the North Dakota State Department of Health, for the ongoing operation of the National Pollutant Discharge Elimination System (NPDES), as described in Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (hereafter, the Act), and its implementing regulations. The 1975 Agreement established policies and procedures for the transfer of the NPDES Permit Program from Region 8 to the Department of Health; it defined the manner in which the applicable regulatory guidelines would be implemented; and it specified areas of cooperation, standards of performance and guidelines for the achievement of the goals set forth in the Act.

The 1975 Agreement was amended three times after its original execution. On January 18, 1990, two amendments were executed between the Regional Administrator and the Director of the Department of Health. The first amendment authorized the Department of Health to issue NPDES permits to federal facilities located in North Dakota; the second amendment authorized the Department of Health to issue NPDES general permits. On September 8, 2005, a third amendment was executed between the Regional Administrator and the Director of the Department of Health, authorizing the Department of Health to implement a pretreatment program.

On April 7, 2017, the Governor of North Dakota signed legislation creating a new North Dakota Department of Environmental Quality (hereafter, the Department) to administer environmental programs formerly under the authority of the North Dakota Department of Health. This legislative change served only to transfer existing authorities, including the NPDES permit authority between the two departments, and neither created new authorities, nor eliminated existing authorities.

In order to effectuate the transfer of the NPDES program between the two departments, the Regional Administrator and the Director of the Department of Environmental Quality (hereafter, the Director) have entered into this revised Memorandum of Agreement (hereafter, Agreement). This Agreement incorporates the terms of the 1975 Agreement and its subsequent amendments; it authorizes the Department to implement the NPDES program in North Dakota; and it delineates the responsibilities of Region 8 and the Department for the ongoing operation of the NPDES program in North Dakota, as described in Section 402 of the Federal Water Pollution Control Act Amendments of 1972 and its implementing regulations, including 40 CFR parts 122, 123, 124, 125, 127, 129, and 133.

This document supersedes and replaces the enforcement agreement titled “FY 90 Enforcement Agreement Between the U.S. Environmental Protection Agency, Region VIII and the State Water Pollution Control Agency and the State Attorney General.”

## **II. POLICIES**

1. It shall be the policy of Region 8 and the Department to fully coordinate and cooperate in



the issuance of waste discharge permits under the NPDES permit program.

2. As provided in Section 101(f) of the Act, it shall be the policy of Region 8 and the Department to minimize paperwork and inter-agency 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 North Dakota 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 NPDES 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, or his designee, with the assistance of the Region 8 NPDES permitting program, under existing State statutes and regulations, shall process and issue NPDES waste discharge permits which are consistent and compatible with the Act and with regulations and guidelines promulgated thereunder. The Regional Administrator, or his delegatee, shall provide written agreement with, objection to, or recommendation on, each NPDES permit to be issued. The Director, or his designee, shall not issue any NPDES permit to which the Regional Administrator has objected.
5. Pursuant to the first January 18, 1990 amendment to the 1975 Agreement, the Department has the authority to administer the NPDES Program for federal facilities within the State of North Dakota.

The administration of the NPDES Program for federal facilities by the Department shall be in the same manner for all other facilities. All specific state commitments regarding the issuance and enforcement of federal permits will be determined through the annual 106 workplan/PPA process.

6. Pursuant to the second January 18, 1990 amendment to the 1975 Agreement, the Department has the responsibility for developing and issuing NPDES general permits. All specific state commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/PPA process.
7. Pursuant to the September 8, 2005 amendment to the 1975 Agreement authorizing North Dakota to issue NPDES permits, the Department has the primary responsibility for the implementation of the National Pretreatment Program in North Dakota and will administer the National Pretreatment Program in accordance with Section 402 of the Act, applicable state legal authority, applicable federal regulations, the State/EPA Performance Partnership Agreement (PPA), the North Dakota Pretreatment Program Description, this MOA, and any other State/EPA agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.
8. Region 8, with technical assistance from the Department as necessary, shall have the responsibility for issuance of NPDES permits for point source discharges from point



sources located within the boundaries of Indian reservations.

9. The Department and the Region 8 NPDES permitting program shall strive to meet the goals set out in this document. Progress in achieving these goals may be reviewed during regular communications by the Director and Region 8 of the Environmental Protection Agency, which may include the development of the PPA.

### **III. AGREEMENTS**

1. TRANSMITTAL OF DATA FROM THE DEPARTMENT TO THE REGIONAL ADMINISTRATOR.
  - a. 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.
  - b. The Department shall provide the following information pertaining to its authorized pretreatment program to the Regional Administrator:
    - i. Provide inspection report to Region 8 upon request or as negotiated in the PPA. All Department inspections will be entered into the EPA's national NPDES data system.
    - ii. A copy of each annual report submitted by approved pretreatment programs. This requirement is not applicable where Region 8 and the state require the POTWs to submit copies to both agencies as a part of the annual report reporting requirement.
    - iii. The Department will enter all appropriate data into the EPA's national NPDES data system (for audits, Pretreatment Compliance Inspection, annual reports, and any other required report or action as defined by Region 8).
    - iv. When a public notice, as required in the Pretreatment Regulations, is issued, the Department will transmit a copy of the public notice to the Region 8 Pretreatment Coordinator. The state need not provide a copy of the submittal being approved except in the case of local limits. In this case, the state shall provide a copy of the submittal to Region 8.
    - v. Where the Department approves a non-substantial pretreatment modification, the Department shall send a copy of the approval letter to the Region 8 Pretreatment Coordinator.
    - vi. Upon request, copies of all notices received from POTWs relating to a changed introduction of pollutants to the POTW.
    - vii. Provide enforcement documents and associated documents to Region 8



upon request or as negotiated in the PPA.

2. PRE-ISSUANCE PREPARATION OF DRAFT NPDES PERMITS.

- a. The Region 8 NPDES permitting program 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 draft NPDES permits for compliance with federal regulations.
- b. The Department will provide the Region 8 NPDES permitting program with an internal draft and summary of rationale for draft NPDES permits, fact sheets, and public notices. The Region 8 NPDES permitting program will promptly review these internal drafts and comment, if necessary, within 10 days. The Director, or his designee, will consider these comments as the draft permits, fact sheets, and final notices are finalized.
- c. For each draft 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 draft 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, or his designee, 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.

3. TRANSMISSION TO REGIONAL ADMINISTRATOR OF DRAFT NPDES PERMITS.

- a. If a public notice required by 40 CFR § 124.10 is issued, the Department will transmit one copy of the NPDES public notice, statement of basis or fact sheet and draft NPDES permit to the Regional Administrator. The information transmitted with the draft permit will include any and all terms, conditions, requirements, or documents which are part of the draft permit.
- b. The Regional Administrator will have 30 days from the time he receives the draft NPDES permit from the Director, or his designee, within which to make general comments upon or recommendations with respect to the draft NPDES permit. Upon request of the Regional Administrator, the Director, or his designee, will provide the Regional Administrator with additional time for review, provided that the total review period shall not exceed 90 days.
  - i. Within 30 days following the receipt of the draft permit, the Regional Administrator may request that the Director transmit the complete record, or particular portions of the record, of the permit proceedings for the draft permit. This request shall constitute an interim objection to the draft



permit pursuant to 40 CFR § 123.44(d)(2). The interim objection will halt the review period established in paragraph III.3.b until the Regional Administrator receives the record or portions of the record, at which point the review period for the draft permit shall recommence (i.e., start over).

- c. The Regional Administrator shall notify the Department in writing within the time periods set forth in paragraph III.3.b if the Regional Administrator objects to the issuance by the Department of the NPDES permit as public noticed. Failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator. If the Regional Administrator transmits such notification to the Director, the following procedures will apply:
  - i. The notification shall set forth the general nature of the objection and will constitute the Regional Administrator's general objection under 40 CFR § 123.44(a)(1).
  - ii. Within 90 days following receipt of the draft permit to which he has issued a general objection, the Regional Administrator shall set forth in writing and transmit to the Director his specific objection to the draft permit. The specific objection shall include:
    - A. An explanation of the reasons for the objection, including citations to the section(s) of the CWA or EPA's implementing regulations that support the objection.
    - B. A description of the actions that must be taken by the Director to eliminate the objection, including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator.
  - iii. Within 90 days of receipt by the Director of a specific objection by the Regional Administrator, the Director may request that a public hearing be held by the Regional Administrator. Whenever requested by the State or if warranted by significant public interest based on requests received, a public hearing will be held as outlined in 40 CFR § 122.44(e) and (f).
  - iv. Following the public hearing, the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection. The Regional Administrator shall notify the Director, in writing, of this decision.
  - v. If a public hearing is held, the Regional Administrator does not withdraw the objection, and the Director does not submit a draft permit revised to meet the Regional Administrator's objection within 30 days of the Regional Administrator's notification under paragraph III.3.c.iv, the Regional Administrator may issue the permit in accordance with EPA's NPDES permitting regulations.
  - vi. If no public hearing is held and the Director does not resubmit a draft



permit revised to meet the Regional Administrator's objection within 90 days of receipt of the specific objection, the Regional Administrator may issue the permit in accordance with EPA's NPDES permitting regulations.

- d. The Department will transmit to the Regional Administrator copies of all written comments received on any public notices for a draft NPDES permit from any source.
- e. If a draft 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 draft NPDES permit to the Regional Administrator 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. The Regional

Administrator shall notify the Department in writing within that time period if the Regional Administrator objects to or concurs with the issuance by the Department of the modified draft NPDES permit. Any such notification will constitute the Regional Administrator's specific objection and will trigger the objection procedures in paragraph III.3.c. Failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator,

- f. The Director, or his designee, shall 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, or his designee.
- g. The Regional Administrator does not waive his right, in any respect, to review all NPDES permits proposed to be issued to any point source discharges in the State of North Dakota. 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.

#### 4. GENERAL PERMITS

- a. After identifying dischargers appropriately regulated by a general permit, the Department will collect sufficient effluent data to develop effluent limitations and prepare the draft general permit. Each draft general permit will be transmitted to the Region 8 NPDES permitting program.
- b. The Regional Administrator will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the



Department. Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development. In the event the Regional Administrator does object to a general permit he will provide notification to the Director, in writing, of the reasons for his objection and the actions necessary to eliminate the objection. Any such notification will constitute the Regional Administrator's specific objection and trigger the objection procedures in paragraph III.3.c.ii to III.3.c.vi. Failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator.

- c. If the Regional Administrator raises no objections to a general permit, it will be publicly noticed in accordance with Chapter 61-28, North Dakota Century Code (hereafter NDCC), Rule 33.1-16-01, North Dakota Administrative Code (hereafter NDAC), and 40 CFR § 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit and posted on the Department's website. The Department will issue general permits in accordance with Chapter 61-28, NDCC, Rule 33.1-16-01, NDAC, and 40 CFR § 122.28.
- d. The Department may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. In addition, interested persons, including dischargers otherwise authorized by a general permit, may request that a facility be excluded from general permit coverage. Dischargers wishing exclusion must apply for an individual NPDES permit within ninety days of publication of the general permit or within 180 days of when the discharge is to occur. The applicability of a general permit will automatically terminate upon the effective date of the individual permit. Finally, a discharger with an effective or continued individual NPDES permit may seek general permit coverage by requesting its permit to be revoked.
- e. The Department also has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

## 5. PRETREATMENT PROGRAM

- a. The Department has primary responsibility for ensuring:
  - i. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with Sections 307(b) and (c) of the Act and State standards.
  - ii. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6).
  - iii. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the North Dakota Pollutant Discharge Elimination System (NDPDES) rules, NDAC Ch. 33.1-16-01.
  - iv. Incorporation of Publicly Owned Treatment Works (POTW) pretreatment



program conditions in NDPDES permits issued to POTWs as required in 40 CFR § 403.8 and as provided at Section 402(b)(8) of the Act.

- v. Identification of POTWs requiring local pretreatment programs.
- vi. Incorporation of requirements for development and implementation of local limitations in NDPDES permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at Section 402(b)(8) of the Act consistent with the latest revision of the Region 8 Strategy for Local Limits Development.
- vii. Review and approval or denial of POTW pretreatment program submittals in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18, except that no POTW pretreatment program shall be approved if Region 8 objects to program approval per the provisions of 40 CFR § 403.11.
- viii. Process and publish, where appropriate, all pretreatment program approvals and program modifications in accordance with the requirements of 40 CFR § 403.11 and 40 CFR § 403.18.
- ix. Incorporation of applicable Pretreatment Standards, including prohibited discharges and categorical standards and requirements, local limitations, State standards, and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12, into permits issued to Significant Industrial Users not regulated by approved POTW pretreatment programs.
- x. Inspection, surveillance, and monitoring procedures consistent with the annual workplan, which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW NDPDES permit; oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11, and 403.12; and audits of approved pretreatment programs conducted at least once per five years.
- xi. Inspection, surveillance, and monitoring procedures which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements.
- xii. The Department shall utilize Region 8's standard operating procedures for Pretreatment Program audits and Pretreatment Compliance Inspections until such time as the Department develops specific procedures that are approved by Region 8.
- xiii. Initiating an enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes, but is not limited to, violations identified through inspection activities, monitoring, or surveillance activities.



The Department shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and Region 8 about violations. If Region 8 determines that the Department has not initiated timely and appropriate enforcement action against a violator, Region 8 may proceed with any or all of the enforcement options available under Section 309 of the Act after notice to and consultation with the Department. Prior to proceeding with a formal enforcement action, Region 8 shall notify the Department as specified in procedures already established for the NPDES program.

The Department agrees to employ a state penalty policy to address issues with failure to comply with Pretreatment Requirements.

- xiv. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6(a). The Department shall forward a copy of its decision to Region 8. Region 8 may modify the Department's category determination within 60 days of Region 8's receipt thereof. All final determinations shall be provided to the POTW and industrial user, and the Department or Region 8, as appropriate.
  - xv. Review POTW removal credit submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7 and 403.11. Where the state intends to approve a removal credit application, the state shall provide the removal credit application, the state's analysis, and any supporting material to Region 8 for review as allowed for under 40 CFR § 403.7(e)(6).
  - xvi. The Department shall review requests for Fundamentally Different Factor (FDF) variances in accordance with those procedures established at 40 CFR § 403.13. The Department may make an initial finding on any FDF variance requests, and in cases where the Department supports the variance, submit its findings together with the request and supporting information to Region 8 for final review. The Department shall not approve or in any way implement an FDF variance without the written approval of Region 8. The Department may deny requests for FDF variances without Region 8 review.
  - xvii. The Department shall utilize Region 8's standard operating procedures for industrial waste surveys, local limits development, and POTW annual reports, until such time as the Department develops specific procedures that are approved by Region 8.
- b. Region 8 is responsible for assuring that the Pretreatment Program is consistent with all requirements of this Agreement, the PPA, and applicable sections of 40 CFR part 403. Region 8 responsibilities shall include the following:



- i. Provision of technical assistance to the Department concerning program implementation issues such as local limits development, categorical standards implementation, trucked and hauled waste, Fundamentally Different Factor (FDF) variances, Category Determinations, Removal Credits, and other technical and procedural guidance and strategies.
- ii. Region 8 may perform annual state Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements, procedures, activities, and program resources. Pretreatment Program audits will take place at the offices of the Department at such times as are mutually agreed by Region 8 and the Department. Region 8 will prepare and transmit to the Department a report summarizing the results of the Pretreatment Program audit which identifies any deficiencies noted as a result of the audit and any associated remedies.
- iii. Region 8 may perform quarterly review of annual commitments in the PPA to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
  - (a) Review of any information transmitted from the Department to assure that all the requirements of this Agreement are met;
  - (b) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
  - (c) Examination of selected Department files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness, and efficacy of enforcement actions.
- iv. Region 8 may conduct oversight inspections to evaluate the Department compliance inspection program as mutually agreed in the PPA. These inspections along with other additional items shall be addressed and agreed upon in the PPA.
- v. Region 8 may perform ongoing review of state pretreatment compliance and enforcement actions. Such review may result in direct Region 8 enforcement actions, upon closure of the state action, where indicated. Any such action will conform with the procedures specified at Section III.5.a.xiii of this agreement as set forth previously.
- vi. Region 8 may at any time review the Pretreatment Program's public participation policies, practices, and procedures.

6. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS.



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

7. MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF NPDES PERMITS.

When the Director, or his designee, 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 30 days within which to object, comment upon or make recommendations with respect to any such proposed change. In the event the Regional Administrator does object to a permit modification, he will provide notification to the Director, in writing, of the reasons for his objection and the actions necessary to eliminate the objection. Any such notification will constitute the Regional Administrator's specific objection and will trigger the objection procedures in paragraph III.3.c.iii to III.3.c.vi. Failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator. No modification suspension, or revocation of a NPDES permit to which the Regional Administrator objects will be made.

8. 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, or his designee, and the Regional Administrator and in accordance with regulations as promulgated in 2 CFR part 1500 and 40 CFR part 35. The Department's inspection frequencies shall be in accordance with the requirements as established by EPA and the PPA.
- b. The Department will inspect the facilities of dischargers, including, where appropriate, effluent sampling and examination of monitoring records, reports, equipment, and methods.
- c. All compliance monitoring samples shall be collected, preserved, analyzed, and validated in accordance with the requirements of 2 CFR § 1500.11 and 40 CFR part 136.
- d. The Director will insure that the Regional Administrator receives copies of all NPDES reporting forms submitted to the Department upon request or as agreed to in the PPA. 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, or his designee, in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director, or his designee, shall require the permittee to supply such additional information as the Regional Administrator specifies. Upon acquisition by the Department of the



capability, all data submitted under this section will be submitted in a form suitable for entry into the EPA's national NPDES data system.

- e. The Director, or his designee, shall evaluate data submitted by NPDES permittees, including reporting forms and other forms supplying monitoring data, for possible enforcement or remedial action.
- f. The Director, or his designee, 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.

## 9. 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 61-28-04 of the North Dakota Century Code and Regulation R-61-28-III(c).

## 10. ENFORCEMENT.

- a. The Department shall be responsible for taking appropriate enforcement actions against persons in violation of NPDES permit conditions and will receive the assistance of the Region 8 enforcement program, upon request.
- b. Whenever the Regional Administrator makes a finding of violation of a waste discharge permit, he shall notify the Director, or his designee, and the person in alleged violation pursuant to the provisions of Section 309(a)(1). The Director, or his designee, shall advise the Regional Administrator of the action proposed with respect to such violation as provided in the aforesaid statute. As a general rule, federal enforcement action will be initiated only when the Department fails to institute appropriate enforcement action against the violator. If the Director, or his designee, proposes to initiate enforcement action, he shall advise the Regional Administrator of the nature of such proposed action.
- c. The Department will advise the Regional Administrator of all progress in enforcement proceedings and related matters. The Regional Administrator may proceed with any remedy available under Section 309 in any case in which the State has proposed enforcement action and progress on such case has become



unduly delayed or prolonged. The State will provide enforcement documents and associated documents to Region 8 upon request or as negotiated in the PPA. Upon the request of the Director, or his designee, the Regional Administrator, or his designee, will appear at administrative enforcement hearings and provide assistance in any public hearing related to enforcement.

11. TRANSFER OF INFORMATION CONCERNING WELL DISPOSAL.

The Regional Administrator shall distribute to the Director, or his designee, 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.

12. PERFORMANCE AND GOALS.

- a. The Director, or his designee, 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. These performance goals shall be addressed in the PPA, which shall include the pretreatment program requirements.

13. 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 III.13.a. above shall occur for any reason, including action by the North Dakota 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 III.13.a. and III.13.b. of this section, the Director, or his designee, shall identify each form used in the North Dakota NPDES Permit Program by a series number and the date of the latest version or revision of such form.

14. 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.

15. EFFECT, RESCISSION AND MODIFICATION.

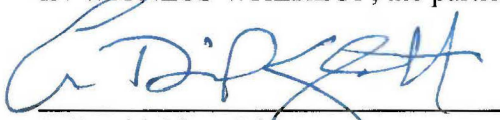
- a. This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the Federal Act and shall remain in effect for the duration of such approved program or until this Agreement is rescinded by mutual agreement of the parties. This Agreement may be modified from 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.
- b. Nothing in this agreement is intended to affect any Pretreatment Standard or Requirement, including any standards or prohibitions established by state or local law, as long as the state or local requirements are not less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the Act or federal regulations.
- c. Nothing in this Agreement shall be construed to limit the authority of the Region 8 to take action pursuant to Sections 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et. seq.).



#### IV. SIGNATURES

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

IN WITNESS WHEREOF, the parties have executed this Agreement:



L. David Glatt, Director  
North Dakota Department of Environmental Quality

3/19/19

Date



Karl Rockeman, Director  
North Dakota Division of Water Quality

3/19/2019

Date



Douglas H. Benevento  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 8

3/29/2019

Date





## REGION 8 ADMINISTRATOR

DENVER, CO 80202

Ref: 8WD-CWW

### **SENT VIA EMAIL**

Dave Glatt, Director  
North Dakota Department of Environmental Quality  
dglatt@nd.gov

Re: Final Revised National Pollutant Discharge Elimination System Memorandum of Agreement  
Between the State of North Dakota and EPA Region 8

Dear Dave Glatt:

Enclosed is the final revised Memorandum of Agreement (MOA) signed by the U.S. Environmental Protection Agency Region 8 and the North Dakota Department of Environmental Quality (NDDEQ). The revised MOA delineates procedures and responsibilities in our cooperative relationship with the North Dakota Pollutant Discharge Elimination System (NDPDES) program, ensuring alignment with the Clean Water Act and implementing regulations.

Thank you for your commitment to developing and maintaining a strong NDPDES program. The EPA greatly appreciates NDDEQ for assisting in making these important changes to this foundational document and looks forward to continuing our work together. If you have any further questions, please contact me at 303-312-6170 or Stephanie DeJong, Region 8 Clean Water Branch Manager, at 303-312-6362.

Sincerely,

Becker,  
Kathleen

Digitally signed by  
Becker, Kathleen  
Date: 2024.12.16  
14:26:30 -07'00'

KC Becker  
Regional Administrator

Enclosure

cc: Karl Rockeman, North Dakota Department of Environmental Quality  
Marty Haroldson, North Dakota Department of Environmental Quality



MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF NORTH DAKOTA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8



## I. INTRODUCTION

On June 13, 1975, the Administrator of the Environmental Protection Agency (EPA), the Regional Administrator of Region 8 of the Environmental Protection Agency (hereafter, Regional Administrator), and the Director of the North Dakota State Department of Health (DOH) entered into a Memorandum of Agreement (hereafter, the 1975 Agreement) to delineate the responsibilities of Region 8 of the Environmental Protection Agency (hereafter, Region 8) and the North Dakota State DOH, for the ongoing operation of the National Pollutant Discharge Elimination System (NPDES), as described in Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (hereafter, the Act), and its implementing regulations. The 1975 Agreement established policies and procedures for the transfer of the NPDES Permit Program from Region 8 to the DOH; it defined the manner in which the applicable regulatory guidelines would be implemented; and it specified areas of cooperation, standards of performance and guidelines for the achievement of the goals set forth in the Act.

The 1975 Agreement was amended three times after its original execution. On January 18, 1990, two amendments were executed between the Regional Administrator and the Director of the DOH. The first amendment authorized the DOH to issue NPDES permits to federal facilities located in North Dakota; the second amendment authorized the DOH to issue NPDES general permits. On September 8, 2005, a third amendment was executed between the Regional Administrator and the Director of the DOH, authorizing the DOH to implement a pretreatment program.

On April 7, 2017, the Governor of North Dakota signed legislation creating a new agency, the North Dakota Department of Environmental Quality (hereafter, the Department), to administer environmental programs formerly under the authority of the DOH. This legislative change served only to transfer existing authorities, including the NPDES permit authority between the two departments, and neither created new authorities, nor eliminated existing authorities.

On March 29, 2019, in order to effectuate the transfer of the NPDES program between the two departments, the Regional Administrator and the Director of the Department (hereafter, the Director) entered into a revised Memorandum of Agreement (hereafter, 2019 Agreement).

This current Agreement incorporates the terms of the 1975 Agreement, the 2019 Agreement, and their subsequent amendments; it authorizes the Department to implement the NPDES program in North Dakota; and it delineates the responsibilities of Region 8 and the Department for the ongoing operation of the NPDES program in North Dakota, as described in Section 402 of the Act and its implementing regulations, including 40 CFR parts 122, 123, 124, 125, 127, 129, and 133.

This document supersedes and replaces the enforcement agreement titled "FY 90 Enforcement Agreement Between the U.S. Environmental Protection Agency, Region 8 and the State Water Pollution Control Agency and the State Attorney General".



## II. POLICIES

1. It shall be the policy of Region 8 and the Department to fully coordinate and cooperate in the issuance of discharge permits under the NPDES permit program.
2. As provided in Section 101(f) of the Act, it shall be the policy of Region 8 and the Department to minimize paperwork and inter-agency 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 North Dakota (State) 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 NPDES 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 of the Act, the Director, or their designee, with the assistance of the Region 8 NPDES permitting program, under existing State statutes and regulations, shall process and issue NPDES discharge permits which are consistent and compatible with the Act and with regulations and guidelines promulgated thereunder. The Regional Administrator, or their designee may comment upon, object to or make recommendations with respect to each NPDES permit to be issued. The Director, or their designee, shall not issue any NPDES permit to which the Regional Administrator has objected.
5. Pursuant to the first January 18, 1990 amendment to the 1975 Agreement, the Department has the authority to administer the NPDES Program for federal facilities within the State.

The administration of the NPDES Program for federal facilities by the Department shall be in the same manner for all other facilities. All specific State commitments regarding the issuance and enforcement of federal permits will be determined through the annual 106 workplan agreement.

6. Pursuant to the second January 18, 1990 amendment to the 1975 Agreement, the Department is responsible for developing and issuing NPDES general permits. All specific State commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan agreement.
7. Pursuant to the September 8, 2005 amendment to the 1975 Agreement authorizing the State to issue NPDES permits, the Department has the primary responsibility for the implementation of the National Pretreatment Program in North Dakota and will administer the National Pretreatment Program in accordance with Section 402 of the Act, applicable State legal authority, applicable federal regulations, the EPA/State annual 106 workplan agreement, the North Dakota Pretreatment Program Description, this Agreement, and any other EPA/State agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of



this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.

8. Region 8, with technical assistance from the Department as necessary, shall have the responsibility for issuance of NPDES permits for point source discharges from point sources located within the boundaries of Indian reservations.
9. The Department and the Region 8 NPDES permitting program shall strive to meet the goals set out in this document. Progress in achieving these goals may be reviewed during regular communications by the Director and Region 8 of the Environmental Protection Agency, which may include the development of the annual 106 workplan agreement.

### **III. AGREEMENTS**

1. TRANSMITTAL OF DATA FROM THE DEPARTMENT TO THE REGIONAL ADMINISTRATOR.
  - a. The Department will assume responsibility for determining that applications submitted to the Department are complete. When the Department determines that the NPDES forms received from the applicant are complete, the Department will enter associated facility and permit application information into the national data system. Upon request, the Department shall provide the EPA a copy of a NPDES permit application received by the Department.
  - b. The Department shall transmit all notices of every action related to the consideration of any permit application or general permit, including notices of hearings, copies of all draft permits, copies of proposed permits when necessary under Section 3, and all final permits. All such notices and documents shall be transmitted electronically to the EPA unless a different manner is prescribed in the annual EPA/State Section 106 workplan agreements.
  - c. The Regional Administrator and Department agree that EPA will review draft permits rather than proposed permits. If a proposed permit is required to be transmitted to EPA, as described in Section 3, the proposed permit will be transmitted electronically unless a different manner is prescribed in the annual EPA/State Section 106 workplan agreement.
  - d. The Department shall provide the following information pertaining to its authorized pretreatment program to the Regional Administrator:
    - i. Inspection reports upon request or as negotiated in the annual EPA/State Section 106 workplan agreement. All Department inspections will be entered into the EPA's national NPDES data system.
    - ii. A copy of each annual report submitted by approved pretreatment programs. This requirement is not applicable where Region 8 and the State require the Publicly Owned Treatment Works (POTWs) to submit copies to both agencies as a part of the annual report reporting requirement.



- iii. Enter all appropriate data into the EPA's national NPDES data system (for audits, Pretreatment Compliance Inspection, annual reports, and any other required report or action as defined by Region 8).
- iv. When a public notice, as required in the Pretreatment Regulations, is issued, the Department will transmit a copy of the public notice to the Region 8 Pretreatment Coordinator. The Department need not provide a copy of the submittal being approved except in the case of local limits. In this case, the Department shall provide a copy of the submittal to Region 8.
- v. Where the Department approves a non-substantial pretreatment modification, the Department shall send a copy of the approval letter to the Region 8 Pretreatment Coordinator.
- vi. Upon request, copies of all notices received from POTWs relating to a changed introduction of pollutants to the POTW.
- vii. Provide enforcement documents and associated documents upon request or as negotiated in the annual EPA/State Section 106 workplan agreement.

## 2. PRE-ISSUANCE PREPARATION OF DRAFT NPDES PERMITS.

- a. The Region 8 NPDES permitting program 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 draft NPDES permits for compliance with federal regulations.
- b. Draft permits and fact sheets shall implement all requirements and information required by federal NPDES regulations.
- c. If the Director, or their designee, makes a tentative determination to deny a permit, they shall notify the applicant of such intent and provide a copy of the determination to the Regional Administrator.

## 3. REVIEW OF DRAFT NPDES PERMITS.

- a. The Regional Administrator will have 30 days from the time they receive the draft individual NPDES permit from the Director, or their designee, to provide a general objection to (in accordance with 40 CFR 123.44(b)(1)) comments or make recommendations with respect to the draft NPDES permit. Upon request of the Regional Administrator, the Director, or their designee, will provide the Regional Administrator with additional time for review, provided that the total review period shall not exceed 90 days (in accordance with 40 CFR 123.44(a)(1)). Within 90 days following receipt of a draft permit to which EPA has generally objected, the Regional Administrator shall provide a specific objection in accordance with 40 CFR 123.44(b)(2).
- b. In the case of general permits, EPA shall have 90 days from the date of receipt of the draft general NPDES permit to comment upon, object to or make recommendations



with respect to the proposed general permit (in accordance with 40 CFR 123.44(a)(2)).

- c. If the Department proposes to issue a permit which differs from the draft NPDES permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment, the Department will transmit the proposed NPDES permit to the Regional Administrator and shall specify the reasons for the modification.

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

- d. The Director, or their designee, shall 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, or their designee.

#### 4. PRETREATMENT PROGRAM

- a. The Department has primary responsibility for ensuring:
  - i. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with Sections 307(b) and (c) of the Act and State standards.
  - ii. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6).
  - iii. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the North Dakota Pollutant Discharge Elimination System (NDPDES) rules, NDAC Ch. 33.1-16-01.
  - iv. Incorporation of POTW pretreatment program conditions in NDPDES permits issued to POTWs as required in 40 CFR § 403.8 and as provided at Section 402(b)(8) of the Act.
  - v. Identification of POTWs requiring local pretreatment programs.
  - vi. Incorporation of requirements for development and implementation of local limitations in NDPDES permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at Section 402(b)(8) of the Act consistent with the latest revision of the Region 8 Strategy for Local Limits Development.
  - vii. Review and approval or denial of POTW pretreatment program submittals



in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18, except that no POTW pretreatment program shall be approved if Region 8 objects to program approval per the provisions of 40 CFR § 403.11.

- viii. Process and publish, where appropriate, all pretreatment program approvals and program modifications in accordance with the requirements of 40 CFR § 403.11 and 40 CFR § 403.18.
  - ix. Incorporation of applicable Pretreatment Standards, including prohibited discharges and categorical standards and requirements, local limitations, State standards, and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12, into permits issued to Significant Industrial Users not regulated by approved POTW pretreatment programs.
  - x. Inspection, surveillance, and monitoring procedures consistent with the annual workplan, which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW NDPDES permit; oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11, and 403.12; and audits of approved pretreatment programs conducted at least once per five years.
  - xi. Inspection, surveillance, and monitoring procedures which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements.
  - xii. The Department shall utilize Region 8's standard operating procedures for Pretreatment Program audits and Pretreatment Compliance Inspections until such time as the Department develops specific procedures that are approved by Region 8.
  - xiii. Initiating an enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes, but is not limited to, violations identified through inspection activities, monitoring, or surveillance activities.
- b. The Department shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and Region 8 about violations. If Region 8 determines that the Department has not initiated timely and appropriate enforcement action against a violator, Region 8 may proceed with any or all of the enforcement options available under Section 309 of the Act after notice to and consultation with the Department. Prior to proceeding with a formal enforcement action, Region 8 shall notify the Department as specified in procedures already established for the NPDES program.



- c. The Department agrees to employ a state penalty policy to address issues with failure to comply with Pretreatment Requirements.
  - i. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6(a). The Department shall forward a copy of its decision to Region 8. Region 8 may modify the Department's category determination within 60 days of Region 8's receipt thereof. All final determinations shall be provided to the POTW and industrial user, and the Department or Region 8, as appropriate.
  - ii. Review POTW removal credit submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7 and 403.11. Where the State intends to approve a removal credit application, the State shall provide the removal credit application, the State's analysis, and any supporting material to Region 8 for review as allowed for under 40 CFR § 403.7(e)(6).
  - iii. The Department shall review requests for Fundamentally Different Factor (FDF) variances in accordance with those procedures established at 40 CFR § 403.13. The Department may make an initial finding on any FDF variance requests, and in cases where the Department supports the variance, submit its findings together with the request and supporting information to Region 8 for final review. The Department shall not approve or in any way implement an FDF variance without the written approval of Region 8. The Department may deny requests for FDF variances without Region 8 review.
  - iv. The Department shall utilize Region 8's standard operating procedures for industrial waste surveys, local limits development, and POTW annual reports, until such time as the Department develops specific procedures that are approved by Region 8.
- d. Region 8 is responsible for assuring that the Pretreatment Program is consistent with all requirements of this Agreement, the annual EPA/State Section 106 workplan agreement, and applicable sections of 40 CFR part 403. Region 8 responsibilities shall include the following:
  - i. Provision of technical assistance to the Department concerning program implementation issues such as local limits development, categorical standards implementation, trucked and hauled waste, FDF variances, category determinations, removal credits, and other technical and procedural guidance and strategies.
  - ii. Region 8 may perform annual state Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment



Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements, procedures, activities, and program resources. Pretreatment Program audits will take place at the offices of the Department at such times as are mutually agreed by Region 8 and the Department. Region 8 will prepare and transmit to the Department a report summarizing the results of the Pretreatment Program audit which identifies any deficiencies noted as a result of the audit and any associated remedies.

- iii. Region 8 may perform quarterly review of annual commitments in the annual EPA/State Section 106 workplan agreement to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
  - (a) Review of any information transmitted from the Department to assure that all the requirements of this Agreement are met;
  - (b) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
  - (c) Examination of selected Department files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness, and efficacy of enforcement actions.
- iv. Region 8 may conduct oversight inspections to evaluate the Department compliance inspection program as mutually agreed in the annual EPA/State Section 106 workplan agreement. These inspections along with other additional items shall be addressed and agreed upon in the annual EPA/State Section 106 workplan agreement.
- v. Region 8 may perform ongoing review of state pretreatment compliance and enforcement actions. Such review may result in direct Region 8 enforcement actions, upon closure of the state action, where indicated. Any such action will conform with the procedures specified at Section III.4.a.xiii of this agreement as set forth previously.
- vi. Region 8 may at any time review the Pretreatment Program's public participation policies, practices, and procedures.

## 5. MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF NPDES PERMITS.

When the Director, or their designee, 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 30 days within which to object, comment upon or make recommendations with respect to any such proposed change. No modification suspension, or revocation of a NPDES permit to which the Regional Administrator objects will be made.



## 6. 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, or their designee, and the Regional Administrator and in accordance with regulations as promulgated in 2 CFR part 1500 and 40 CFR part 35. The Department's inspection frequencies shall be in accordance with the requirements as established by EPA and the annual EPA/State Section 106 workplan agreement.
- b. The Department will inspect the facilities of dischargers, including, where appropriate, effluent sampling and examination of monitoring records, reports, equipment, and methods.
- c. All compliance monitoring samples shall be collected, preserved, analyzed, and validated in accordance with the requirements of 2 CFR § 1500.12 (2024) and 40 CFR part 136.
- d. The Director will ensure that the Regional Administrator receives copies of all NPDES reporting forms submitted to the Department upon request or as agreed to in the annual EPA/State Section 106 workplan agreement. If the Regional Administrator determines that the NPDES reporting forms submitted to the Department are not complete or are otherwise deficient, they shall specify to the Director, or their designee, in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director, or their designee, shall require the permittee to supply such additional information as the Regional Administrator specifies. Upon acquisition by the Department of the capability, all data submitted under this section will be submitted in a form suitable for entry into the EPA's national NPDES data system.
- e. The Director, or their designee, shall evaluate data submitted by NPDES permittees, including reporting forms and other forms supplying monitoring data, for possible enforcement or remedial action.
- f. The Director, or their designee, 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.

## 7. 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 their own determination as to the confidentiality of the information contained in the NPDES forms 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 61-28-04 of the North Dakota Century Code and Section 33.1-16-01-10 of the North Dakota Administrative Code.

#### 8. ENFORCEMENT.

- a. The Department shall be responsible for taking appropriate enforcement actions against persons in violation of NPDES permit conditions and will receive the assistance of the Region 8 enforcement program, upon request.
- b. Whenever the Regional Administrator makes a finding of violation of a discharge permit, they shall notify the Director, or their designee, and the person in alleged violation pursuant to the provisions of Section 309(a)(1). The Director, or their designee, shall advise the Regional Administrator of the action proposed with respect to such violation as provided in the aforesaid statute. As a general rule, federal enforcement action will be initiated only when the Department fails to institute appropriate enforcement action against the violator. If the Director, or their designee, proposes to initiate enforcement action, they shall advise the Regional Administrator of the nature of such proposed action.
- c. The Department will advise the Regional Administrator of all progress in enforcement proceedings and related matters. The Regional Administrator may proceed with any remedy available under Section 309 of the Act in any case in which the State has proposed enforcement action and progress on such case has become unduly delayed or prolonged. The State will provide enforcement documents and associated documents to Region 8 upon request or as negotiated in the annual EPA/State Section 106 workplan agreement. Upon the request of the Director, or their designee, the Regional Administrator, or their designee, will appear at administrative enforcement hearings and provide assistance in any public hearing related to enforcement.

#### 9. 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 their 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 III.9.a. above shall occur for any reason, including action by the North Dakota legislature or a court, the Director, or their 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 their approval of any test method other than those specified by a standard permit or form, the Director, or their designee, shall obtain the approval of the Regional Administrator.
- d. In order to facilitate the provisions of paragraph III.9.a. and III.9.b. of this section, the Director, or their designee, shall identify each form used in the State's NPDES Permit Program by a series number and the date of the latest version or revision of such form.

#### 10. FURTHER ASSURANCES.

The Director, or their 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.

#### 11. EFFECT, RESCISSION AND MODIFICATION.

- a. This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the 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.
- b. Nothing in this Agreement is intended to affect any Pretreatment Standard or Requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program or other requirements or prohibitions established under the Act or federal regulations.
- c. Nothing in this Agreement shall be construed to limit the authority of the Region 8 to take action pursuant to Sections 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et. seq.).




IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved **Becker, Kathleen**  
KC Becker  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 8

Digitally signed by  
Becker, Kathleen  
Date: 2024.12.12  
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Approved   
L. David Latt, P.E.  
Director  
North Dakota Department of Environmental Quality

11-22-2024

Date