

MEMORANDUM OF UNDERSTANDING
REGARDING PERMIT AND ENFORCEMENT PROGRAMS
BETWEEN THE

STATE WATER CONTROL BOARD

AND THE

REGIONAL ADMINISTRATOR, REGION III
ENVIRONMENTAL PROTECTION AGENCY

The State Water Control Board of the Commonwealth of Virginia (the Board) and the Regional Administrator, Region III, U.S. Environmental Protection Agency (Regional Administrator), have determined that it is highly desirable to develop an understanding concerning the implementation of their respective responsibilities in the area of water quality control within the Commonwealth of Virginia. The principal area in which such an understanding is desirable is the administration of permit programs pursuant to the State Water Control Law, § 62.1-44.2 et seq., Code of Virginia (1950), as amended, and the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended, (the Act). The Board desires to administer and enforce the National Pollutant Discharge Elimination System (NPDES) Permit Program within the Commonwealth of Virginia. The Regional Administrator and the Board agree that the Permit Program shall be administered in accordance with the following objectives and precepts:

1. The Permit Program is the backbone of the State and the Federal Water Pollution Control Programs and, accordingly, it must be effectively administered and enforced in order to ensure the achievement of State and national water quality objectives.
2. The best interests of the Board and the Regional Administrator will be served if the Permit Program is administered and enforced by the Board.
3. In accordance with Congressional policy established by § 101(b) and 101(f) of the Act, the Board shall, after receipt of administrative authority of the Permit Program, have the primary responsibility to effectively administer and enforce that Program.
4. The Board can most effectively administer and enforce the Permit Program through close cooperation with the Regional Administrator.

5. The Regional Administrator can best contribute to the effective administration and enforcement of the Permit Program within the Commonwealth by close cooperation with the Board and by lending prompt support to the Board so that the Board can implement its primary responsibilities under the Program.
6. The Board and the Regional Administrator recognize and agree that the effective administration and enforcement of the Permit Program will be facilitated through the drastic minimization of paper work and interagency decision procedures so that needless duplication of efforts and unnecessary delays are avoided.
7. With respect to permit applications for interim sewage facilities, the construction of which commences after the effective date of this Understanding, the Board agrees to be guided by the spirit and intent of the "Minimum Criteria for Reviewing and issuing NPDES Permits for Interim Treatment Facilities" attached to this Understanding as Exhibit A.

II. Definitions

1. "Report of Waste Discharge" shall include an application for an NPDES permit.
2. "Waste discharge requirements" are the equivalent to an NPDES permit issued under authority of Section 402 of the Act, and implementing regulations and guidelines.
3. "Monitoring report" includes a completed NPDES reporting form.
4. All other terms and phrases used in this agreement shall have the same meaning as in the Act and the State Water Control Law and amendments thereto or regulations promulgated thereunder.
5. The "Regional Administrator", Region III, U.S. Environmental Protection Agency, for the purpose of this agreement, means the Regional Administrator, and/or his designees, consistent with Agency and Regional delegations of authority.

6. The "Board", for the purposes of this agreement, shall mean the State Water Control Board with the understanding that the Executive Secretary and/or his designees may act for the Board when delegated such authority.

III. Permit Program

1. General

It is recognized by the Board and the Regional Administrator that the Act and regulations adopted thereunder provide that when a state's permit program is approved, waste discharge requirements will be issued by the state and not by the Regional Administrator but that the Regional Administrator may object to the issuance of NPDES permits or specific terms and conditions contained therein. Therefore, it is in the best interest of the Regional Administrator and the Board to reach agreement on all terms and conditions to be contained in NPDES permits prior to the issuance of public or hearing notices.

2. Scope of Program

- a. The Board shall be the primary enforcement agency with respect to all permits previously issued by the Regional Administrator (including all joint permits) as well as all pending NPDES permit applications provided, however, that all NPDES permit conditions involved in the adjudicatory hearing process shall remain with EPA until the completion of such process. It is understood that the Board is granted the authority to modify, amend, suspend or revoke, as appropriate, permits previously issued by the Regional Administrator (including joint permits) in accordance with this Understanding and appropriate regulations. Such permit modifications, amendments and/or revocations shall be subject to the same transmittal, review, comment, and objection procedures afforded the Regional Administrator for draft and final permits pursuant to this Understanding.
- b. It is agreed that the Board shall receive authority to administer Section 316 of P.L. 92-500 as part of NPDES program approval.
- c. It is agreed that the Board shall administer the NPDES permit program in accordance with the following order of priority for permit issuance:

- a. major discharges;
- b. minor discharges, as defined by s 6.3(18) of the Board's Regulation No. 6.

- d. In accordance with Section 3(2) of Executive Order 11752 of the President of the United States, dated December 17, 1973, it is agreed that the Regional Administrator will provide the Board with such information as is necessary to determine whether or not each federal facility within Virginia is in compliance with applicable State and Federal Standards. The Regional Administrator shall further provide to the Board, prior to issuance of a public notice, a copy of the proposed NPDES permit for every federal facility in Virginia and allow the Board 30 days to comment on such permit.

- e. It is agreed that the Board and the Regional Administrator will mutually concur, in writing, in any revisions or modifications made to the joint EPA - Board NPDES permit form (format) previously developed and approved by both parties.

3. Transmittal of Data From Regional Administrator

- a. All relevant data received by the Regional Administrator both prior to and subsequent to, the final approval of the state permit program shall be transmitted to the Board. Such transmittal shall include, at least, copies of all Refuse Act applications or NPDES applications received by the Regional Administrator prior to such date.

- b. As expeditiously as possible, but in no event later than 90 days after final approval of the State permit program, the Regional Administrator shall transmit such material to the Board. To the extent practicable during such 90 day period, the Regional Administrator shall identify, in writing, those applications which he finds are administratively incomplete or otherwise deficient and shall specify the information required by the Regional Administrator with respect to such applications. Further, the Regional Administrator shall identify those applications which he has not reviewed for completeness.

4. Transmittal of Data to Regional Administrator

The Board will insure that:

- a. Copies of all NPDES forms, including but not limited to, NPDES reporting forms, and other uniform national forms which have not been reviewed for completeness by the Regional Administrator shall be promptly transmitted to the Regional Administrator upon receipt by the Board. The Board, however, is not required to re-transmit to the Regional Administrator the data transmitted to the Board in accordance with paragraph III(3).
- b. On a monthly basis, the Regional Administrator will receive copies of all notices to the Board from publicly owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

5. Processing of NPDES Applications

- a. A "complete" copy of any NPDES application received by the Board will be forwarded to the Regional Administrator within 30 days of receipt thereof by the Board. The Board shall insure an administratively and technically complete application prior to forwarding said application. Generally, the "complete" application will be forwarded together with a draft NPDES Permit. In such cases, the periods afforded the Regional Administrator to review and comment on the application and draft permit will run concurrently.
- b. The Regional Administrator will have 30 days after receipt of a copy of such application to comment upon or object to its sufficiency. In the case of an application concerning new sewage discharges, the Regional Administrator will comment upon or object to its sufficiency within 14 days after receipt. Any comment upon, or objection to, sufficiency shall be in writing and shall specify the nature of information required to correct such deficiencies. In the event of failure to comment or object within the above comment periods or to request, in writing, an extension of time in which to comment, the report shall be deemed complete with respect to action by the Regional Administrator.

- c. In the event that the Regional Administrator objects to the sufficiency of any application in that the application is not in compliance with the Act, or regulations or guidelines adopted thereunder, the Regional Administrator shall specify the nature of the objections, the section of the Act, regulations or guidelines which support the objections and the information required as a condition to elimination of his objections to the report.
- d. Upon receipt of any objections from the Regional Administrator, the Board shall notify the discharger or proposed discharger of such objections and shall request any necessary additional information.
- e. A complete copy of any such additional information requested by the Board and received from the discharger shall be forwarded to the Regional Administrator upon receipt thereof, and the Regional Administrator will advise in writing, within 14 days from receipt, whether the deficiencies involved have been corrected to his satisfaction. In the event of failure to comment or object within such 14 day period, the NPDES application shall be deemed complete with respect to action by the Regional Administrator.
- f. In the event of further objections to the sufficiency of the application report, the Board will initiate a coordinated effort to achieve agreement.

6. Formulation of Draft NPDES Permits

- a. The Board shall transmit to the Regional Administrator all draft permits not waived pursuant to paragraph VI(1)(a) of this Understanding, including any and all terms, conditions, requirements or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants.
- b. The Regional Administrator shall have a 30 day period from the date of receipt of the proposed permit in which to comment upon, object to, and or make recommendations with respect to the proposed permits. In the case of a draft permit concerning new sewage discharges, the Regional Administrator will comment upon, object to, or make recommendations within 14 days after receipt. If the Regional Administrator does not submit objections or request, in writing, an extension of time in which to comment and or object, within the above comment periods, the Regional Administrator waives the right to comment.

- c. If the Regional Administrator objects to the proposed tentative waste discharge requirements, for the reason that the requirements conflict with the Act or regulations and guidelines adopted thereunder, the Regional Administrator shall specify the nature of the objection, the section of the Act, regulations or guidelines which support the objection, and the terms and conditions required by the Regional Administrator as a condition to the elimination of his objections to the waste discharge requirements. The Board shall notify the Regional Administrator, in writing, prior to issuance of any proposed NPDES permit of the disposition of any recommendations and or objections of the Regional Administrator which have not been incorporated in the proposed permit.

7. Public Notice

- a. Promptly after formulation by the Board of a proposed NPDES permit, which the Regional Administrator has waived his right to object pursuant to paragraph VI (1) (a), or III(6) (b), the Board will prepare and issue a public notice of proposed issuance of the NPDES permit. The Board may similarly proceed to issue a public notice of proposed issuance of an NPDES permit for other discharges upon receipt of the Regional Administrators comments, recommendations, and/or objections in accordance with paragraph III(6) above.
- b. At the time of public notice issuance, a copy of the public notice, together with a copy of any fact sheet, if applicable, and the draft NPDES permit shall be mailed to the Regional Administrator. A copy of the draft NPDES permit need not be mailed to the Regional Administrator if there have been no changes in the draft permit concurred in pursuant to paragraph III(6) above, or if review of such permit has been waived pursuant to paragraph VI(1) (a) of this Understanding.

8. Issuance of NPDES Permits

- a. The Board will grant NPDES permits only after notice and opportunity for public hearing as required by the Act and regulations adopted thereunder.

- b. The Board will promptly transmit any changes or revisions made in any draft NPDES permit (which has not been waived, pursuant to paragraph VI) after issuance of Public Notices, to the Regional Administrator for his written concurrence within 14 days of receipt. Changes made by the Board in any draft NPDES Permit in response to comments, recommendations or objections of the Regional Administrator need not be transmitted prior to permit issuance.
- c. The Board will grant NPDES permits only after objections of the Regional Administrator have been resolved to the mutual satisfaction of both parties.
- d. When the Regional Administrator has informed the Board in writing of his lack of objection or has waived his right to comment on proposed requirements following his receipt of the draft permit, and no significant adverse comments are presented in writing pursuant to the public notice, the tentative requirements may be adopted without modification and the permit may be issued. If significant adverse comments are submitted in writing pursuant to the public notice by any person(s) or the Regional Administrator, a public hearing shall be held without delay. The staff shall then summarize the results of the hearing and shall prepare recommendations in accordance therewith. These recommendations shall be forwarded to the Regional Administrator who shall be given 14 days from date of receipt in which to object and/or comment. If the Regional Administrator has no objections and/or significant comments, the staff shall submit its recommendations to the Board for action. Following this, the permit shall be issued. If the Regional Administrator objects, the staff shall not submit its recommendations to the Board until all objections of the Regional Administrator have been resolved or until the Board's staff determines that such resolution can not be achieved.
- e. The Board to the extent practicable, will issue or deny, as appropriate within 210 days after approval of the State's program, NPDES permits to all dischargers which have applied for NPDES permits as of the effective date of program approval by the Administrator of EPA pursuant to Section 402(b) of the Act.

IV. Compliance Monitoring and Inspection

1. General

It is recognized that an efficient and well organized monitoring and inspection program is necessary to insure the success of the NPDES and the Virginia Water Control Law. Such success will be insured only if the resources of the Regional Administrator, and the Board are coordinated so as to avoid duplication of effort.

2. Compliance Monitoring and Inspection Procedures

The Board will ensure that:

- a. Waste discharge requirements will contain discharge monitoring programs which will enable the State and the Regional Administrator to determine whether the discharger complies with requirements, with prohibitions, including effluent limitations, with national standards of performance, and/or pretreatment and toxicity standards.
- b. Monitoring reports are submitted by NPDES dischargers to the Board and the Regional Administrator at appropriate intervals and, in any event, no less than yearly. The Regional Administrator's right to receive monitoring reports shall be waived pursuant to paragraph VI of this Understanding. The Board shall maintain the monitoring data received that the Regional Administrator has waived receipt of and shall transmit such data to the Regional Administrator on a case-by-case basis as requested. EPA will enter the monitoring data so received directly into the National Data Bank when it becomes functional.
- c. All significant proposed changes in monitoring programs contained in an NPDES permit will be submitted to the Regional Administrator, and he shall have fourteen (14) days in which to object, in writing, upon the proposed changes. In the event the Regional Administrator objects to the proposed changes in the monitoring program in that the proposed changes are not in compliance with the Act or regulations and guidelines adopted thereunder, the Regional Administrator shall specify the section of the Act, regulations, or guidelines, which support

the objections and the information required as a condition to elimination of his objections to the proposed changes. If the Regional Administrator does not object, in writing, within fourteen (14) days or indicates, in writing, prior to that time that he has no objections, the proposed change will be issued by the Board. The Regional Administrator's right to object and comment on proposed changes in monitoring and reporting requirements shall be waived for those dischargers waived pursuant to paragraph VI(1)(a).

- d. Notices received by the Board from NPDES permittees regarding compliance or non-compliance with permit conditions, schedules and/or limitations will be transmitted to the Regional Administrator within ten (10) working days of their receipt by the Board. The Regional Administrator's right to receive notices from NPDES permittees regarding compliance or non-compliance with permit conditions, schedules and/or limitations, shall be waived pursuant to paragraph VI of this Understanding. The Board shall maintain information received that the Regional Administrator has waived receipt of and shall transmit such information to the Regional Administrator on a case-by-case basis as requested. Permit conditions, schedules, and limitations include, but are not limited to, the following:
- (1) "5 day notices" of non-compliance with effluent limitations;
 - (2) "14 day letters or reports of progress" required by the Schedule of Compliance part of the permit;
 - (3) Municipal notices and reports including, where applicable, Industrial Waste Survey, Interim Plan of Action to maximize treatment plant efficiency, and requested compliance schedules.
 - (4) Other reports, notices, or submissions required by permits when specifically requested by the Regional Administrator on a case-by-case basis.

3. Sampling and Inspection Schedules and Priorities

- a. The Regional Administrator and the Board shall ensure the development of schedules for effluent sampling and analysis of permittees within the Commonwealth to determine compliance with permit requirements. In addition, the Regional Administrator and the Board will identify priorities for permittee inspections.
- b. The schedules for planned effluent sampling and analysis of permittees will be exchanged at least 10 days in advance of the month in which such surveys are scheduled. The Board and the Regional Administrator will provide more than 10 days advance notice whenever possible in order to allow time for ample survey preparation and shall provide each other with the opportunity to participate in planned effluent sampling and analysis surveys conducted by either party.
- c. The Board or the Regional Administrator may participate in inspections conducted by the other whenever either desires to do so. The Regional Administrator shall advise the Board of all NPDES permittee inspections he plans to conduct, generally 15 days in advance of such inspections. The Board, however, is not required to advise the Regional Administrator prior to each permittee inspection unless the Regional Administrator has previously indicated in writing his desire to participate in the next inspection for a specific NPDES permittee.
- d. The Board and the Regional Administrator shall develop and agree to a separate operational agreement on the procedures to be observed in ensuring a coordinated sampling and analysis program for determining permit compliance.

4. Staff Assistance by Regional Administrator

Upon request by the Board, the Regional Administrator will provide, to the extent possible, staff assistance to the Board in their inspection and monitoring programs.

V. Enforcement Actions

1. The State Water Control Board shall be the primary enforcement agency with respect to permits issued under the NPDES program, and the Regional Administrator shall assume a strong supporting role.

All enforcement matters will be undertaken and expeditiously completed by the State Water Control Board. The term "enforcement matter" shall be construed to mean any court action, administrative order, directive, hearing, letter requesting a permit holder to undertake or refrain from any activity, or any other action of any enforcement nature. The foregoing shall not be construed to limit the authority of the Regional Administrator to take action pursuant to Section 309 or 504 of the Act.

2. The Board will promptly forward to the Regional Administrator a copy of all hearing notices relative to proposed issuance of administrative orders, administrative orders, and judicial orders issued or obtained by the Board when such hearings or orders concern compliance with an NPDES permit.

VI. Waiver Provisions

1. Waiver by Regional Administrator

- a. Except for discharges to the territorial sea, contiguous zone, or ocean, the foregoing procedures established by this agreement shall be modified as to waste discharge requirements for: (1) publicly owned treatment works involving discharges or proposed discharges with an average flow equal to or less than 0.5 MGD; (2) all other discharges or proposed discharges with an average flow equal to or less than 0.1 MGD; (3) all discharges equal to or less than 1.0 MGD which involve discharges or proposed discharges consisting only of one pass cooling water, provided however, such discharges from publicly owned treatment works and industrial sources do not (a) affect the waters of an adjacent state, and/or (b) do not contain toxic substances in excess of standards promulgated by the Administrator of EPA pursuant to Section 307 (a) of the Act, and/or (c) are not "Interim Treatment Facilities", the construction of which commences after the effective date of this Understanding (Exhibit A). As to these discharges enumerated in (1) and (2), and (3) above, except as otherwise expressly provided in (a) and (b) and (c) above, the Regional Administrator waives the right to: (1) comment and object on the sufficiency of the report of waste discharges, the tentative waste discharge requirements, and on the final adopted waste discharge requirements, (2) receive monitoring reports, (3) object and comment on proposed changes in monitoring and reporting requirements, and (4) receive notices regarding compliance or non-compliance with permit conditions, schedules and/or limitations.

- b. The foregoing does not include waiver of receipt of a complete copy of the report of waste discharge, receipt of public notice of report of waste discharge (and any required fact sheet), receipt of notice of public hearing, and receipt of a copy of all final NPDES waste discharge requirements issued, including modifications of or revisions thereto. In addition, Paragraph VI.1(a) does not include a waiver of the obligation to transmit a copy of notice to the Board from any publicly owned treatment works, as provided in 40 CFR 124.45(d) and (e), or to transmit documents enumerated in Paragraph IV.2.
2. The Regional Administrator reserves the right to terminate the foregoing waiver, in whole or in part or with respect to any specific discharger, at any time. Any such terminations shall be accomplished by the Regional Administrator, in writing, and a copy of such termination shall be delivered to the Board.
3. The foregoing waiver shall not be construed to permit the issuance of waste discharge requirements which do not comply with applicable provisions of Federal and/or State laws, rules, regulations, policies or guidelines.

VII. Transmission of Policies and Technical Information

The Regional Administrator shall promptly transmit to the Board any proposed and finally issued policies, technical information, effluent guidelines, or requirements published in Federal Regulations issued pursuant to the Federal Water Pollution Control Act Amendments of 1972, or in directives concerning the disposal of pollutants into surface or ground water.

VIII. Applicant Contacts

Whenever an inquiry is received by EPA concerning any aspect of the administration or implementation of the NPDES permit program including but not limited to a report of waste discharge, waste discharge requirement or monitoring report, in the Commonwealth of Virginia, the EPA staff shall inform the owner of the Board's authority to administer the program and refer the inquiry to the Board.

IX. Cooperation and Periodic Review

- a. It is hereby agreed that the Board and the Regional Administrator will meet periodically to review the NPDES program in Virginia and to suggest revisions to the program which may be necessary to achieve compliance with State and Federal objectives, and that a record will be maintained of the meeting.
- b. It is hereby agreed that the Board and the Regional Administrator will hold an informal conference prior to any (1) notification under §402(C)(3) of the Act or (2) "federally assumed enforcement" notice pursuant to §309(a)(2) of the Act. The purpose of the conference will be to attempt to resolve any issues or differences of opinion between the Board and the Regional Administrator such that the aforementioned notices will not be necessary.

X. Term

This Memorandum of Understanding will take effect upon program approval by the Administrator of EPA pursuant to Section 402 (b) of the Act. This Memorandum shall remain in effect for the duration of such approval program or until the Memorandum is rescinded by mutual agreement of the parties. This Memorandum may be modified from time to time as the parties may agree.

Dated March 12, 1975

COMMONWEALTH OF VIRGINIA
STATE WATER CONTROL BOARD

by Fugere J. Jensen
Fugere Jensen, Executive
Secretary

Dated MAR 11 1975

ENVIRONMENTAL PROTECTION AGENCY

by Daniel J. Snyder III
Daniel J. Snyder, III
Regional Administrator

Dated MAR 31 1975

Approved by Russell F. Train
Russell F. Train
Administrator

Attachment: Appendix A

REGION III

The processing of NPDES permit applications for interim or temporary sewage treatment facilities, that is, treatment facilities designed for a useful life of usually less than five years, has embroiled EPA in considerable controversy which has resulted in unnecessary delays in the processing and issuance of permits. The primary cause of these delays is the lack of sufficient information available to EPA to fully assess the impact of its action on the environment and to address issues raised by concerned public and private groups and individuals.

In order to ensure the availability of sufficient information on which to base a decision, EPA hereby notifies the appropriate state agencies and potential NPDES applicants, under the authority of the NPDES permit regulations, of additional information requests which the applicants may be reasonably required to submit in order to obtain a NPDES permit.

The eleven points as enumerated below will be considered as the minimum requirement by the EPA, Region III when reviewing and processing an NPDES permit for any interim facility in Region III.

1. Applications for NPDES permits for discharges from interim facilities will only be processed for agencies or persons duly authorized by the appropriate state governmental agency to provide such sewage service.
2. Any application for an NPDES permit for an interim facility must be in conformance with applicable state requirements or guidelines for the construction and operation of such facilities.
3. The applicant for an NPDES permit for discharges from interim facilities shall provide a letter of certification from the responsible unit of local government certifying that the interim facility and the development associated with the operation of the interim facility are in accordance with the officially adopted land use plan and/or zoning regulations.
4. The applicant shall provide a letter of certification from the appropriate state agency certifying that the interim plant is in conformance with the applicable approved water quality management plans and sewage facility plans.

EXHIBIT A

5. The applicant shall provide a schedule for the discontinuation of the facility operating on an interim basis and shall identify the permanent facility to which the sewage flows shall be diverted. The applicant shall provide written commitment from the owner and operator of the said permanent facility stating their willingness and capability to accept flows from the interim facility and their agreement as to the conversion date.
6. The treatment provided at the interim facility must meet all applicable Federal, state, and local water quality and health requirements on the same time schedule which would apply to permanent facilities discharging at the same location.
7. The applicant shall certify the extent, if any, of current or projected sewage overflows within its system and the effects of the interim facility on reducing or eliminating these overflows. As a minimum, sufficient capacity shall be provided to significantly eliminate all existing overflows in the area tributary to the interim facility.
8. The applicant shall provide a schedule of hook-ups showing, at maximum intervals of six months, the expected increases in flow to the interim facility. If the interim facility is intended to allow flow increases to an interconnected system not directly tributary to the interim facility, the applicant shall indicate the area(s) to be allowed new service and its plans to monitor flow increases from such areas.
9. In order to insure that the capacity of the interim facility or the increase in the system capacity provided by the interim facility is not exceeded, the applicant shall certify the authority by which new connections could be restricted. When the flows to the interim facility and/or planned increases to the sewerage system reach 80% of design capacity, the applicant will be required to reevaluate its proposed new connection schedule, and if necessary institute restrictions on further connections to limit the total flows so as not to exceed 100% capacity during the design life of the facility.
10. The applicant shall supply such information, as necessary, to assure that adequate funds will be available for and such quality and quantity of plant operators will be provided to assure continuous operation and monitoring of plant performance and compliance with permit limitations. Assurance shall be given that

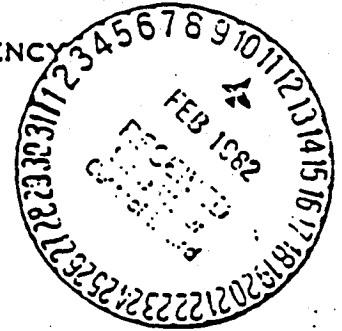
the applicant will develop, as necessary, a system of user charges which are designed to recover the operations and maintenance costs of the applicant's treatment works through the proportionate sharing of these costs by recipients of the waste treatment services. In addition, an operation and maintenance plan, including contingency plans for operation during plant upsets, equipment breakdown, and maintenance will be provided prior to plant start up.

11. Where significant public interest or concerns for adverse environmental effects arise during the NPDES process, the applicant may be required to submit information concerning the primary and secondary effects on the environment of the interim facility.



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

0108 - 1140
971 - 677; INNE



FEB 9 1982

Honorable Charles S. Robb
Governor of Virginia
Richmond, Virginia 23230

2/9/82
NPDES FOR
FEDERAL
FACILITIES

Dear Governor:

It is with great pleasure that I am today approving the State of Virginia's request to administer the National Pollutant Discharge Elimination System (NPDES) program for Federal facilities.

Your State is the twentieth to request and receive approval for administration of this important program. I have also approved a revision to the Memorandum of Understanding between the Environmental Protection Agency (EPA) and the State reflecting this transfer (copy enclosed).

Once again, congratulations to you and your staff. We look forward to working with you and the State Water Control Board in continued efforts toward the prevention and control of water pollution in the State of Virginia.

Sincerely yours,

Bruce R. Barrett
Acting Assistant Administrator
for Water

Enclosure

cc: Robert V. Davis ✓
Executive Director
Virginia State Water Control Board

Peter N. Bibko
Regional Administrator
Environmental Protection Agency
Region III

MODIFICATION TO THE MEMORANDUM OF UNDERSTANDING
REGARDING PERMIT AND ENFORCEMENT PROGRAMS
BETWEEN THE
VIRGINIA STATE WATER CONTROL BOARD AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

The Memorandum of Understanding approved March 31, 1975 by the Administrator of the United States Environmental Protection Agency between the Commonwealth of Virginia State Water Control Board (hereinafter "State") and the United States Environmental Protection Agency (hereinafter "EPA") Region III is hereby modified, by agreement of the parties, as follows:

Hereafter, the State will administer the NPDES permit program with respect to all Federal facilities within its boundaries. The State has shown, by statement of its Attorney General, that it has the authority to implement and administer this program. The State is henceforth responsible for the issuance, modification, suspension, revocation, re-issuance, monitoring, enforcement, and public participation aspects of all Federal facilities NPDES permits in Virginia.

All references in Section III, paragraph 2(d), or elsewhere in the Memorandum of Understanding, which had the effect of retaining authority over Federal facilities with the responsibilities of EPA Region III, have no force or effect after the effective date of this Modification. Nothing in this Modification shall be construed to limit the authority of EPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the Clean Water Act (33 U.S.C. 1251 et seq.).

This Modification will become effective upon approval by the parties involved.

Commonwealth of Virginia
State Water Control Board

U. S. Environmental Protection
Agency, Region III

R. V. Davis

Executive Secretary

N. M. [Signature]
Regional Administrator

Sept. 6, 1981

Date

JUN 11 1981

Date

Approved:

Bruce R. Barrett
Asst. Administrator for Water..

Jul 9, 1982
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

*DEA
S.W.R.M.*



Honorable Gerald L. Baliles
Governor of Virginia
Richmond, Virginia 23219

*4/14/89
NPDES
PRETREATMENT*

PK I SWCB

Dear Governor Baliles:

It is with great pleasure that I am today approving the Commonwealth of Virginia's National Pollutant Discharge Elimination System (NPDES) Pretreatment Program in accordance with the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403. I am also herewith authorizing the Commonwealth of Virginia to administer the National Pretreatment Program as it applies to municipalities and industries within the Commonwealth.

You and your staff are to be congratulated for the diligent effort put forth in moving to assume administration of this important environmental program. We look forward to working with you and the State Water Control Board in continuing our efforts toward the prevention and control of water pollution in the Commonwealth of Virginia.

Sincerely,

Stanley L. Laskowski
Stanley L. Laskowski
Acting Regional Administrator

cc: Richard Burton SWCB

MEMORANDUM OF AGREEMENT
BETWEEN THE
VIRGINIA STATE WATER CONTROL BOARD
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III

The Memorandum of Agreement (MOA) between the Virginia State Water Control Board (hereinafter SWCB) and the Administrator of the United States Environmental Protection Agency (hereinafter EPA) and approved on March 31, 1975 and amended on February 9, 1982, is hereby modified to define the SWCB and EPA responsibilities for the establishment, implementation and enforcement of the National Pretreatment Program pursuant to Section 307, and 402(B) of the Clean Water Act (hereinafter the Act) as follows:

The SWCB has primary responsibility for:

- (a) Enforcing against prohibitive discharges in accordance with the Act;
- (b) Applying and enforcing National Categorical Pretreatment Standards established by the EPA in accordance with Section 307(b) and (c) of the Act, local Publicly Owned Treatment Works (POTW) standards and State standards, whichever apply or are more stringent;
- (c) Reviewing and approving POTW Pretreatment Programs in accordance with the Act;
- (d) Requiring, where appropriate, Pretreatment Program development and implementation in NPDES permits issued to POTWs;
- (e) Overseeing POTW Pretreatment Programs in accordance with the Act;
- (f) Regulating industrial dischargers to POTWs without Pretreatment Programs;
- (f) Requiring industrial waste surveys in accordance with the Act; and
- (h) ~~Requiring~~ Requiring POTWs with approved Pretreatment Programs, or those developing a program, to develop and enforce specific limits upon all industrial users where pollutants cause interference or pass-through to ensure compliance with the NPDES permits.

EPA will oversee the SWCB Pretreatment Program operations consistent with the Act and this MOA.

The SWCB shall perform inspection, surveillance and monitoring activities which will determine, independent of information supplied by the POTW, compliance and non-compliance by the POTW with pretreatment requirements incorporated into the

POTW permit; and carry out inspection, surveillance and monitoring activities which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with Pretreatment Standards.

The EPA Regional Water Division Director will be provided 30 days to review and comment upon, object to, or make recommendations with respect to proposed major POTW NPDES permits or modifications and pretreatment conditions. However, if the Water Division Director so requests in writing, an additional 30 days shall be given for such review. The EPA Regional Water Division Director shall notify the SWCB in writing within the allowed period that the EPA concurs or objects to the State's determination. If EPA objects to certain conditions it shall set forth the reasons for the objection(s) and the action(s) that must be taken by the SWCB to remove the objection.

National Pretreatment Standards: Categorical Standards

The SWCB shall review requests from industrial users or POTWs for certification as to whether the industrial user does or does not fall within a particular industrial category. The SWCB will make a written determination for each request stating the reasons for the determination. The SWCB shall then forward its findings, together with a copy of the request and any necessary supporting information, to the EPA Regional Water Division Director for concurrence. If the Water Division Director does not overrule the SWCB decision within 60 days after receipt thereof, the SWCB findings are final. When the original request is submitted to the EPA Water Division Director such requests will be forwarded to the SWCB for an initial determination then sent back to EPA for concurrence. Where the Water Division Director elects to overrule the SWCB decision, the Water Division Director's determination will be forwarded to SWCB for review.

The State Agency will have 30 days from the receipt of the determination to comment. At the end of that period, the Water Division Director shall consider any comments received and shall make a final determination. A copy of the final determination shall be sent to the requestor and to the SWCB.

Variances from Categorical Pretreatment Standards for Fundamentally Different Factors

The SWCB shall make an initial finding on all requests from industrial users for variances from categorical Pretreatment Standards, where the request is based on the allegation of the existence of fundamentally different factors. Where the SWCB's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the EPA Regional Water Division Director for a final determination. The SWCB may deny, but not approve and implement the fundamentally different factor(s) variance request until written approval has been received from the Water Division Director.

Net/Gross

Any pretreatment request for net/gross determinations received by the SWCB will be forwarded to the EPA Water Division Director for determination of eligibility.

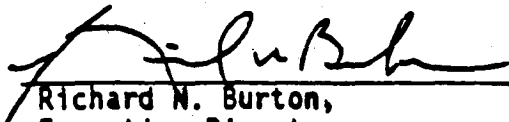
Other Provisions

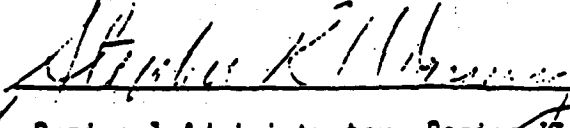
Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions established by State or local law, as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or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

Nothing in this modification shall be construed to limit the authority of the EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the Act (33 U.S.C. 1251 et seq).

The Virginia State Water Control Board will update its Pretreatment Regulation to assure its compatibility with federal regulations.

This modification will become effective upon the U.S. EPA Regional Administrator's approval of the SWCB's Pretreatment Program application.

By: 
Richard N. Burton,
Executive Director
Virginia State Water Control Board

By: 
Regional Administrator, Region VI
U.S. Environmental Protection Agency

Date: 7/3/89

Date: 4/12/89

5/20/91 VPDES General Permits

AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
STATE WATER CONTROL BOARD
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Memorandum of Agreement between the United States Environmental Protection Agency (hereafter EPA) and the State Water Control Board (hereafter Board) dated March 31, 1975, as amended on February 9, 1982, and April 14, 1989, is hereby amended to include Board and EPA responsibilities for the development, issuance and enforcement of Virginia Pollutant Discharge Elimination System (hereafter VPDES) General Permits.

Hereinafter, the Board will administer the General VPDES Permit program in accordance with the Permit Regulation (VR 680-14-01), specifically Section 6.2, the State Water Control Law, and the Clean Water Act. If the Federal Regulations regarding General Permits are amended in the future then the Board will update its Permit Regulation to ensure continuing compatibility with the General Permit provisions of the Federal Regulations.

After identifying dischargers appropriately regulated by a General Permit the Board will prepare a Draft General VPDES Permit and fact sheet setting forth the principle facts and methodologies considered during the permit development.

Each Draft General VPDES Permit and fact sheet will be transmitted to the Water Management Division Director, EPA, Region III for review and the opportunity to comment upon, make recommendations about, or object to the Draft General Permit. A copy of the Draft General VPDES Permit and fact sheet shall also be sent at the same time to the EPA Director, Office of Water Enforcement and Permits, EPA Headquarters. EPA will have up to ninety (90) days from receipt of the Draft General VPDES Permits and fact sheets to review Draft General VPDES Permits and provide comments, recommendations and objections to the Board. The EPA Director, Office of Water Enforcement and Permits may comment upon, object to, or make recommendations with respect to Draft General VPDES Permits on EPA's behalf. If EPA raises no objections to a Draft General VPDES Permit within 90 days it will be publicly noticed in accordance with the Board's Public Participation Guidelines and the Virginia Administrative Process Act, including publication in a daily or

weekly newspaper circulated in the area to be covered by the permit and public notices shall be mailed to the same Federal and State agencies and interested persons who would be notified if individual permits were being issued. In the event EPA objects to a Draft General VPDES Permit, EPA will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The Board has the right to an EPA held public hearing on the objection. Within 90 days of receipt of EPA's objection, the Board, any interstate agency or interested person may request an EPA held public hearing. If no public hearing is requested by the Board and the Board does not resubmit a permit revised to meet EPA's objections, the Draft General VPDES Permit will not become effective. If a public hearing is held, EPA does not withdraw its objection and the Board does not amend the permit to meet the objection or modified objection within 30 days of receipt of EPA's reaffirmed objection or modified objection, the Draft General VPDES Permit will not become effective.

The Board has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of General VPDES Permits.


This Amendment to the Memorandum of Agreement will be effective upon execution by the Regional Administrator.

FOR STATE WATER CONTROL BOARD:


Executive Director

4/15/91
(Date)

FOR ENVIRONMENTAL PROTECTION AGENCY:


Regional Administrator
Region III

5/20/91
(Date)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

4/9/93

STRUCTURE OF
VA AGENCIES

Letter of Agreement
Between the
Commonwealth of Virginia Department of Environmental Quality
and the
United States Environmental Protection Agency
Region III

I. Introduction: In its 1992 session, the General Assembly of Virginia passed legislation, 1992 Va. Acts ch 887 effective April 1, 1993, creating a new Department of Environmental Quality. The programs, functions, staff, facilities, assets and obligations of four Virginia agencies, the State Water Control Board, the Department of Air Pollution Control, the Department of Waste Management and the Council on the Environment were, by the legislation, consolidated into this new Department of Environmental Quality. The Virginia State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board were continued as rule and policymaking boards and stand in such relationship to the Department of Environmental Quality that, to the extent that matters covered in this Letter of Agreement may contemplate and require that the Department have rule and policymaking authority, the Department may be deemed to have that authority through the Boards. As a result of the changes in the structure of Virginia's state government by the enactment of the 1992 legislation, it is necessary and desirable to change various preexisting program delegations, authorizations, agreements and other bilateral documents to which the United States Environmental Protection Agency Region III, and the environmental agencies of the Commonwealth of Virginia government are parties, so that the language of said documents reflects the current structure of the Commonwealth's government.

II. The NPDES Program: The National Pollutant Discharge Elimination System (NPDES) program, is the subject of a 1975 Memorandum of Understanding between the State Water Control Board of the Commonwealth of Virginia and the Regional Administrator of Region III of the United States Environmental Protection Agency. Amendments to the 1975 Memorandum of Understanding were executed by the parties in 1981, 1989 and 1991. It is hereby agreed that all references to the Executive Secretary or Executive Director of the State Water Control Board in the 1975 Memorandum of Understanding, the amendments thereto and any related documents shall be deemed to refer, as of April 1, 1993, to the Director of the Department of Environmental Quality and it is also agreed that said Memorandum, amendments and related documents shall otherwise be read and interpreted in a manner that reflects the

current structure of the Commonwealth's government. Any new documents executed after the date of this Letter of Agreement shall reflect the current structure of the government of the Commonwealth of Virginia. For the purposes of 40 C.F.R. § 123.62 the Department of Environmental Quality is, from April 1, 1993, the authorized agency to administer the NPDES program in Virginia. This change in the authorized agency has been determined to be a non-substantial program revision and EPA hereby approves it.

III. Clean Air Act Programs: The federal Clean Air Act New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) were the subjects of a February 21, 1976 delegation (published in the Federal Register on February 26, 1976). The delegation from EPA to Virginia was accompanied by action to include the address of the Virginia State Air Pollution Control Board in the list of addresses appearing in the Code of Federal Regulations for reports, requests, applications, submittals and communications under the NSPS and NESHAPS. The delegation from EPA gave the Commonwealth the authority to implement and enforce the NSPS and NESHAPS with certain exceptions. On May 12, 1981 EPA delegated to the Commonwealth of Virginia the federal Prevention of Significant Deterioration (PSD) program. On August 3, 1990 the Governor of Virginia authorized the Executive Director of the Department of Air Pollution Control to submit State Implementation Plan (SIP) revisions from Virginia to EPA. Because the NSPS, NESHAPS and PSD programs have been delegated to the Commonwealth of Virginia and not particularly to a state agency, there is no change in the Commonwealth's authority to implement and enforce these programs. As expeditiously as practicable after the execution of this Letter of Agreement, EPA and the Commonwealth shall take such steps as are necessary to update the Code of Federal Regulations to reflect new addresses in 40 C.F.R. § 60.4 and 40 C.F.R. § 61.04, and to do whatever else is necessary and appropriate with respect to such delegations to reflect the new structure of the Commonwealth government as of April 1, 1993. As expeditiously as practicable after the execution of this Letter of Agreement, the Director of the Department of Environmental Quality shall request the Governor of Virginia to send a letter to EPA Region III, confirming that the Governor has authorized the Director of the Department of Environmental Quality to submit State Implementation Plan (SIP) revisions from Virginia to EPA.

IV. Superfund Programs: One or more Superfund (Comprehensive Environmental Response, Compensation and Liability Act) Co-operative Agreements between the Commonwealth of Virginia and EPA have been applied for and/or executed by the Virginia Department of Waste Management, the Virginia Waste Management Board and/or the Executive Director of the Virginia Department of Waste Management. All such agreements and applications shall be

deemed, as of April 1, 1993, to refer to the Department of Environmental Quality and its Director as appropriate, rather than to the Department of Waste Management, the Virginia Waste Management Board and/or the Executive Director of the Department of Waste Management.

V. Resource Conservation Recovery Act (RCRA): In 1984 the Commissioner of the Virginia Department of Health and the Regional Administrator of EPA Region III entered into a Memorandum of Agreement regarding the Commonwealth's authorized hazardous waste program under Subtitle C of RCRA. Subsequently, Virginia transferred administration of its hazardous waste program from the Department of Health to the Department of Waste Management. It is hereby agreed that all references to the Commissioner and the Department of Health in the 1984 Memorandum of Agreement shall be deemed as of April 1, 1993 to be references to the Department of Environmental Quality and its Director. As expeditiously as practicable after the execution of this Letter of Agreement, EPA shall carry out the procedures in 40 C.F.R. § 271.21(b)(3) with respect to the transfer of the RCRA program to the Department of Environmental Quality. The notice under 40 C.F.R. § 271.21(b)(3) shall contain a provision dealing with ratification of the operation of the RCRA program by the Department of Environmental Quality between April 1, 1993 and the date the procedures required by that regulation are complete. It is also hereby agreed that all references to the Department of Waste Management in the 1991 Memorandum of Understanding for terms and responsibilities associated with both the initialization and operation of the Resource Conservation and Recovery Information System shall be deemed as of April 1, 1993, to be references to the Department of Environmental Quality and its Director.

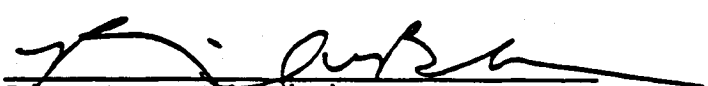
VI. Leaking Underground Storage Tanks: In 1987 the Regional Administrator of EPA Region III and the Executive Director of the Virginia State Water Control Board entered into a Memorandum of Understanding for implementation of the Leaking Underground Storage Tank Trust Fund established under Subtitle I of RCRA, in Virginia. The Executive Director of the State Water Control Board had been designated by the Governor of Virginia as having the responsibility to implement the trust fund in the Commonwealth. It is hereby agreed that all references to the State Water Control Board and its Executive Director in the 1987 Memorandum of Understanding and in any documents concerning the Virginia Leaking Underground Storage Tank Trust Fund program executed between the time of the 1987 Memorandum of Understanding and the present shall be deemed to refer as of April 1, 1993, to the Department of Environmental Quality and its Director. As expeditiously as practicable after the execution of this Letter of Agreement, the Director of the Department of Environmental Quality shall request the Governor of Virginia to send a new letter to the Regional Administrator of EPA Region III confirming

that the Director of the Department of Environmental Quality, as successor to the Executive Director of the State Water Control Board, continues to be designated with lead responsibility to implement the trust fund in the Commonwealth.


VII. Miscellaneous - Various other documents including but not limited to applications for federal assistance, grant documents and agreements exist which concern the EPA-Virginia relationship with respect to the funding, administration and implementation of environmental programs. It is hereby agreed that all references to elements of the executive branch of the Commonwealth of Virginia's state government in such documents shall be deemed to refer as of April 1, 1993 to the appropriate element in the new government structure.

VIII. Effect: This agreement is limited to its express terms. The agreement is not intended as and shall not be interpreted as action by EPA on any environmental program modification, request for federal assistance, or other document or package that may be or may already have been submitted to EPA for approval or other action except only the modifications expressly addressed by this agreement which are modifications to effect the April 1, 1993 executive branch change in the Commonwealth of Virginia's state government. This agreement shall have as its effective date, the date it is signed by the EPA Region III Regional Administrator.

Dated: APR 1 1993


Director, Virginia Department of Environmental Quality

APR 09 1993


Stanley L. Laskowski
Acting Regional Administrator
U. S. Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 29 1998

Larry Lawson, Director
Division of Water Program Coordination
Virginia Department of Environmental Quality
629 East Main Street
Richmond, VA 23219

Dear Mr. Lawson:

Since placing requirements related to Total Maximum Daily Loads (TMDLs) in National Pollutant Discharge Elimination System (NPDES) permits is a new process for the states, the Environmental Protection Agency (EPA), Region III requests that Virginia and other Region III states submit TMDL related permits for our review. EPA regulations at 40 CFR §122.44(d)(1)(vii)(B) state that, "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA pursuant to 40 CFR §130.7." To ensure compliance with this regulation, EPA needs to receive the following draft permits:

- All draft NPDES permit actions (issuance, reissuance, modifications, and Notices of Intent for majors, minors and general permits) for facilities which discharge pollutants related to the TMDL established for that stream.

Termination of EPA's waiver of review of NPDES permits is expressly provided for in 40 CFR §123.24(e)(1) and Section VI, Part 2 of the Memorandum of Agreement (MOA). It is my expectation that when it is clear that TMDL requirements are routinely reflected in the NPDES permits drafted by the state, EPA can once again waive review of all permits beyond majors. I appreciate your cooperation in this regard. If you have any questions please contact me at 215-814-2050 or have your staff call Mr. Robert Koroncai at 215-814-5730.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom", written in black ink.

Thomas J. Maslany, Director
Water Protection Division