

**National Pollutant Discharge Elimination System (NPDES)
Memorandum of Agreement**

**Between the State of Washington
And
United States Environmental Protection Agency
Region 10**



July 2018

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I. General

This Memorandum of Agreement (hereinafter, MOA)¹ sets forth the terms, conditions, and agreements between the parties for carrying out the responsibilities and procedures as required by Title 40 of the Code of Federal Regulations (CFR) § 123.24² for how the National Pollutant Discharge Elimination System (NPDES) program will be administered by the State of Washington through the Department of Ecology (Ecology) and the Energy Facility Site Evaluation Council (EFSEC) (together referred to as the “State”). The State’s NPDES program is subject to oversight by Region 10 of the United States Environmental Protection Agency (hereinafter, EPA). Both the Department of Ecology (hereinafter, Ecology) and the Energy Facility Site Evaluation Council (EFSEC) administer the State NPDES program for facilities within their respective authorities. State NPDES program responsibilities and procedures covered by this MOA at times pertain to either Ecology, EFSEC or to both agencies. Ecology and EFSEC permit different types of facilities, which do not overlap. Ecology and EFSEC do not co-permit facilities. The detail regarding how both Ecology and EFSEC agree to share resources for administration of the State NPDES Program for their respective permittees are formally established in a separate Memorandum of Agreement between both agencies (Agencies MOA).

The original Memorandum of Agreement (1973 MOA) between EPA and Ecology granted NPDES Program delegation authorities to Ecology and was approved November 9, 1973. On September 30, 1986, EPA approved a modification of the 1973 MOA to include the Pretreatment Program as an appendix. In addition, on September 26, 1989 EPA approved an amendment to the 1973 MOA granting Ecology the authority to administer the general permit program. On January 9, 1990, EPA approved an update to the 1973 EPA and Ecology, effectively replacing the 1973 MOA and its modifications.

The original Memorandum of Agreement (1979 MOA) between EPA and EFSEC was approved August 15, 1979. The 1979 MOA granted EFSEC permitting authorities for issuance, modification, and enforcement of NPDES permits for energy facilities.

Ecology maintains primary authority for the NPDES program in Washington; however, as directed by the legislature in the Revised Code of Washington (RCW) 90.48.262 EFSEC has “necessary powers to establish and administer a point source discharge program” for energy facilities subject to RCW 80.50. RCW 80.50 limits EFSEC’s permitting authorities to certain energy projects. Pursuant to requirements under RCW 90.48.262, the agencies maximize coordination and avoid duplication, the Agencies’ MOA sets forth agreements regarding how the two agencies conduct their activities in order to meet the requirements set forth in this MOA, and state and federal law.

It is the intent for this MOA to supersede all applicable previous NPDES program Memoranda of Agreement and amendments between the state agencies and EPA. If the EPA Regional Administrator (RA) determines that any provision of this agreement does not conform to the requirements of Sections 304(i) and 402(b),(c), (d), (e) and (f) of the federal Clean Water Act (hereinafter, the CWA), 33 U.S.C. §§1314(i), 1342(b), (c), (d), (e) and (f), or to the requirements of 40 C.F.R. Parts 122-125, or other applicable federal regulations, the Regional Administrator will notify the State of the need to revise this agreement, or other parts of the authorized program, to be consistent with the currently applicable federal statutes and regulations, and may propose revisions or modifications as part of the notice (40 CFR § 123.62).

¹ 40 CFR §§ 123.24(a) and (c)

² Any regulations cited in this MOA are regulations in effect on the effective date of this MOA.

The State with the Regional Administrator hereby agree to maintain a high level of communication, cooperation and coordination between the State and EPA in a partnership to ensure successful and effective administration of the NPDES program. In this partnership, EPA will provide to the State technical and other assistance on permit, compliance and enforcement matters when requested, as appropriate and necessary, and as funding allows. Exchange and submittal of information should be encouraged electronically when possible and appropriate. The State must conform to the requirements of the NPDES Electronic Reporting Rule, 40 CFR Part 127, through its phased implementation process.

The State will administer an NPDES program in accordance with the CWA sections 304, 307, and 402, this MOA, applicable state legal authority, the Agencies MOA, and the biennial Performance Partnership Agreement (PPA), consistent with applicable federal requirements. These mechanisms, along with the annual work planning process allow the State and EPA to work together to strategically direct resources towards the most important issues. The State has the primary responsibility to establish the State NPDES program priorities that are consistent with national NPDES goals and objectives to the extent practicable.

The strategies and priorities for permit issuance, compliance monitoring, enforcement of permits (against both unpermitted and permitted facilities) and Pretreatment Program delegation established in this MOA, may be set forth in more detail in the PPA, the Agencies MOA, or an Ecology/EPA Enforcement Agreement signed by the applicable Ecology Director, EFSEC Chair, the Regional Administrator and/or persons delegated appropriate authority. EFSEC has no authority to enforce permit requirements for facilities that EFSEC does not license. Pretreatment and CAFO program delegation also does not extend to EFSEC and applies to Ecology only. This PPA, and any other EFSEC/Ecology, or State/EPA agreement(s) regarding the NPDES program should be consistent with this MOA. However, in the event of any conflict or inconsistency, this agreement will control, consistent with 40 CFR § 123.24(c).

II. Scope of Approval

The State and the Regional Administrator agree that Ecology and EFSEC have been granted approval to administer the NPDES permitting, compliance, and enforcement programs; however, EFSEC does not have program approval for the State's Pretreatment or CAFO programs. In addition, the State does not have NPDES Program approval for (1) facilities located in Indian Country (defined in 40 CFR § 122.2), (2) facilities operating outside of State waters (generally all offshore facilities that are at least three miles offshore), (3) federal facilities owned and operated by a federal agency, or for (4) biosolids (sewage sludge) use and disposal permitting, compliance, or enforcement (unless specifically approved, or as provided by CWA section 405(f)). Any reference to Pretreatment in this section pertain to Ecology's NPDES program administration, only.

The State will implement the State NPDES Program in accordance with CWA sections 304(i) and 402, and in accordance with 40 CFR Part 123. EPA will continue to be the permitting authority for Indian Country, and those parts of the NPDES Program for which the State has not been approved. Additionally, consistent with 40 CFR § 124.62, EPA will remain the decision-maker on certain variance requests. In any event, EPA maintains concurrent authority with the State to address noncompliance issues and to take enforcement actions. The State will be responsible for the following when approved: accepting applications; drafting permits and fact sheets; public notice and review of draft permits; preparing a

response to comments; issuing permits; conducting inspections, audits, and reviews of various reports; and initiation and completion of enforcement actions.

This MOA sets forth procedures under which the EPA and the State will coordinate their actions and share information regarding all matters, consistent with their respective legal obligations and authorities, in the administration of the NPDES program. Coordination of actions and sharing of information between Ecology and EFSEC in regarding all matters, consistent with their respective legal obligations and authorities for purposes of administration of the State NPDES program is covered under the Agencies MOA. Nothing herein will be construed as expanding the respective agency authorities. In addition, nothing here in will be construed as requiring or approving the State to implement or administer any federal law, other than those portions of the CWA that the EPA has approved the State to implement and administer.

The effect of the MOA:

Nothing in this MOA limits the State's³ authority to take action under State law.

Nothing in this MOA limits EPA's authority to take action under federal law, or requires it to take any action at any time.

Nothing in this MOA constitutes or creates any rights or valid defenses to regulated parties in violation of any environmental statute, regulation, or permit, including, without limitation, and defense to an enforcement action taken by the Ecology, EFSEC, or EPA.

Nothing in this agreement establishes an agency relationship or privity between EPA and the State.

No waiver of sovereign immunity is implied or assumed in this agreement.

III. State Responsibilities

The State will exercise its legal authority contained in State regulations and statutes and, to the maximum extent possible, maintain the resources required to carry out all aspects of the approved NPDES and Pretreatment Programs. The State program approved to implement the NPDES program pursuant to the requirements of the CWA is implemented through the State NPDES Program pursuant to RCW 90.48 as adopted under Chapters 173-220, 173-216 and 173-226 of the Washington Administrative Code (WAC), as well as RCW 80.50 and WAC Chapter 463-76.

EPA and the State agree on the use of electronic communications for much of the communication specified in this MOA.

In accordance with the priorities and procedures established in this MOA and/or as described in the PPA or other binding agreement between both the EPA and the State, the State will:

1. Create and maintain the legal authority and, to the maximum extent possible, to secure the resources required to carry out all aspects of the State's NPDES and Pretreatment Programs, including revisions to State program legal authorities, in accordance with 40 CFR Parts 123 and 403.

³ This provision includes any action or authority under local law.

2. Administer the authorized program, including receipt of permit applications, issuance, denial, or termination of NPDES permits, and providing compliance and enforcement activities in compliance with all applicable federal laws.
3. Issue and administer general permits, in accordance with State regulations and requirements consistent with 40 CFR § 122.28.
4. Ensure that EPA is kept fully informed and up to date regarding:
 - a. Draft and final policy and program development documents related to the State's NPDES program and Pretreatment program;
 - b. Draft, proposed, and final statutes, rules and/or regulations related to the State's NPDES program and Pretreatment program;
 - c. New case law, settlement agreements, and remands of regulations related to the State's NPDES program and Pretreatment program; and,
 - d. Draft, proposed and final technical guidance and polices which pertain to the State's NPDES program and Pretreatment program.
5. Ensure that any proposed revision of the State's NPDES program or Pretreatment program is submitted to EPA for approval pursuant to 40 CFR § 123.62(b).
6. Revise the State's NPDES and Pretreatment programs as needed to conform to new federal regulations, including revisions to state regulations, within one year of the date of promulgation of the new federal regulations as provided in 40 CFR § 123.62(e). However, if the State is required to amend or enact a statute in order to make the required revision, the revision must be made within two years of the date of promulgation of the new federal regulations, as provided in 40 CFR §§ 123.62(e) and 403.18.
7. Process NPDES permit applications in a timely manner and propose to issue, reissue, modify, terminate, deny or revoke and reissue State NPDES permits consistent with 40 CFR Parts 122 and 123.
8. Develop and maintain a Continuing Planning Process document per CWA section 303(e) and 40 CFR § 130.5. Activities to maintain current planning processes may be identified in the applicable grant agreement.
9. Comprehensively evaluate and assess facility compliance with enforceable documents including permits, administrative orders, consent orders, court orders, and any applicable enforcement actions which deal with NPDES and Pretreatment issues including compliance with effluent limitations reporting, best management practices, compliance schedules, and operation and maintenance.
10. Maintain a vigorous program of taking timely and appropriate enforcement actions for NPDES permit violations, unpermitted discharges, and Pretreatment program violations in accordance with State statutes and regulations, and consistent with federal NPDES requirements. The State agrees to review the EPA's national and regional policies and

guidance when adopting corresponding or related State policies and guidance and agrees to adopt State policies or guidance that are consistent with the CWA and applicable federal regulations. In the absence of State policies and guidance, the State agrees to consider implementing EPA's policy and guidance.

11. Maintain an effective program to carry out the Pretreatment responsibilities in accordance with 40 CFR §§ 403.8(f) and 403.10(e) and (f).

12. Maintain information which must be easily accessible to EPA, for program evaluation for each NPDES permit and for each significant industrial user (SIU) for which the State is the control authority for a minimum of the previous five years or until such permit is reissued; this includes, but is not limited to the minimum data requirements within national databases. This information will also be available to the public as provided by section 308(b) of the Clean Water Act, except to the extent it is enforcement confidential. Where applicable, such files must include, at minimum, copies of:
 - a. Permit application, including attachments;
 - b. Proposed permit and/ or current final issued permit, or final order of denial;
 - c. Fact sheet or statement of basis, including effluent data;
 - d. Draft permit submitted for public notice and comment;
 - e. Public notice;
 - f. Public comments received in writing before the end of the public comment period, orally at a public hearing, and the State's response to comments;
 - g. Annual reports from permittees, if required;
 - h. The rationale, if not included in the fact sheet, which details the permit limit calculations and development. The rationale will include both the technology and the water quality basis for the draft or proposed permit;
 - i. All discharge monitoring reports (DMRs), including whole effluent toxicity (WET), toxicity reduction evaluation (TRE), and in-stream sampling requirements;
 - j. Studies supporting permit limits (e.g., wasteload allocation, total maximum daily load, site specific analysis, and in-stream sampling data);
 - k. All relevant inspection reports and compliance information;
 - l. All enforcement related documents for both formal and informal actions, including orders, penalty calculation, assessment and collection;
 - m. Relevant Compliance Schedule Reports;
 - n. Stormwater related documents, including stormwater management plans and pollution prevention plans received by the State;
 - o. For combined sewer overflow (CSO) communities, the long term control plan (LTCP), and any other documentation related to compliance with the CSO provisions of the permit and documentation related to discharges from the CSOs;
 - p. Information regarding any bypass events and/or sanitary sewer overflows (SSOs);

- q. Requests for hearings, motions, for reconsideration and rehearing, and any order issued by the State;
 - r. All pretreatment related documents, including the permittee's pretreatment program and annual report, as applicable;
 - s. Concentrated animal feeding operation (CAFO) related documents submitted by the CAFO to the State; and
 - t. Other pertinent information and correspondence.
13. Submit to EPA the information described in this MOA, the PPA and applicable portions of 40 CFR Parts 123 and 403. Additionally, upon request by EPA, the State will submit specific information and allow access to any files necessary for evaluating the State's administration of the NPDES and Pretreatment programs within a time-frame agreed upon by EPA and the State. The timeframe for file access will be determined at the time of the EPA's request.
14. Ensure that the conditions of draft permits are written to achieve applicable water quality requirements of all affected or downstream States and Indian Tribes, and that all affected States and Indian Tribes are, at a minimum, provided timely notice of such draft permit and any other information requested.
15. Input or ensure reporting for all regulatory nationally required data elements for all NPDES regulated facilities (e.g., non-majors, majors, stormwater, pretreatment, and CAFOs) into the national NPDES database, as provided under 40 CFR § 123.26(e)(4) and as required by the electronic reporting rule under 40 CFR § 127.16. This transfer of data shall occur through regular updates from the Permitting and Reporting Information System (PARIS) to the Integrated Compliance Information System for the Clean Water Act National Pollutant Discharge Elimination System (ICIS-NPDES) database as described in the PPA.
16. Make available to EPA any information obtained or used by the State under the State's NPDES and Pretreatment programs upon request without restriction due to claims of confidentiality unless otherwise required by law. The State will determine if information submitted by an applicant under a claim of confidentiality is confidential (i.e., confidential business information) in accordance with state law and identify the material accordingly. EPA will be informed of any confidential information that is transmitted to EPA. EPA will treat such claims as confidential in accordance with 40 CFR Part 2, Subpart B and 40 CFR §§122.7 and 403.14.

IV. EPA Responsibilities

1. EPA will provide, to the maximum extent possible, funding to the State to support the State's responsibilities under the NPDES program, including providing formal training in permit writing, compliance inspections, and enforcement, subject to the availability of appropriated funds and EPA authority. As required by the Anti-Deficiency Act, 31 USC §§1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds. Nothing in this MOA, in and of itself, obligates EPA to expend appropriations or to

enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with Agency budget priorities.

2. EPA will oversee the State's administration of the NPDES program on a continuing basis for consistency with the CWA, State law or rules, this MOA, the PPA, and all applicable federal regulations. In addition, EPA may consider as a part of its assessment, comments from dischargers, potentially affected Tribal governments, the public, and federal and local agencies concerning the State's administration of the NPDES program. Any such comments considered by EPA will be brought to the attention of the State by written correspondence, if the commenting party has not previously communicated with the State.
3. EPA will provide appropriate assistance in obtaining retrievals from, and training for, the entry and use of information into ICIS-NPDES, hereafter ICIS, or its successor. After initial ICIS training by EPA Headquarters, additional support will be provided to the State upon request and as resources allow. Changes in ICIS procedures will be provided to the State sixty (60) calendar days in advance of such change, if possible.
4. EPA will ensure that the State is kept fully informed, in an easily accessible and up-to-date manner, to the fullest extent allowable, subject to applicable confidentiality considerations, regarding:
 - a. Draft and final policy and program development documents related to NPDES; and
 - b. Draft, proposed, and final regulations related to NPDES; and
 - c. Draft, proposed and final technical guidance and policies which pertain to NPDES.
5. EPA will ensure that Ecology is kept fully informed, in an easily accessible and up-to-date manner, to the fullest extent allowable, subject to applicable confidentiality considerations, regarding:
 - a. Draft and final policy and program development documents related to Pretreatment;
 - b. Draft, proposed, and final regulations related to Pretreatment; and
 - c. Draft, proposed, and final technical guidance and policies which pertain to Pretreatment.
6. EPA will review and provide comments to the State on draft permits, proposed permits, and any future NPDES Program modifications in a timely manner.
7. EPA will review and provide comments to Ecology on Pretreatment Program actions and any future Pretreatment Program modifications in a timely manner.
8. EPA will provide technical assistance regarding the interpretation of regulations and guidance for the development of draft and proposed permits.
9. EPA will conduct timely and appropriate enforcement and compliance monitoring activities within the State, as appropriate.
10. EPA will provide the State with copies of inspection reports and formal enforcement actions, as appropriate.

11. Input all required data into ICIS for facilities EPA retains authority over or where EPA takes federal action. EPA retains authority, unless the State is expressly approved, for all NPDES activity in Indian Country.
12. Issues decisions on variance requests for which the CWA retains authority for EPA to issue the decision.
13. EPA and the State agree on use of electronic communications for much of the communication specified in this MOA.
14. Nothing in this MOA will be construed to limit EPA's authority to take action under the CWA, including but not limited to sections 307, 308, 309, 311, 402, and 504.

V. Jurisdiction

The State NPDES Program is approved (subject to EPA's oversight and enforcement authority pursuant to CWA section 304(i) and 402(d) and (i)) to perform permitting, compliance and enforcement activities of the State's NPDES Program, including, but not limited to, the Stormwater Program, Pretreatment Program, and CAFO program. EPA will transmit and receive information regarding the State's NPDES Program in accordance with 40 CFR §§ 123.41, 123.42, and 123.43.

The State is responsible for drafting, providing public notice, issuing, modifying, reissuing, revoking, denying, and terminating permits in accordance with this MOA, the CWA, the regulations promulgated thereunder at 40 CFR Part 122 and 123, and applicable State statutes and rules.

1. The State must:
 - a. Assume permitting, compliance, and enforcement obligation for facilities, in its jurisdiction with the exception of: Indian Country, outside State waters (3 miles offshore), federal facilities located within Washington, and the federal biosolids program.
 - b. Evaluate and determine compliance for facilities subject to the State's NPDES program.
 - c. Enforce state law and State permits at facilities with EPA-issued NPDES permits, except those in Indian Country.
2. In its NPDES permits, the State may include permit requirements from State statutes, rules, and policies on biosolids and other state programs beyond the scope of the federal NPDES program. The State will ensure no permit or fact sheet references federal biosolids regulations, standards, or requirements of non-approved programs, other than language approved by EPA.
3. EPA will retain permitting, compliance, and enforcement authority for facilities located in Indian Country (except as otherwise noted), federal facilities located within Washington, and facilities operating outside state waters (3 miles offshore). EPA also retains authority over federal biosolids permitting, compliance, and enforcement.
4. EPA is responsible for processing all appeals, modification requests, and variance requests pertaining to permits issued by EPA and over which EPA retains authority. EPA will copy

the State on all correspondence and permitting decisions, except for permits EPA has jurisdiction over, including those in Indian country.

5. The State and EPA are encouraged to coordinate permitting, compliance monitoring, and enforcement activities for those industries and permits where the agencies have dual authority. The coordination outlined in other sections of this agreement may be expanded in other formal agreement(s). EPA may not defer to the State on any EPA statutory or regulatory authority, obligation, duty, or procedure including permitting, compliance, and enforcement.
6. If an EPA objection over a state proposed NPDES permit is not resolved in the timeframes set forth in EPA's regulations (40 CFR § 123.44), then EPA assumes exclusive Clean Water Act permitting, compliance, and enforcement authority for that facility, pursuant to federal law. (CWA sections 402(d)(2) and (4)). At the end of the permit term of the permit issued by EPA, the State will be responsible for issuing the next permit, and EPA will transfer the files back to the State.

VI. Permit Issuance and Review

A. Receipt of New Permit Applications and NOIs by the State

Within thirty (30) calendar days after receipt of a complete permit application or notice of intent for coverage under an NPDES general permit, the State will enter all required information directly into ICIS or transfer this information electronically from the PARIS to ICIS or its successor, in accordance with 40 CFR § 123.26(e)(4).

B. EPA Permits

EPA will input all required data into EPA's national ICIS database for the facilities EPA retains authority over, and coordinate with the State on CWA section 401 certification.

C. Permit Issuance

If the State's final determination is to issue the permit, the permit will be forwarded to the permit applicant, along with a transmittal letter conveying the State's decision. A copy of the final issued permit and fact sheet will be transmitted to EPA via Ecology's electronic permitting system, PARIS, unless a paper copy is requested.

D. Notice to Deny

If the State's final determination is to deny the permit, notice of intent to deny must be given to EPA and the applicant in accordance with applicable state rules and NPDES regulations.

E. Permit Reissuance

All expiring State NPDES permits for which timely and complete permit renewal applications have been submitted should be reissued on or before their expiration date. If such timely reissuance is not possible the permit is administratively continued beyond its expiration date, but in no event will the expired permit be modified. An administratively extended permit remains in effect and enforceable until such time as the NPDES permit is reissued. EPA may periodically request status updates from the State of such permits.

F. EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Suspensions

The State may consult with EPA for informal review of permit documents prior to issuing any permit or permit modification for public notice to ensure that the permit will comply with the federal Clean Water Act. The State must transmit to EPA appropriate portions of working documents in connection with these consultations. During informal review of a permit, EPA may request to review the proposed permit.

For the purposes of computing time, the State and EPA agree that 40 CFR § 124.20(c) apply to the term calendar days.

1. EPA may review and comment on draft permits, permit modifications, and revocations and reissuances rather than proposed permits. Draft permit and proposed permit are defined in 40 CFR § 122.2. Where EPA has chosen to review and comment on draft permits rather than proposed permits, a proposed permit need not be prepared by the State and transmitted to EPA for review unless (1) the State proposes to issue a permit which differs from the draft permit reviewed by EPA, (2) EPA has objected to the draft permit, (3) there is significant public comment, or (4) EPA requests in writing to review the proposed permit.

The State will not proceed to issue a permit if there are unresolved EPA objections to the permit. Submission of a revised draft permit that meets EPA's objections restarts the review process and refreshes the timeframe for review under this MOA.

2. For the purposes of this Section, EPA's review of permit modifications, revocations and reissuances, will follow the same procedures as outlined for the review of a draft individual permit or draft general permit, as appropriate.
3. The State will notify EPA of draft individual permits available for public review. EPA and the State may agree on a different process and/ or categories of permits, and EPA is not required to review all submitted permits. The State and EPA can agree on the method of submission, format, etc. At EPA's request, the State will transmit to EPA one copy of the complete permit application, the public notice, the draft individual permit, the fact sheet associated with the draft permit, and an Ocean Discharge Criteria Evaluation pursuant to 40 CFR § 125.122(b), if applicable, for formal review. Upon request by EPA, the State will provide EPA with copies of documents related to or supporting the draft permit.
 - a. Within 30 calendar days of EPA's receipt of a draft individual permit, the Regional Administrator or designee will send to the State written comments on, objections to, or recommendations with respect to the draft permit. However, consistent with 40 CFR § 122.44(b), EPA reserves the right to take up to a total of ninety (90) calendar days to provide comments on, objections to, or recommendations with respect to the draft permit, provided that EPA notifies the State in writing within thirty (30) days of the receipt of a draft individual permit that it wishes to take up to ninety (90) calendar days to do so.
 - b. A notification of objection to a draft individual permit by EPA during the initial 30-day period need only set forth the general nature of the objection(s) pursuant to 40 CFR § 123.44. If a general objection is filed within 30 days, EPA will have the remainder of

ninety (90) calendar days from the date EPA received the draft permit to supply specific grounds for objection. Notwithstanding the foregoing, EPA and the State may mutually agree to extend EPA's review time on a particular draft permit to the full ninety (90) calendar days without filing a general objection during the initial period. Nothing in this agreement waives EPA's right to submit a general objection to the draft permit and request the full ninety (90) calendar days to review a draft permit to provide a specific objection. EPA will also send a copy of any comments, objections, or recommendations on a draft individual permit to the permit applicant.

- c. In the event EPA files a general objection to a draft individual permit, EPA will have ninety (90) calendar days from the date of EPA's receipt of the most recent complete draft permit to submit in writing to the State the specific grounds for objection, including:
 - i. A statement of the reason for the objection (including the section of the CWA or regulations that support the objection – EPA's objection to the issuance of a proposed permit must be based upon one or more of the grounds listed in 40 CFR § 123.44(c); and
 - ii. The actions that must be taken by the State to eliminate the objection (including the effluent limitations and conditions that the permit would include if it were issued by EPA).

4. At the time a draft general permit is available for public review, the State must transmit to the RA or designee one copy of the public notice, draft general permit, the fact sheet associated with the draft general permit, and an Ocean Discharge Criteria Evaluation, if applicable, for formal review. Within ninety (90) calendar days of EPA's receipt of a draft general permit, the RA or designee may submit in writing to the State comments upon, objections to, or recommendations with respect to the draft general permit.
 - a. If EPA does not object to the draft general permit in writing within ninety (90) calendar days of receipt and no significant public comment on the general permit is received during the public review period, then the State may proceed to issue the general permit. If significant public comment is received, the State will develop responses to those comments, including changes to the permit, and provide EPA a new draft permit, according to the procedures specified above.
 - b. In the event EPA files a general objection to a draft general permit, EPA will have ninety (90) calendar days from the date of EPA's receipt of the most recent complete draft permit to submit in writing to the State the specific grounds for objection, including:
 - i. A statement of the reason for the objection (including the sections of the CWA or regulations that support the objection) – EPA's objection to the issuance of a proposed permit must be based upon one or more of the grounds listed in 40 CFR § 123.44(c); and

- ii. The actions that must be taken by the State to eliminate the objection (including the effluent limitations and conditions that the permit would include if it were issued by EPA).
 - c. As agreed in this MOA, EPA and the State agree to a process for EPA to review any submission of a notice of intent (NOI) to be covered under a general permit. EPA may request to review any applicant's NOI to be covered under a general permit. The state will provide a copy of the NOI to EPA within ten (10) days of EPA's request. Within twenty (20) days after receipt of the application for coverage, EPA will notify the State of any formal objections to the applicant's suitability for coverage under the general permit and request reissuance of an individual permit as provided by 40 CFR § 122.28(b)(3). If EPA determines that the applicant does not meet the eligibility criteria of the general permit, the State and EPA will meet to discuss the basis for EPA's concerns.
5. Prior to notifying the State of an objection based upon any of the grounds set forth in 40 CFR § 123.44(c), EPA:
- a. Must consider all data transmitted 40 CFR § 123.43,
 - b. May, if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, request the State to transmit to EPA the complete record of the permit proceedings before the State, or any portions of the record that EPA determines are necessary for review. If this request is made within 30 days of receipt of the State's submittal under 40 CFR § 123.43, it will constitute an interim objection to the issuance of the permit, and the full period of time specified in this Section, as appropriate, for EPA's review will recommence when EPA has formally received all of the requested information, and
 - c. In its discretion, and to the extent feasible within the period of time set forth in this section, afford to the public an opportunity to comment on the basis for the objection.
6. Within ninety (90) calendar days of receipt by the State of an objection by EPA, the State, or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §§ 123.44(e) and (f). If the hearing is requested by the State, EPA must hold the hearing. Following the public hearing, EPA must reaffirm the original objection, modify the terms of the objection, or withdraw the objection and must notify the State of the decision.
7. If the State does not submit a revised permit that meets EPA's objections within ninety (90) calendar days of the notice of objection (or thirty (30) calendar days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objections), EPA may issue the permit. Following the issuance of an EPA-issued permit and its permit cycle, authority to reissue the permit reverts to the State.
8. Following the close of the public comment period on a draft permit, a new draft permit may be prepared or proposed permit will be prepared, a response to comments developed, and the

fact sheet revised as appropriate to reflect the proposed permit. The State may issue the permit without further review by EPA unless one of the four (4) criteria identified in item 1 above is met.

9. If any exceptions listed in F.1 above occur, then the State will send to EPA one copy of the proposed permit, copies of the written public comments received, including hearing records, and a response to comments prepared under the State's regulations. EPA may comment upon, object to, or make recommendations to the proposed permit pursuant to the process set forth in this Section above.
10. A copy of the final issued permit with authorizing signature and date, fact sheet revised to reflect the issued permit, response to comments, and Ocean Discharge Criteria Evaluation, if applicable, must be transmitted to EPA. This may be done electronically.
11. Subject to waivers of permit reviews, and annual agreement between EPA and the State, the State must notify EPA whenever it intends to terminate or revoke and reissue an effective State NPDES permit or NOI of coverage by general permit. The State must transmit to EPA a copy of any permit that it proposes to modify or revoke and reissue with the proposed changes and comments, if any were submitted, from downstream States and Indian Tribes clearly identified. The procedures in this section must be followed with respect to modifications by the State of any issued permit and, for purposes of this MOA, each permit proposed to be modified must follow the same procedures as a new permit, except for permits that undergo minor modifications, as described in the State's approved program.

G. Public Participation

1. The State will give public notice in accordance with 40 CFR §§ 124.10(c), (d) and (e) whenever a draft permit has been prepared under 40 CFR § 124.6(d) or a hearing has been scheduled pursuant to 40 CFR § 124.12.
2. Public notice of the preparation of a draft permit will allow at least thirty (30) calendar days for public comment, and public notice of a public hearing, if one is determined to be appropriate, will be given at least thirty (30) calendar days before the hearing.
3. The State will make available to the public all permit applications, draft permits (individual and general), public notices, applications, fact sheets or Statements of basis, proposed permits, and final issued permits, effluent data, inspection reports and other documents pertaining to the NPDES program (except information claimed and/or determined to be confidential in accordance with 40 CFR § 122.7, or analogous State law),
4. The State will prepare and distribute copies of all public notices and fact sheets in accordance with State regulations; consistent with federal regulations found in 40 CFR § 124.8 and 40 CFR § 124.10. Unless otherwise waived by the specific organization, in addition to the general public notice described in 40 CFR § 124.10(d)(1), the State will provide to the following organizations, a copy of the fact sheet or any comparable rationale, permit application (if any) and draft permits (if any) associated with the notice:
 - a. U.S. Army Corps of Engineers;

- b. U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS);
 - c. Other appropriate State and federal agencies;
 - d. Adjacent States and Indian Tribes (for permits which have the potential to affect them or the State or Tribe have expressed interest);
 - e. The State Historical Preservation Officer (SHPO).
5. All NPDES major permits and general permits will be publicly noticed in a manner constituting legal notice to the public under State law, in accordance with 40 CFR § 124.10(c)(3).
 6. The State will provide an opportunity for administrative and/or judicial review in State court of the final approval or denial of permits that is sufficient to provide for, encourage, and assist public participation in the permitting process in accordance with 40 CFR § 123.30. The approval, rejection or modification of an NPDES permit is subject to review pursuant to the provisions of the Chapter 34.05 RCW, Chapter 43.21B RCW, RCW 80.50.140 and WAC 463-76-063.
 7. The public notice and comment procedures required by the State's statute or rule will be followed with respect to all permit modification to final issued permits, except for minor permit modifications as provided in 40 CFR § 122.63 and WAC 173-220-190. Public notice of the permit modification application will be given in the same manner as for initial permit applications.

H. Waiver of Permit Review by EPA

On an annual basis, the State will transmit to EPA an annual Permit Issuance Plan that may be part of the PPA that identifies the permits the State intends to issue during the upcoming year; EPA and the State may agree to revisions to this Plan, as appropriate. EPA waives the right to review, object to, or comment on the sufficiency of preliminary draft permits, draft permits, proposed permits (to the extent that they must be submitted to EPA), and final (issued) permits for all dischargers or proposed discharges, with the exception of the categories described below. By regulation [40 CFR 123.24(d)], EPA may not waive review of:

- a. discharges into the territorial sea;
- b. discharges that may affect the waters of another state or Indian lands;
- c. discharges proposed to be regulated by general permits;
- d. discharges from Publicly Owned Treatment Works (POTWs) with a daily average discharge that exceeds one million gallons per day (MGD);
- e. discharges of uncontaminated cooling water with a daily average discharge that exceeds 500 MGD;
- f. discharges from any major discharger or discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122; and
- g. discharges from any other sources with a daily average discharge that exceeds 0.5 MGD, except that EPA may waive review of permits for discharges of non-process wastewater regardless of flow.

As noted above, the regulation does not allow EPA to waive its right to review applications or NOIs from primary industry categories, including coal mining facilities, whether they are major or non-major dischargers. EPA reserves the right to unilaterally terminate the waivers in this Section, in whole or in part, at any time. Any such termination will be made in writing to the State.

The foregoing waiver does not authorize the issuance of permits which do not comply with applicable provisions of federal laws, regulations, effluent guidelines, State statutes, or State rules. The waiver will not relinquish the right of EPA to ask the State for review of any action or inaction. The State will supply EPA with a copy of all final permits.

I. Discharger List

The State and EPA will input current data into EPA's national ICIS database for all major and non-major facilities for which they are responsible (i.e., those agreed upon in the PPA, Compliance Monitoring Strategy (CMS) plan, etc.) via electronic transfer of information from the State's permitting database, PARIS.

If EPA should expand its current provisions for input of data into EPA's ICIS-NPDES database, the State will comply with new regulations.

A domestic major facility is a facility classified by the State or EPA (40 CFR § 122.2) as a major discharger based on a design treatment plant flow of at least 1.0 MGD, an approved Pretreatment Program, a high potential for violation of water quality standards, or poses a potential or actual threat to human health or the environment.

A nondomestic major facility is a facility classified by the State or EPA (40 CFR § 122.2) as a major facility based on the State's *NPDES Permit Rating Work Sheet* that is based on EPA's NPDES Permitting Work Sheet, plus any additional dischargers that, at the discretion of the State or EPA, should be classified as major due to a high potential for violation of water quality standards and/or a history of chronic violations.

J. Administrative or Court Action

If the terms of any permit, include any permit for which review has been waived by EPA, are affected in any manner by an administrative or court action, the State must immediately transmit to EPA a copy of the permit in a timely manner, with changes identified. EPA will then have ninety (90) calendar days from receipt of the revised permit to review, comment on, or make written objections to the changed permit pursuant to CWA sections 402(d).

K. Variances

Consistent with time limitations contained in the most recently amended CWA, Ecology must conduct an initial review of all requests for fundamentally different factors, and for variances under sections 301(c), (g), (i), (k), and 316(a) of the CWA.

With regards to sections 301(i) and (k) and 316(a) variances, Ecology may deny or approve the request pursuant to the requirements in 40 CFR § 124.62. Ecology must send a copy of the determination to the requester and EPA.

With regards to fundamentally different factors and section 301(c) and (g) variances, and section 302 of the CWA modifications, in accordance with 40 CFR § 124.62, Ecology may deny the request, and such determination will be forwarded to the requester and EPA. If Ecology determines that factors do exist that may warrant such a variance, it will send the request and recommendations to EPA. If EPA denies a variance request, Ecology must so notify the requester. If EPA approves a variance request, Ecology must prepare a draft permit factoring in the variance.

L. Appeals

The State will provide EPA with a copy of all judicial, administrative law decisions, as well as any formal settlement agreements that the State enters into, that impact the State's ability to implement the State NPDES Program in accordance with state and federal requirements.

Stay of Permit. When the State makes a determination to stay a permit, in whole or in part, the State will notify EPA.

VII. Pretreatment Program

A. General

This Section applies only to Ecology and defines Ecology and EPA responsibilities to establish, implement, and enforce the National Pretreatment Program, pursuant to State regulations, CWA sections 307 and 402. EFSEC has no delegated Pretreatment authority from EPA; therefore, Ecology is the responsible State party. Ecology will apply and enforce the Pretreatment regulations as required by 40 CFR Part 403, and EPA will oversee Ecology's Pretreatment Program operations consistent with 40 CFR Part 403 regulations and this agreement. Terms in this Section are defined in 40 CFR § 403.3, unless otherwise noted.

As Ecology issues, reissues, or modifies permits in accordance with Section V of this agreement, Ecology will include appropriate pretreatment conditions in those issued, reissued, or modified permits. Appropriate pretreatment conditions include, but are not limited to, the following: required compliance with 40 CFR Part 403 and corresponding state law, approved POTW Pretreatment Program requirements, submission of a technical evaluation of the need to revise local limits within a specified period and based in part on monitoring over the previous NPDES permit period, and at least semi-annual monitoring of influent, effluent, and biosolids for specific pollutants of concern which may be received from Industrial Users of the POTW.

Ecology will serve as: a) the "Control Authority" for those industrial users who introduce pollutants into a POTW which has not been approved to have a Pretreatment Program, or where Ecology assumes that authority pursuant to 40 CFR § 403.10(e), and therefore implements the Control Authority responsibilities in 40 CFR Part 403 and Ecology will serve as the "Approval Authority" for an Approved POTW Pretreatment Program.

EPA retains authority over federal facilities and facilities in Indian Country, unless EPA has specifically approved Ecology to operate the Pretreatment Program over those facilities.

If the State does not have a Pretreatment Program approved by EPA, EPA will retain authority over facilities in the State, and the State will work with EPA to ensure enforcement Pretreatment Standards and Requirements in the State

B. Program Responsibility, Including Permitting, Compliance Monitoring and Enforcement

Ecology will fully implement its approved Pretreatment Program including the following responsibilities:

- a. Enforce as appropriate against discharges prohibited by State statute and regulations, and 40 CFR § 403.5.
- b. Identify and regulate Significant Industrial Users (SIUs) and non-significant Industrial Users (IUs) who introduce pollutants into a POTW without an approved pretreatment program. If Ecology runs the pretreatment program in lieu of local authorities, Ecology will assure full implementation of the program. 40 CFR §§ 403.10(e).
- c. Seek civil and criminal penalties and injunctive relief (including a temporary restraining order), as appropriate, for noncompliance by a POTW permit and for noncompliance with National Pretreatment Standards and Requirements by Industrial Users (IUs), as set forth in 40 CFR §§ 403.8(f)(1)(vi), 403.10(f)(iv) and 403.5(c).
- d. Where Ecology has not elected to assume the role of a Control Authority, review, approve, or deny a POTW Pretreatment Program in accordance with the procedures at 40 CFR §§ 403.8, 403.9 and 403.11. Review and approve program modifications, as specified in 40 CFR § 403.18.
- e. Where Ecology has not elected to assume the role of a Control Authority, incorporate approved POTW Pretreatment Program conditions in a NPDES permit issued to a POTW, as required in 40 CFR § 403.8 and CWA section 402(b)(8); require compliance by a POTW with the incorporated NPDES permit conditions; and require compliance by IUs with National Pretreatment Standards and Requirements.
- f. Where Ecology has not elected to assume the role of a Control Authority, require approved POTW Pretreatment Programs to develop and enforce local limits, as necessary, as set forth in 40 CFR § 403.5(c).
- g. Where Ecology has elected to assume the role of a Control Authority, develop and enforce local limits, when required by regulation or necessary, including best management practices as necessary, where there are categorical users discharging to a POTW without an approved Pretreatment Program.
- h. Require submission of reports from approved POTW Pretreatment Programs and Industrial Users, as outlined in 40 CFR § 403.12.
- i. Evaluate and assist continuing compliance:
 - i. of a POTW with pretreatment conditions incorporated into the POTW permit through review of monitoring reports submitted to Ecology by the POTW, as required by 40 CFR § 403.12;
 - ii. of industrial users where Ecology is the control authority; and
 - iii. by IUs with National Pretreatment Standards through the review of self-monitoring reports submitted to the POTW or to Ecology by the IUs, as required by 40 CFR § 403.12.
- j. Carry out inspection, surveillance, and monitoring procedures that will determine, without relying solely on self-monitoring information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit.
- k. Carry out inspection, surveillance, and monitoring procedures that will determine, without relying solely on self-monitoring information supplied by the SIUs compliance and noncompliance.

- l. As specified in this agreement, review and recommend approval or denial to EPA of requests for Fundamentally Different Factors variances submitted by an IU in accordance with the criteria and procedures set forth in 40 CFR § 403.13 and enforcement-related conditions in the POTW's NPDES permit.
- m. Review and, as appropriate, approve POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW, in accordance with 40 CFR §§ 403.7, 403.9, and 403.11.
- n. Analyze influent and effluent of a POTW to identify, without relying solely on self-monitoring information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW's NPDES permit.
- o. Investigate evidence of violations of pretreatment conditions set forth in the POTW permit by taking samples and acquiring other information, as needed.

C. National Pretreatment Standards Categorical Standards, 40 CFR § 403.6(a)

Pursuant to 40 CFR § 403.6(a), Ecology must review requests from IUs for industrial category or subcategory determinations received within sixty (60) calendar days after the effective date of a National Pretreatment Standard for a subcategory under which an IU believes itself to be included or prior to discharge from an existing IU which adds or changes a process or operation which may be included in a subcategory, or prior to discharge from an IU which is a new source. Ecology will prepare a written determination and justification as to whether the IU does or does not fall within that particular subcategory. Ecology must forward its findings, a copy of the request, and necessary supporting information to EPA for concurrence. If EPA does not modify or object to Ecology's proposed findings within sixty (60) calendar days after receipt thereof, Ecology will take agency action to approve or deny the request.

D. Removal Credits and Net Gross, 40 CFR §§ 403.7, 493.11, 403.15

Pursuant to 40 CFR § 403.7, Ecology must review and approve a POTW application for removal credits for IUs who are or may be subject to National Pretreatment Standards in the future. Ecology findings, the application, and supporting information must be submitted by Ecology to EPA for review. No removal credits request must be approved by Ecology if, during the thirty (30) calendar day (or extended) evaluation period provided for in 40 CFR § 403.11(b)(1)(ii) and any hearing held pursuant to 40 CFR § 403.11(b)(2), EPA objects in writing to the approval of such a submission, per 40 CFR § 403.11(d).

If Ecology receives a request for a net/gross adjustment of applicable categorical standards in accordance with 40 CFR § 403.15, Ecology will forward the application to EPA for a determination. Once this determination has been made, EPA will notify, in writing, the applicant and the applicant's POTW and provide reasons for the determination and any additional monitoring requirements EPA deems necessary.

E. Variances from Categorical National Pretreatment Standards for Fundamentally Different Factors (FDF), 40 CFR § 403.13

Pursuant to 40 CFR § 403.13, Ecology will make an initial finding on all requests from IUs for variances from categorical National Pretreatment Standards for fundamentally different factors (FDFs), and in cases where Ecology supports the variance, submit its findings, the FDF request, and supporting information to EPA for concurrence. Ecology will not grant a FDF request until written

concurrence has been received from EPA. Ecology may deny requests for FDF without EPA concurrence.

F. Effective Integration of Pretreatment Enforcement Activities into the State NPDES Program

Ecology's pretreatment enforcement response procedures and time frames will be adequate and timely to evaluate and assure compliance. Response procedures include reporting all regulated POTWs (including minor POTWs with approved POTW Pretreatment Programs) on the required noncompliance reports. The procedures will include taking appropriate enforcement action including when a POTW fails to submit approvable Pretreatment Programs, has violations of pretreatment requirements, or the POTW fails to submit timely reports.

Ecology will initiate appropriate enforcement action against an approved POTW Pretreatment Program for failure to adequately enforce its IU control mechanisms. Ecology will ensure that approved POTW Pretreatment Programs comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards and Requirements and comply with enforcement procedures of Section XI. These procedures must include provision for at least annual public notification in a newspaper(s) of general circulation that provide reasonable public notice within the jurisdiction(s) served by the POTW of IUs that, at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment requirements, in 40 CFR § 403.8(f)(2)(viii).

Where Ecology assumes the role of Control Authority, Ecology will be directly responsible to have the procedures in place for categorical and significant non-categorical IUs in accordance with 40 CFR §§ 403.8(f)(2) and 403.10(f)(2)(i). Ecology must exercise its enforcement procedures to enforce against violations of the Pretreatment Program Standards and Requirements.

Ecology will take appropriate action against an Approved POTW Pretreatment Program that is in noncompliance with 40 CFR Part 403. Noncompliance includes, but is not limited to:

- a. Failure to meet milestones in enforceable schedules for submitting a required local Pretreatment Program,
- b. Violations of IU or POTW permit conditions
- c. Other provisions and criteria that are identified as Significant Non Compliance for failure of a POTW to implement its Pretreatment Program,
- d. Delinquent reports from IUs or Approved POTW Pretreatment Reports.

VIII. Reporting and Transmittal of Information

A. State to EPA

The State should provide EPA with all of the following documents according to the timelines provided. In many cases, documents and other program information can be transmitted electronically.

1. Ecology CWA section 401 certifications for NPDES permits that EPA retains legal jurisdiction over that discharge to waters of the state: Draft certification before public notice; final certification on or before permit issuance provided no substantive changes occurred between the public notice of draft and the permit issuance.

2. One copy of all permit applications and permit modifications; draft permits and permit modifications, including fact sheets; Ocean Discharge Criteria Evaluation, if applicable; and as applicable, new source/ new discharger determination, except those for which EPA has waived review: When received and/or when transmitted to application and/or placed on public notice.
3. One copy of an applicant's NOI to be covered by a general permit: As agreed to between the State and EPA in the PPA.
4. One copy of all State NPDES-related public notices: Upon issuance.
5. Written comments received, hearing records, the State's response to comments on draft permits, proposed permits, and revised fact sheet to reflect changes to the proposed permit (if applicable) for which EPA has waived review: Upon completion of the document by the State.
6. One copy of the proposed permit and revised fact sheet to reflect changes to the proposed permit, if applicable, except those permits EPA waived review of, or EPA has reviewed and approved a draft permit that has not changed as a result of public comment: Upon completion of the document by the State.
7. One copy of all final issued permits, including all minor and major modifications: When issued.
8. An annual list of facilities scheduled for a compliance inspection, including the inspection dates: Annually as established in the PPA and/or CWA CMS: Upon approval.
9. Proposed revisions to the schedule of compliance inspections: As negotiated and approved.
10. Copies of inspection reports and transmittal letters of inspection reports for facilities authorized to discharge under the State NPDES program (majors and minors): Upon request by EPA.
11. Input or electronic transfer of all required data into the national database, including, as applicable, the requirements of any electronic submissions requirements established by EPA regulation, information submitted electronically by POTWs or IUs to the State, as well as information necessary to enable EPA to prepare:
 - a. narrative reports for major permittees, as specified in 40 CFR § 123.45(a): Within 14 days of receipt of report by permitting authority.
 - b. a statistical summary report on the number of major permittees with two or more violations, as specified in 40 CFR § 123.45(b): Semiannually at time of first and third quarter noncompliance review (QNCR).

- c. a statistical summary report on all non-major discharges listing the number of instances of noncompliance, enforcement actions, and extensions of compliance deadlines, as specified in 40 CFR § 123.45(c): Annually, November 30.
 - d. statistical information not otherwise included above (e.g., quarterly, semi-annual and annual reports) in accordance with 40 CFR § 123.45.
12. Copies of all enforcement actions ranging from warning letters or Notices of Violations to administrative and judicial actions for major and non-major facilities: Upon request by EPA.
 13. Copies of the correspondence to carry out the Pretreatment Program, including:
 - a. Categorical pretreatment determinations: Upon issuance.
 - b. Initial removal credit determinations: Upon issuance.
 - c. Initial determinations on pretreatment FDF: Upon issuance.
 - d. Net gross: Upon issuance.
 14. When Ecology is the control authority, Pretreatment Program approvals or modifications, copies of inspection reports of SIUs, reporting results from SIUs, noted SIU violations, and enforcement action against SIUs: Upon request by EPA.
 15. Identification of any revisions to the State NPDES Program necessary to preserve compliance with new or revised federal NPDES Program requirements and a timetable for completing such revisions: No later than annually in discussions between the State and EPA on the PPA
 16. Notification of any State agency, legislative, or court action that may affect the State NPDES program: Within 10 business days of when the State becomes aware.
 17. Copies of court decisions/actions affecting the permit issuance, compliance, and the State enforcement process: Within 15 business days of receipt by the State.
 18. Information of any situation posing a substantial endangerment to the health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the United States: Immediately.

B. EPA to State

EPA should provide the State with all of the following documents according to the timelines provided.

1. Notification of citizen complaints: Upon receipt.
2. Draft and final or revised EPA regulations that affect NPDES programs: Upon issuance.
3. Draft and final or revised EPA guidance related to NPDES program implementation: Upon issuance.
4. Copies of information pertaining to discharges EPA retains jurisdiction over: When received from applicant or permit and/or public notice issued by EPA.

5. Other information related to permits under EPA jurisdiction: Upon request.
6. EPA will discuss the inspections it intends to conduct independently as negotiated in the annual grant agreement with Ecology: Upon request.
7. EPA will discuss the proposed revisions to the schedule of compliance inspections: As revisions occur.
8. Copies of approval of a Pretreatment Program for a municipality under its jurisdiction: As issued.
9. Notification to the State of observed deficiencies resulting from EPA oversight inspections: As performed.
10. Copies of all inspection reports and transmittal letters for NPDES facilities, excluding those that EPA considers enforcement confidential: Upon request.
11. Copies of all final enforcement actions against violators, including warning letters, notices of violation, administrative orders, judicial filings, and settlements: Upon request.
12. Notification of the commencement of federal civil enforcement actions: Immediately.
13. Draft and final reviews of Ecology's NPDES Program, including the Pretreatment Program: As performed.
14. Copies of court decisions/ actions affecting the permit issuance, compliance, or enforcement processes: Within 15 days of receipt by EPA.

C. Transfer of Files from EPA to State upon Subsequent Program Approval

Upon approval of any subsequent NPDES Program modification for additional NPDES Program coverage by the Regional Administrator, EPA will immediately deliver to the State all project files for pending permit applications proposed for issuance/reissuance. Project files will include all relevant information including but not limited to, application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all project files are complete prior to delivery to the State.

EPA will deliver files for all other permits to the State in accordance with a mutually agreed upon schedule. Files will contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions, and other pertinent information and correspondence. EPA will ensure all files are complete prior to delivery to the State.

IX. Review of New or Revised State Rules, Regulations, or Statutes

In accordance with 40 CFR §§ 123.62(a) and or 403.10, either EPA or the State may initiate a revision to the NPDES and Pretreatment Program. The State and EPA will keep each other fully informed of any proposed modifications to its statutory or regulatory authority, forms, procedures, or priorities. EPA and

the State will work together to ensure the State NPDES program is consistent with any applicable regulatory revisions, including any final regulations governing the electronic submission of NPDES information from states or regulated facilities.

The State will ensure that any proposed revision to the State NPDES Program is submitted to EPA for approval pursuant to 40 CFR § 123.62(b).

1. Revision of the State's program will be accomplished in conformance with 40 CFR § 123.62(b) as follows:
 - a. The State will submit to EPA's Regional Administrator a modified program description, an Attorney General's Statement, Memorandum of Agreement, or any such other documents, as EPA determines to be necessary under the circumstances after consultation with the State. EPA will determine if the proposed revision is substantial or non-substantial.
 - b. If EPA determines that the proposed revision is substantial, EPA will issue public notice of the proposed revision and provide an opportunity to comment for a period of at least thirty (30) calendar days. The public notice will also provide an opportunity to the public to request a public hearing.
 - c. The Regional Administrator will approve or disapprove program revisions based on the requirements of 40 CFR Part 123 and of the CWA. Notice of approval of a substantial change will be published in the Federal Register. A program revision will become effective upon the approval of the Regional Administrator.
 - d. If EPA determines the revision to be non-substantial, notice of approval may be given by letter from the Regional Administrator to the State.
 - e. In order to conform with new or revised promulgations of federal regulations, the State must revise its program within one (1) year of promulgation of the new or revised federal regulations, unless the State must amend or enact a statute to make the required revision or if a State legislative process must be completed, in which case such revision will take place within two (2) years under 40 CFR § 123.62(e).
 - f. The State will provide proposed revisions to EPA in a timely manner in consideration of the date the State needs to have EPA's review completed. After conducting a preliminary review of the State's proposed revision, EPA will provide to the State an estimated schedule for completing its review. The estimated review schedule will depend on the complexity of the proposed revision. EPA will, thereafter, provide the State with quarterly updates, as appropriate, regarding the status of its review.
2. The State must notify EPA whenever it proposes to transfer all or any part of any program from the approved State agency to any other State agency, and must identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until given approval by the Regional Administrator under 40 CFR §§ 123.62(b) and (c).

3. Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to the State's program, the Regional Administrator may request, and the State will provide, a supplemental Attorney General's Statement, program description, or other documents or information as are necessary and as provided under 40 CFR § 123.62(d).

X. Compliance and Evaluation Program

A. Implementation of Schedules and Conditions

As provided by 40 CFR § 123.26(a), the State will track the submission of all documents required pursuant to permit conditions or schedules, or any applicable administrative or judicial enforcement actions. In order to determine a discharger's compliance status, the State will conduct a timely and substantive review of all such submitted documents and consider enforcement action in the event a required document is not submitted in a timely manner, is otherwise inadequate, or identifies noncompliance.

B. Compliance Monitoring and Evaluation

The State agrees to maintain an effective compliance monitoring and evaluation program. For purposes of this MOA, the term "compliance monitoring and evaluation" will refer to all efforts to assess whether NPDES regulated entities are in compliance with laws and regulations constituting the State NPDES program, including any permit condition or limitation, any compliance schedule, any pretreatment standard or requirement, or any previous administrative or judicial enforcement action.

1. Discharges endangering public health will receive immediate and paramount attention.
2. The State will operate a timely and effective compliance monitoring system to assess and track compliance by dischargers with their permit conditions (e.g., effluent limits and compliance schedules) and any applicable enforcement action.
3. The State will directly enter or upload the compliance monitoring and evaluation data from the PARIS database into the ICIS on a schedule as required in national policy, the PPA, or in any applicable regulations governing submission of NPDES information from regulated entities or States. The current national policy is the EPA 1985 PCS Policy (as amended) and the 2007 Integrated Compliance Information System (ICIS) Addendum to the Permit Compliance System (PCS) Policy.
4. When EPA promulgates new reporting data requirements, the State will adhere to those requirements and ensure that required NPDES information is provided to EPA in a timely, accurate and complete manner.
5. Compliance monitoring will focus on the most important NPDES point sources of water quality impairment and the most serious violations. EPA's *NPDES Compliance Monitoring Strategy for the Core Program and Wet Weather Sources* (October 17, 2007), hereafter NPDES CMS, specifies inspection frequency goals for the NPDES program and available flexibilities that EPA and states may use in negotiating inspection commitments. The PPA and/or approved annual State NPDES CMS should be based on these goals and guidance.

6. All compliance monitoring and evaluation activities will be undertaken in such a manner that will lead to timely, appropriate and effective follow-up response (e.g., informal action or formal enforcement actions consistent with applicable Enforcement Response Policies (ERPS)).
7. The State will maintain complete records of all material relating to the compliance status of discharges within the State's jurisdiction, including Compliance Schedule Reports, DMRs, Compliance Inspection Reports, any other reports that permittees may be required to submit under the terms and conditions of a State permit or an approved Pretreatment Program (as applicable to Ecology), and documents related to any administrative or judicial enforcement action. Records will be maintained according to applicable federal records schedules.

C. Compliance Review

The State will require all NPDES permittees to use State approved DMR formats which are consistent with, at a minimum, federal DMR formats. Pursuant to 40 CFR § 123.26, the State will conduct timely and substantive reviews and maintain complete records of all material relating to the compliance status of a State NPDES permittee, including DMRs, Compliance Schedule Reports, Compliance Inspection Reports, enforcement documents, and any other reports that a permittee may be required to submit under the terms and conditions of a State NPDES permit, state certification of an NPDES permit, approved Pretreatment Program, state administrative actions, or state court order. The State will evaluate a permittee's compliance status based on the review of material submitted, as well as results of a site inspection, if conducted. The evaluation will take into account frequency, severity, circumstances, and analytical error to determine the appropriate enforcement response to noncompliance. The State will provide periodic non-compliance reports to EPA.

1. For all major dischargers and those other dischargers or types of dischargers identified in the PPA or approved annual State NPDES CMS, the State will ensure that monitoring and evaluation data are entered into ICIS either directly or through a regularly occurring data flow from PARIS to ICIS. Data entry and accuracy rates will be established in EPA's current national data system policy and guidance or in any applicable regulations governing submission of NPDES information from regulated entities or States. The State must provide information necessary to determine if:
 - a. any required self-monitoring reports (including DMRs or other reports required to be submitted pursuant to a permit or an applicable administrative or judicial enforcement action) are submitted on time;
 - b. the submitted reports are complete; and
 - c. the permit conditions (e.g., effluent limits and compliance schedules) or requirements of an applicable administrative or judicial enforcement action are met.
2. The State's timely and substantive review of all such reports received and all independently gathered information to evaluate the discharger's compliance status will be uniform and consistent with the Enforcement Management System (EMS) as referenced in Section X.G, or in any subsequent national guidance and policy issued by EPA.

3. DMR forms or electronic versions thereof, for any monitoring data required by an NPDES permit (or the NPDES portion of a State permit), will be consistent with the requirements of 40 CFR § 122.2.
4. Pursuant to 40 CFR § 122.2, EPA may object in writing to deficiencies in reporting forms used by permittees or, the State. The State will ensure that deficiencies identified by EPA are adequately addressed.
5. The State will report single-event violations (SEV) information from inspections consistent with applicable federal policy or regulations.
6. For all major dischargers subject to regulation under CWA section 402, the State will submit noncompliance and program reports as required by 40 CFR § 123.45, or other applicable federal regulations. The State will utilize data flow from PARIS to ICIS to produce the automated QNCR with hand-written annotations, if necessary. EPA agrees to provide assistance in generating these automated QNCRs.
7. On a quarterly basis, EPA will generate for the State's review a list (e.g., the Watch List) of facilities that appear to be in non-compliance based on certain EPA selection criteria. The State will confer with EPA concerning data correction, if applicable, and/or the appropriate enforcement response for these facilities. The State will advise EPA if the State has already initiated enforcement.
8. EPA will, through the State Review Framework, review ICIS data against source documents (DMRs, inspection records, enforcement actions, etc.) to verify the accuracy of the ICIS data and the QNCRs. The State agrees to work with EPA if permit data transferred from PARIS to ICIS is not consistent or is found to contain errors.
9. In accordance with 40 CFR § 123.26(b)(4), the State will maintain procedures for receiving and ensuring proper consideration of information about alleged violations submitted by the public.
10. The State will submit noncompliance and program reports for, but not limited to, non-major NPDES permittees as required by 40 CFR § 123.45, or other applicable federal regulations.
11. 40 CFR § 123.45(c) requires the submission of an Annual Noncompliance Report (ANCR) containing information including, but not limited to the number of non-major NPDES permittees review, the number of non-major discharges in noncompliance, the number of enforcement actions, and number of permit modifications extending compliance deadlines. EPA will generate the ANCR annually from ICIS and provide the draft to the State by the last day of February for review and submission.
12. EPA and the State will modify this MOA to conform to any applicable regulations governing submission of NPDES information from regulated entities or States.

13. EPA will provide the State notification of citizen complaints through a phone call, email message, or copy of the written complaint. These complaints will become a part of the permit record.

D. Facility Compliance Inspections

The State will conduct field activities to determine the status of compliance with permit and pretreatment requirements, including sampling and non-sampling inspections. The different types of compliance inspections will be conducted in accordance with EPA's most recent NPDES Compliance Inspection Manual, 40 CFR § 123.26(d), and EPA's most recent Clean Water Act CMS, and all current grant agreements.

1. General Procedures: In accordance with the requirements contained in 40 CFR § 123.26, the State will maintain and implement an inspection and surveillance program to determine the compliance status of dischargers independent of information supplied by dischargers.
 - a. The State and EPA will develop, as part of the PPA and in accordance with the CWA CMS, an inspection plan of individual dischargers proposed to be the subject of compliance audits and inspections for the coming year (October through September).
 - b. The State will have procedures to receive information from the public.
 - c. Information will be made available to the public about inspections and violations through the PARIS external interface.
 - d. The State will have procedures for receipt, evaluation, retention, and investigation for possible enforcement of all notices and reports required of regulated entities.
 - e. State agents conducting compliance evaluations will have the authority to enter premises subject to regulation. Inspections will be conducted in such a way that will produce admissible evidence in an enforcement proceeding or in court.
 - f. EPA and the State may mutually agree to amend the inspection plan in recognition of changing priorities and circumstances during the year.
 - g. Unless otherwise agreed to by EPA in writing, the State will conduct agreed upon compliance inspections.
 - h. EPA or the State may determine that additional inspections are necessary to assess compliance.
 - i. If EPA makes a determination that additional inspections are necessary or appropriate, EPA will notify the State of such determination and may perform the inspections alone or jointly with the State or may request that the State conduct those inspections.
 - j. EPA will keep the State fully informed of its plans and the results of any inspections. Pursuant to 40 CFR § 123.24(b)(4)(i), EPA as a general rule will provide the State at least seven (7) calendar days' notice before a joint or independent inspection is conducted. EPA retains the ability to conduct inspections without notice.

2. Reporting Schedules: The State will enter inspection information into PARIS and will ensure the inspection information populates the ICIS database. It will do so in accordance with and on a schedule established in the PCS policy or the ICIS Addendum to the Appendix of the 1985 PCS policy statement (a.k.a., Water Enforcement National Data Base (WENDB) equivalent), the PPA, or any regulations governing the submission of data and information to EPA. The State will ensure data entry of required inspection information, including Single Event Violations of the CWA's NPDES requirements that are documented during a compliance inspection, reported by the facility, or determined through other compliance monitoring methods, as well as violations detected that will cause the facility to be in significant non-compliance.
3. Inspections: The State and EPA will, as part of the PPA and State NPDES CMS, define the scope of compliance inspections to be undertaken by the State. For the purposes of this agreement, a "compliance inspection" includes, but is not limited to: a compliance evaluation, compliance sampling, performance audit, biomonitoring, toxic sampling, diagnostic, reconnaissance, follow-up, construction site and industrial inspections, audits, aerial photography, case follow up, and Pretreatment Program inspections (Ecology only). In addition:
 - a. As negotiated in the PPA, the State must give EPA adequate notice and opportunity to participate in its scheduled inspection activities.
 - b. As agreed to in the PPA, the State will inform EPA of the inspections it has scheduled for the coming year. The State will update PARIS with inspection and enforcement results for inspections the State conducts and Ecology will ensure this data populates ICIS.
 - c. EPA retains the right to perform inspections of any permittee at any time. EPA as a general practice will notify the State to give it an opportunity to participate and will otherwise keep the State informed of its plans and results. EPA retains the ability to conduct inspections without notice.
 - d. For inspections conducted by EPA, or enforcement actions taken by EPA, EPA will input the data into ICIS and provide the inspection and enforcement information to the State to enter the data into PARIS.
 - e. All inspection reports will be thoroughly reviewed by the State to determine what, if any, enforcement action will be initiated. The State will forward copies of inspection reports to EPA upon request. Where an audit or inspection is conducted solely by EPA, a copy of the audit or inspection report will be forwarded to the State within sixty (60) calendar days after the inspection.
 - f. Any changes or additions to the definition of a "compliance inspection" will be incorporated as appropriate into the commitments of an approved negotiated CWA CMS.
4. Inspection Schedules: The State and EPA will develop targets in the PPA and State Clean Water Act CMS Plan to address the most significant water quality problems and most serious noncompliance. Plans will include a list of the compliance inspections to be performed

annually by the State. The targets may be modified with the concurrence of the State and EPA. The State may revise inspection schedules in the future in response to revisions made to EPA's NPDES CMS and in accordance with Federal and State program direction and priorities. EPA and the State agree that inspection schedules are enforcement confidential to the extent permitted by state law. The State and EPA agree to maintain their confidentiality using available legal authorities, to inform each other of any request for their disclosure, and to coordinate with each other in responding to any such requests. EPA and the State retain the right to withhold its respective inspection schedules not already in possession of the other entity in the event of any disclosure.

E. Compliance Tracking

In accordance with the State NPDES Program Description, this agreement, and as required in 40 CFR § 123.26, the State must operate a compliance tracking system so that staff will be capable of determining that:

- a. Self-monitoring reports required by permit and/or pretreatment management requirements are submitted in a timely manner;
- b. Submitted reports are complete and accurate; and
- c. Permit conditions and/or pretreatment management requirements (when applicable) are met

The State's compliance program will track the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (e.g., required reports, Notices of Violation, Administrative Orders, Consent Agreements, and court orders). The State must conduct a timely and substantive review of all date-related permit conditions and reports and consider possible enforcement actions for failure to submit required reports.

EPA will be responsible to enter data into EPA's national ICIS database for the facilities it retains authority over e.g., facilities in Indian Country.

F. Enforcement Management System

Within one hundred and twenty (120) calendar days of the execution of this MOA or as otherwise established in the PPA and State Clean Water Act CMS, the State agrees to submit to EPA for review and comment a current Enforcement Management System (EMS), or verify that the existing Compliance Assurance Manual(s) EPA has on record are current and in effect. The EMS is a document outlining procedures, policies, timelines, etc., to be used by the State in conducting official business (e.g., inspections, tracking and evaluating compliance enforcement actions, assessment of penalties, etc.). Such procedures and policies with respect to compliance and enforcement should take into consideration EPA's current NPDES national enforcement guidance and policies and should include application of criteria for screening the significance of violations, procedures and time frames for selecting appropriate initial and follow-up response options to identified violations, and procedures for maintaining a chronological summary of all violations. The State agrees to implement its EMS. The State agrees to submit any changes to its EMS to EPA for review and comment upon request.

G. Miscellaneous Compliance Activities

1. Information Requests: Whenever EPA or the State requests information from the other concerning a specific discharger and the requested information is not available for the files, that information will be researched and provided to the requesting agency within a reasonable time.
2. Laboratory Quality Assurance: Ecology will plan, initiate, and maintain a program as provided in the PPA and State Clean Water Act CMS to ensure that laboratories working for the State's permitted dischargers follow approved quality assurance protocols.
3. Emergency Pollution Incidents: EPA and the State agree to immediately notify each other by telephone or through a mutually agreed upon emergency response protocol, upon receipt by EPA and the State of any information concerning a situation which in its opinion poses an actual or threatened pollution incident that may result in endangerment to human health or the environment. The State agrees to ensure that all potentially affected downstream drinking water intake facilities are notified of the situation (including notification across state lines when applicable) so that they can take appropriate actions to minimize a risk to the public.
 - Department of Health Drinking Water Program
 - 800-521-0323 (business hours)
 - 877-481-4901 (after business hours)
 - Ecology's Spills Program
 - 800-424-8802
 - 800-258-5990
 - The appropriate local health district
4. Citizen Complaint and Follow-up: The State must maintain procedures to receive and ensure proper consideration of information submitted by the public about alleged State NPDES Program violations and maintain a system to track and evaluate the complaints received from the public (40 CFR § 123.26(b)(4)). Public complaints received by EPA will be referred to the State as soon as reasonably possible. The State must maintain either a physical or electronic record of the initial contact, assignment, investigation, and final disposition of State NPDES – related complaints received from the public. This record will be made available to EPA and the public pursuant to applicable state and federal law. Complaints received by the State or referred to the State by EPA under anonymity or confidentiality will be handled in accordance with the State Public Records Act. EPA and the State agree to closely coordinate follow-up of such complaints. The State will maintain provisions providing for public participation in enforcement actions consistent with the requirements of 40 CFR § 123.27(d).

XI. Enforcement

A. Timely and Appropriate Enforcement

1. The federal regulations at 40 CFR § 123.27 establish the minimum requirements (i.e., remedies, penalties/fines, public participation) for enforcement authority for a State administering the NPDES program.

2. EPA and State NPDES enforcement program guidance and policies describe agency goals and expectations for what constitutes timely and appropriate enforcement action. [EPA's 1989 "NPDES Enforcement Management System (EMS)" and "Clarification of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations" (May 29, 2008)]
3. The State is responsible for commencing and completing timely and appropriate enforcement actions against dischargers in violation of the laws and regulations constituting the State NPDES program, including any permit conditions or limitations, compliance schedules, pretreatment standards or requirements, or previous administrative or judicial enforcement actions. This responsibility encompasses violations detected through any means including the compliance monitoring activities set forth in this agreement.
4. EPA considers a State enforcement action to be timely and appropriate if it:
 - a. Reflects the nature and severity of the violations and the overall degree of noncompliance and results in a return to compliance by the violator (EPA's 1989 EMS and May 29, 2008 "Clarifications of NPDES EMS Guidance on Timely and Appropriate Response to Significant Noncompliance Violations");
 - b. Seeks or imposes, where appropriate, penalties that consider the factors set forth in CWA sections 309(d) and 309(g)(3), meet the requirements of 40 CFR § 123.27; and are consistent with the State's or EPA's penalty policy, criteria, and/or procedures;
 - c. Seeks injunctive relief for continuing noncompliance to return the discharger into compliance within a reasonable time frame. The injunctive relief should be accompanied by an appropriate, specified schedule containing interim milestones necessary to measure progress towards the final compliance date and goals;
 - d. Is commenced and completed taking into account the recommendations in the most recent EPA guidance and policy; and
 - e. Is consistent with other provisions of this MOA.
5. The State should pursue compliance and enforcement procedures that are consistent with EPA's current NPDES guidance and policies. These include, but are not limited to, procedures associated with: violation detection, prioritization of violations (e.g., an appropriate initial response, escalation of enforcement in response to continuing noncompliance, provisions for public participation in the enforcement process, documentation of any action taken/ not taken and of the return to compliance, and entry of enforcement data into EPA's national data system.
6. The federal regulations at 40 CFR § 123.27(a)(1) require the State to have enforcement authority for remedies (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to immediately and effectively restrain any person engaging in any unauthorized activity that is endangering or causing damage to public health or the environment. Pursuant to EPA's 1986 NPDES State Program Guidance (Volume Two), the

State agrees to immediately notify EPA of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the State. For violations which present imminent and substantial endangerment to the health, safety, or welfare of the public or the environment, EPA expects the State to take timely and appropriate enforcement action. Such action should be taken as soon as possible after the State or EPA makes a determination that the condition or activity is of a nature which, if not abated, may pose an imminent and substantial endangerment as described by CWA section 504.

7. Copies of all enforcement actions (including informal actions, formal actions, and/or penalty actions) issued against all dischargers shall be retained and submitted to EPA upon request pursuant to 40 CFR § 123.24(b)(3) and 40 CFR § 123.41(a).
8. In accordance with 40 CFR § 123.24(b)(3) and 40 CFR § 123.41(a), the State will retain and allow EPA to review reports, documents, and other information relevant to enforcement of its NPDES program. Examples of relevant information include documentation of: appropriate initial and follow up response and enforcement actions; enforcement actions that clearly define what the discharger is expected to do by a reasonable certain date, including any schedule which contains interim milestones necessary to measure the progress towards final compliance; and any assessment and collection of a civil penalty, when appropriate. Penalty records should include penalty calculations and their rationales.
9. The State will maintain provisions providing for public participation in enforcement actions consistent with the requirements of 40 CFR § 123.27(d).

B. Penalty Calculation, Documentation and Collection

The State will assess or sue to recover civil penalties and criminal fines, as appropriate and in accordance with CWA section 309, the federal regulations at 40 CFR § 123.27(a), (b), and (c), RCW 90.48.140, RCW 90.48.144, RCW 43.21B.300, RCW 80.50.150, RCW 80.50.155 and state regulations.

1. Penalty Calculation: States are encouraged to calculate penalties consistent with applicable regulations and State or EPA policy and guidance (e.g., EPA's 1995 Interim CWA Settlement Penalty Policy).
 - a. EPA's settlement penalty policy recommends that penalty calculations begin with estimating the statutory maximum penalty to determine the potential maximum penalty liability of the discharger.
 - b. Penalty calculations should, at a minimum, consider two components: the economic benefit of noncompliance and an additional appropriate amount reflecting the seriousness of the violations, (i.e., a gravity component).
 - c. If State statutory authority does not expressly authorize recovery of economic benefit, the State should make reasonable efforts to calculate economic benefit in order to recover it in negotiations or litigation.

- d. In calculating economic benefit, EPA encourages the use of EPA's BEN computer model or another reliable methodology, and to document the assumptions it uses and how the assumptions are applied in specific cases.
 - e. EPA expects settlement penalties to be for more than the amount of economic benefit of noncompliance (where it is possible to calculate it) unless the violator demonstrates an inability to pay, a compelling public concern exists, there are litigation-related reasons, or the total amount of economic benefit exceeds a State's maximum penalty cap. State settlement penalties should be above and beyond the costs to violators to return to compliance, as compliance costs are not penalties.
 - f. State penalty calculations should document the basis for the penalty and the rationale for any penalty adjustments.
 - g. The State should maintain penalty records in the most convenient format for administration of the State programs and accessible to EPA.
 - h. The State should provide, upon request, either a copy of its settlement penalty policy, criteria, and/or procedures to EPA (pursuant to 40 CFR § 123.24(b)(3), 40 CFR § 123.41(a), and EPA's 1986 NPDES Program Guidance), or should create a State settlement penalty policy within six months of the effective date of this MOA.
2. Penalty Collection Recommendations:
- a. Collect assessed penalties and document all efforts to collect such penalties.
 - b. Have systems in place for documenting payment of penalties with corresponding documentation in the case files.
 - c. Verify all penalty collections through appropriate documentation, e.g., via cancelled checks, official correspondence, or notes to the case files.
 - d. Do not allow penalty installment payments, except as necessary by a documented inability to pay, and require interest payments on any delayed penalty payment.
 - e. Where a settlement allows for a series of payments, provide documentation for all dates that have passed.

C. EPA Actions

EPA partners with States to enforce environmental statutes and regulations. There are many instances where federal resources, expertise and authorities can be critical to achieving a comprehensive and effective resolution of violations.

Examples of instances where direct federal action is appropriate include, but are not limited to, the following:

- (a) a State or local agency requests EPA action;
- (b) a State or local enforcement response is not timely and appropriate;

- (c) national precedents (legal or program) are involved;
- (d) there has been a violation of an EPA order or consent decree;
- (e) federal action would support the broader national interest in deterring noncompliance; and
- (f) a demonstrated lack of State performance in enforcing State and EPA laws and rules.

Factors EPA will consider in deciding whether to take direct enforcement in the above type cases include:

- (a) cases specifically designated as nationally significant (e.g., significant noncompliers; explicit national or regional priorities);
- (b) significant environmental or public health damage or risk involved;
- (c) significant economic benefit gained by the violator;
- (d) interstate issues;
- (e) repeat patterns of violations and violators; and
- (f) long standing state performance issues.

Pursuant to Sections 309(a)(3) and (b) and 402(i) of the CWA, EPA may take direct enforcement action as the Agency deems necessary. EPA generally will consult with and provide the State with advance notice prior to taking a direct federal action. This notice can be written, electronic (email), or by a telephone call. EPA and the State will provide each other, upon request, with copies of any enforcement actions taken. Early and full communication and coordination between EPA and the State, (e.g., early notification of inspections, the basis of and intent for enforcement actions prior to initiation of any action, and other information sharing) have proven very effective in resolving compliance and enforcement matters. The parties to this agreement recognize that issues of imminent and substantial endangerment and criminal cases may present special circumstances and may not permit the same level of pre-filing coordination.

D. Attorney General

The State will establish procedures for routine coordination on enforcement cases between the State and the appropriate legal resources within the State such as the State Attorney General's Office, including notification of proposed enforcement actions and general time frames for actions from case referral to filing.

XII. EPA's Oversight and Enforcement Authority

In accordance with 40 CFR § 123.24(a), this agreement does not restrict or limit EPA's oversight and enforcement authorities under the CWA. Any discussion of EPA or State roles and responsibilities is intended to guide EPA and State personnel to effectively administer the NPDES program, but is not meant to make the State EPA's agent for purposes of enforcement or restrict or limit EPA's direct enforcement authority under the CWA. Thus, EPA reserves the right to inspect federally regulated permittees or to bring federal enforcement action under the CWA in response to any violation of the CWA.

If EPA determines that the State has not taken timely enforcement action against a violator and/or that the enforcement action as not been appropriate, EPA may proceed with any or all enforcement options available under CWA section 309, administrative, civil, and/or criminal.

EPA generally will notify the State of its pending federal civil enforcement action prior to commencement. Notwithstanding the above, nothing will be construed as limiting EPA's authority under CWA section 309 and 40 CFR Part 503.

This agreement does not create any rights in law or equity for any person not a party to this agreement. Any failure by EPA or the State to follow any provision(s) of this agreement will not affect the validity of any inspection or enforcement action and will not constitute a defense to any violation of the CWA.

The State may request EPA to initiate federal enforcement action when the State has been unable to achieve compliance through State remedies. The State may request EPA to participate in conferences and/or discussions in the pursuit of enforcement actions against a federal facility which may lead to formal filing of an enforcement action by the State against a federal facility. EPA may also initiate direct action if performance reviews demonstrate a lack of state enforcement response to violations.

EPA will coordinate with the State, as necessary and appropriate, on EPA's off-shore, section 301(h), and biosolids permitting, compliance and enforcement activities through the permit and inspection planning processes, and will provide a copy to the State when EPA issues an enforcement document.

XIII. Program Review

The State and EPA are responsible for ensuring that the State NPDES program is consistent with all requirements of this MOA, the PPA, CWA CMS, the EMS and applicable sections of 40 CFR Parts 122-125, 140 and 403.

To ensure that these requirements are fulfilled, EPA will:

1. Review the information transmitted to the State to ensure that all the requirements of this MOA are met.
2. Meet with the State officials at least annually, as funds allow, to assess data management processes, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing.
3. Periodically examine in detail the State files and documentation of selected dischargers to determine whether:
 - a. Permits are processed and issued consistently with federal requirements;
 - b. Capability exists to discover permit violations when they occur;
 - c. The State's compliance reviews are timely;
 - d. Inspections are being conducted properly and coverage is appropriate;
 - e. Violations are identified and reported;
 - f. Data is accurate and entered into PCS/ICIS-NPDES in a timely manner;
 - g. The State's enforcement actions are timely, appropriate and effective;
 - h. Penalties are assessed correctly and collected; and
 - i. The State's public participation policies, practices, and procedures are satisfactory.
4. Implement the State Review Framework and the Permit Quality Review, making reports, findings, and recommendations publicly available.

5. Determine the need for (and to hold) public hearings on the State NPDES program pursuant to CWA section 402(c)(3).

The State will notify the Regional Administrator and will transmit the text of any change to EPA for review and approval pursuant to 40 CFR § 123.62(n) prior to taking any action to propose or effect any amendment, rescission, or repeal of any statute, rule, or directive which has been approved by EPA in connection with the State NPDES program; any action to modify program approval documents (e.g., MOA, Program Description or Attorney General's/Independent Counsel's Statement); or any action to transfer all or any part of the approved State NPDES program to another State agency or instrument.

The State will keep EPA fully informed of any program modification, court action, legislation or legislative directive which acts to amend, rescind or appeal any part of its authority to administer the NPDES program or which substantially impairs the State's ability to administer or to otherwise maintain compliance with NPDES program requirements.

If an amendment, rescission, or repeal of any statute, rule, directive, or policy for or by the State occurs for any reason, including action of the State Legislature or a court, the State must, within ten (10) days of such event, notify the Regional Administrator and must transmit a copy of the text of such revision to the Regional Administrator.

If there are revisions to the CWA and the regulations that implement it, the State must seek any amendments to its statutes, rules, or program authorization necessary to preserve and maintain compliance with NPDES program requirements within the shortest reasonable time frame, but in no event longer than the time frames set out in 40 CFR § 123.62(e). During the negotiation of the grant agreement, the State and EPA must discuss the status and schedule of necessary revisions to the State's NPDES Program that are required as a result of any changes to the CWA and the regulations promulgated there under, as well as related guidance documents.

XIV. Term and Termination of the MOA

This MOA will be reviewed periodically by EPA, and the State, and revised as appropriate. In no event, will this review occur any less frequently than every four years, starting from the date of execution of this agreement.

Either EPA or the State may, at any time, initiate an action to modify the MOA pursuant to 40 CFR § 123.62 and the following guidelines:

1. No modification to this MOA will become effective without the written concurrence of all three parties; and
2. Any revisions or modifications to this MOA, must be in writing and must be signed by the Ecology Director, EFSEC Chair, and the Regional Administrator.

XV. Approval and Effective Date of the MOA

This MOA will take effect on the date of execution by the last signatory. If the Regional Administrator determines that any provision of this MOA does not conform to the requirements of the CWA, to the requirements of 40 CFR Parts 122-125, or to any other applicable federal regulations, the Regional Administrator will notify the State, in writing, of any proposed revision or modification which must be

made to this MOA. Any revision or modification of this MOA will take effect on the date of execution by the last signatory.

7/19/18
DATE

Maia Bellon by Polly Zehm
Maia D. Bellon
Director
State of Washington, Department of Ecology

7/27/18
DATE

Stephen Power for Kathleen Drew
Kathleen Drew
Chair
State of Washington, Energy Facility Site Evaluation Council

8/10/18
DATE

Chris Hladick
Chris Hladick
Regional Administrator
U.S. Environmental Protection Agency, Region 10