

Memorandum of Agreement

Between The

Division of Water Resources

Of The

Department of Natural Resources

Of The

State of West Virginia

And The

Regional Administrator, Region III  
U. S. Environmental Protection Agency

Regarding The Administration and Enforcement  
Of The National Pollutant Discharge Elimination System (NPDES)

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## I. Introduction

In recognition of the Clean Water Act (CWA) with amendments through 1978, the Consolidated Permit Regulations of 1980 (40 CFR Parts 122-125), the promulgated pretreatment regulations (40 CFR Part 403) and that the State of West Virginia is requesting approval of a State program for National Pollutant Discharge Elimination System (NPDES) delegation, it is necessary to execute a Memorandum of Agreement (MOA) between the Chief and the EPA Regional Administrator.

This MOA is the mechanism for specifying the details of the EPA overview role of the State NPDES program, which is provided for in the above referenced regulations.

The State shall administer the NPDES Program consistent with this MOA, the CWA, applicable federal regulations, promulgated effluent guidelines and State law and regulations issued pursuant thereto.

Each of the parties has responsibilities to assure that the requirements of the National Pollutant Discharge Elimination System are met. The parties agree to maintain a high level of cooperation and coordination between State and EPA staffs in a partnership to assure successful and effective administration of the NPDES Program. In this partnership, the EPA shall provide to the Division of Water Resources, technical and legal assistance as herein provided and in accordance with the State/EPA agreement.

It is the goal of both the Division of Water Resources and EPA to minimize the flow of documents. To this end, both parties further agree to cooperate in the development of an automatic data processing (ADP) system and other systems which will allow for efficient and effective implementation by the State of the NPDES Program.



The EPA shall provide, on a continuing basis and in a timely fashion to the Division of Water Resources, information relative to proposed, revised, new, promulgated, remanded or withdrawn or suspended regulations and to further advise the State of results of cases pertaining to the NPDES program in general, which could impact the implementation of the program at the State level.

The Division of Water Resources is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits issued by the State and those issued by the EPA and subsequently accepted and transferred to the Division of Water Resources. The annual State Section 106 Program Plan shall be the document which establishes strategies and priorities of the specific implementation of compliance monitoring, enforcement and pretreatment.

All Evidentiary Hearings properly filed for by permittees in accordance with 40 CFR Part 124.74 shall be retained by EPA. EPA shall be responsible for resolving issues by these Hearings and the Division of Water Resources shall retain its rights under Section 401 of the CWA to certify or not, to any change in issued NPDES permits which result from resolution of Adjudicatory Hearings subject to this section.

If requested by either party, meetings will be scheduled between the Division of Water Resources and EPA to review specific operating procedures, resolve problems or discuss mutual concerns involving the administration of the NPDES Permit Program.

The EPA shall assess the Division of Water Resources' administration of the NPDES Program, from time to time, for consistency with the CWA, this MOA and all applicable Federal regulations. This assessment shall be accomplished through the review of permits, reports and enforcement actions

submitted by the Division of Water Resources to EPA, in accordance with this MOA. The Regional Administrator may consider as a part of this assessment, comments concerning the Division of Water Resources' administration of the NPDES Permit Program documented and received by permittees, the public, and appropriately involved Federal and local agencies. Copies of any such comments received by the Regional Administrator shall be forwarded to the Chief. When these assessments are made, the EPA shall submit a written report to the Chief advising the particulars of the assessment and whether or not the State is satisfactorily administering the NPDES Program.

This MOA shall be reviewed jointly at least annually by the Division of Water Resources and the Regional Administrator during the preparation and evaluation of the annual program plan.

Either party may initiate action to modify this MOA.

Following two (2) years of administration by the Division of Water Resources with satisfactory assessment of such State administration, the EPA agrees to renegotiate this MOA to reflect and provide for a significant lesser overview role of the State and to significantly reduce, where possible, the categories of dischargers subject to EPA review.

As a part of future annual State Section 106 Program Plans, EPA and the Division of Water Resources shall agree upon a list of industrial and municipal facilities to be designated major dischargers during the succeeding fiscal year for the purposes of establishing priorities for permit issuance, compliance inspection frequency and transmission of information to EPA. Until such future designation is made, the current list of major dischargers identifying 121 facilities will be used.



## II. Permit Review and Issuance

### A. General

It is recognized by the Division of Water Resources and the EPA that the CWA and regulations adopted pursuant thereto provide that upon approval of a state program for NPDES, NPDES permits subject to such program will be issued by the Division of Water Resources and not EPA. Further, EPA maintains an overview role and may object to conditions of NPDES permits. Therefore, it is in the interest of the EPA and the Division of Water Resources to reach an agreement which specifies the details of the EPA overview of NPDES permits to be issued by the State.

### B. Waiver of EPA Review of State-Issued NPDES Permits

1. Except as hereinafter expressly provided, EPA waives the right to review, object to, or comment upon State-issued permits under 402(d),(3), (e) or (f) of the CWA for all categories of discharges except:
  - a. Discharges which may affect the waters of another State.
  - b. Discharges proposed to be regulated by general permits.
  - c. Discharges from POTWs with a daily average discharge exceeding 1 million gallons per day.
  - d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day.
  - e. Discharges from any major discharger or from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122, dated May 19, 1980.
  - f. Discharges from other sources with a daily average discharge exceeding 0.5 million gallons per day.

2. The Regional Administrator retains the right to terminate the foregoing waiver as to future permit actions, in whole or in part, by sending the Chief written notice of termination at least sixty (60) days before such termination shall be effective, except where EPA cannot practically give this much advance notice.



- C. Transmission of Information to Division of Water Resources Upon Program Transfer
1. The Regional Administrator shall transfer all NPDES files to the Chief at the time of program approval except those for which EPA maintains jurisdiction, as delineated below or those documents involved in litigation that have not yet been filed in court.
  2. All files transferred to the Chief shall be on microfiche, except for pending permit applications and support files for permit issuance, which consist of all relevant information collected before approval of the State Program and not already in the possession of the Chief, and including the record of any proceedings, enforcement action, compliance reports, etc. Pending permit application files shall be transferred to the Chief, subject to the following:
    - a. Commencing immediately, the Regional Administrator shall begin preparation for transferral to the Division of Water Resources, a list of all pending NPDES permit applications received by EPA. The list will include the name of each discharger, SIC Code, and specifically designate whether the application is:
      - (1) administratively complete;
      - (2) administratively incomplete or otherwise deficient; or
      - (3) of undetermined status.
    - b. Upon receipt of the above list, the Division of Water Resources shall identify the priority order to be used by EPA to transfer application files to the Division of Water Resources.
    - c. To the extent practicable, the Regional Administrator shall, within one hundred eighty (180) days of EPA's approval of West Virginia's NPDES Program, complete the transferral of all NPDES permit application files (including those for Federal installations),

and any other relevant data collected by the Regional Administrator prior to approval of West Virginia's Program.

- d. Subsequent to EPA's approval of West Virginia's Program, the Regional Administrator shall forward all appropriate information received thereafter relating to the NPDES permit applications to the Division of Water Resources, no later than fifteen (15) days after the receipt of such information, for those installations.
  - e. All NPDES permit applications in Category (1) above shall be transferred without further actions by the Regional Administrator.
  - f. All NPDES permit applications in Category (2) above shall be transferred with a document prepared by the EPA which specifies the information needed to make the application administratively complete or identify other deficiencies.
  - g. All NPDES permit applications in Category (3) above shall have completeness determinations made by the Regional Administrator prior to transfer of the file to the Division of Water Resources and a document prepared by the EPA and submitted to the Division of Water Resources which specifies if the application is complete or not and if not complete, such document shall specify the information needed to make the application administratively complete or identify other deficiencies.
3. Where the Chief has not adopted and accepted NPDES permits issued by EPA under Section 3.03 of Chapter 2 of the W. Va. Administrative Regulations, EPA shall maintain jurisdiction over those permits.
  4. The retention of EPA jurisdiction over any permits shall include the processing of any permit appeals, modification requests or variance requests; the performance of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request



or variance request is not finally resolved when the Federally issued permit expires, EPA will retain jurisdiction until the matter is resolved, unless the Division of Water Resources and the Regional Administrator make some other arrangement.

5. The Division of Water Resources shall become the sole permit issuing authority and the Administrator shall suspend the issuance of permits upon approval of the State Program.
6. If an NPDES applicant or permittee contacts the Regional Administrator concerning either an application or a permit, except for those covered in 3. and 4., above, the Regional Administrator shall inform the applicant of the Division of Water Resources' role and refer all inquiries concerning the specific NPDES application or permit to the Division of Water Resources.
7. The Division of Water Resources shall not issue a permit on the basis of any application received from EPA resulting from this transfer, which the Regional Administrator identifies as incomplete or otherwise deficient until the Chief receives information from the applicant sufficient to complete the application or correct the deficiency.
8. The Regional Administrator will forward to the Chief copies of all inspections performed by EPA and provide in writing to the Chief documentation advising of any enforcement action the EPA pursues against a violator.
9. Following EPA audit or any other review of the State NPDES Program, the Regional Administrator will forward a draft report of any such audit or review to the Chief for his review and comment in advance of release of any final report.

D. Transmission of Information to EPA

1. The Division of Water Resources shall transmit to the Regional Administrator:
  - a. Copies of permit program forms as developed or significantly modified.
  - b. Copies of all complete NPDES permit applications received by the Chief except those for which permit review has been waived.
  - c. Whenever requested by EPA, copies of permit applications for which permit review has been waived.
  - d. Notice of every action taken by the Division of Water Resources related to the consideration of any permit application or general permit, including a copy of each draft permit and any conditions, requirements or documents which are related to the draft permit, except for those for which permit review by EPA has been waived.
  - e. Whenever requested by EPA, copies of notices for which permit review has been waived.
  - f. A copy of every State-issued NPDES permit, along with any and all terms, conditions, requirements, or documents which are related to or affect the authorization of the permit.
2. The Division of Water Resources shall transmit a copy of each draft general permit, except those for separate storm sewers, to the EPA Director, Office of Water Enforcement and Permits at the same time such draft is transmitted to the Regional Administrator.
3. The Chief shall transmit to the EPA:
  - a. Upon request of the Regional Administrator, notices from publicly-owned treatment works for actions in accordance with 40 CFR Part 122.61(b) and 40 CFR Part 403.



- b. A copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permit, except those for which permit review has been waived by EPA and for which EPA has not otherwise requested receipt, if:
- (1) The Regional Administrator requests the information; or
  - (2) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or
  - (3) Significant comments objecting to the tentative determination and draft permit have been presented at the public hearing or in writing pursuant to the public notice.
- c. The Division of Water Resources shall keep such records as the Regional Administrator may reasonably require to ascertain whether the State program complies with the requirements of the CWA or 40 CFR Part 123.
4. The Division of Water Resources will forward to EPA copies of compliance inspection reports on major dischargers and copies of correspondence to major dischargers regarding non-compliance.
5. Upon program approval, the Chief shall prepare quarterly and annual noncompliance reports on NPDES permittees and submit to the Regional Administrator.
- a. The Chief shall submit quarterly narrative reports for major facilities, as elsewhere defined and agreed upon through this document. The report shall:
- (1) Be subcategorized as non-POTWs, POTWs and Federal permittees.
  - (2) Be alphabetized by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be listed first.

- (3) For each entry, include in the following order the following information:
- (a) Name, location and permit number of the noncomplying permittee.
  - (b) Brief description of noncompliance for that permittee.
  - (c) Date(s) and brief description(s) of action(s) taken by Chief to insure compliance.
  - (d) Status of resolution of the noncompliance.
  - (e) Any details which tend to explain or mitigate the instance(s) of noncompliance, provided that such reports be kept confidential by EPA if the State is contemplating or is taking enforcement action against a particular facility for which these details are submitted.
- b. These quarterly noncompliance reports (QNCRs) shall be submitted in accordance with the schedule required by EPA regulations effective at the time. Currently, this is prescribed by 40 CFR Part 122.18(e).
- c. Statistical reports shall be submitted on an annual basis by the Chief on minor NPDES permittees indicating the total number reviewed, the number of noncomplying minor permittees, the number of enforcement actions and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in 40 CFR Part 122.18(a)(2).
- d. A separate list of minor discharges which are one or more years behind in construction phases of the compliance schedule shall be submitted and alphabetized by permittee name and permit number.
- e. These annual reports shall be prepared for a calendar year basis and completed within 60 days after the end of the calendar year.



E. Processing of NPDES Applications

1. In accordance with Section D., copies of complete NPDES permit applications shall be forwarded to the Regional Administrator immediately following the Division of Water Resources' determination that the application is complete. The draft permit for facilities for which the Regional Administrator has not waived review shall be submitted to the Regional Administrator concurrently with the complete application.
2. The Regional Administrator has up to thirty (30) days after receipt of the copy of the draft permit to make general comments upon, objections to or recommendations with respect to the draft permit. If the Regional Administrator requires additional time to supply specific grounds for objection, the Regional Administrator shall notify the Chief in writing during the thirty (30) day period of need for a time extension, and specify the length of the requested extension, but in no case shall it exceed ninety (90) days from the time he receives the draft permit. Such written notification shall provide information on the general objection of EPA to the draft permit.
3. In the event the Regional Administrator fails to provide the general objection or notify the Division of Water Resources of the request for an extension within such thirty (30) day period, the application shall be deemed complete with respect to EPA.
4. In the case of draft general permits, EPA shall have 90 days from the date of receipt of the draft general permit to comment upon, object to or make recommendations with respect to the draft general permit.

5. The written notification by the Regional Administrator , or the Director, Office of Water Enforcement and Permits, as appropriate, shall include:
  - a. A statement of reasons for the objection (including the section of the CWA or regulation thereunder that supports the objection), and
  - b. The actions that must be taken by the Chief to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator).
  
6. The Regional Administrator or Director, Office of Water Enforcement and Permits objection to the issuance of a draft permit must be based upon one or more of the following grounds:
  - a. The permit fails to apply, or to insure compliance with any applicable requirement of 40 CFR Part 123;
  - b. In the case of a draft permit for which notification to the Administrator is required under section 402(b)(5) of the CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;
  - c. The procedures followed in connection with formulation of the draft permit failed in a material respect to comply with procedures required by the CWA or by regulations thereunder or by the MOA;
  - d. Any finding made by the Chief in connection with the draft permit misinterprets the CWA or any guidelines or regulations under the CWA, or misapplies them to the facts;



- e. Any provision of the draft permit relating to the maintenance of records, reporting, monitoring, sampling or provision of any other information by the permittee are inadequate, in the judgement of the Regional Administrator to assure compliance with permit conditions, including effluent standards and limitations required by the CWA, by the guidelines and regulations issued under the CWA, or by the draft permit;
  - f. In the case any draft permit with respect to which applicable effluent standards or limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the draft permit, in the judgement of the Regional Administrator, fails to carry out the provisions of the CWA or any regulations issued under the CWA; the provisions of this subparagraph apply to determinations made pursuant to 40 CFR Part 125.3(c)(2) in the absence of applicable guidelines and best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403, or 405, as the case may be; The objection by the Regional Administrator shall take into consideration the draft permit terms and conditions provided in accordance with Section II. F.8. this MOA.
  - g. Issuance of any draft permit would in any other respect be outside the requirements of the CWA, or regulations issued under the CWA.
7. Upon receipt of EPA's general objection, the Division of Water Resources shall promptly notify the applicant and advise that the time provided by the regulations for the Chief to act on the application may be extended, due to EPA's general objection to the permit.

8. Upon receipt of EPA's specific objection, the Division of Water Resources shall promptly notify the applicant that the EPA has objected to the issuance of the permit and the time provided by the regulations for the Chief to act on the application will be extended. This notification will include all comments, recommendations and objections made by EPA on the draft permit and will request the applicant to provide the information necessary to comply with the recommendations or to remove the cause for EPA objection. If the cause for EPA objection was based on procedural aspects or judgment by the Division of Water Resources varying from that of the Regional Administrator, rather than due to any cause by the applicant, the Chief shall advise the Regional Administrator of the reasoning, as the situation demands.
9. Prior to notifying the Chief on an objection based upon any of the grounds set forth above, the Regional Administrator:
  - a. Shall consider all data transmitted to the EPA by the Division of Water Resources.
  - b. May, if the information provided is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, request the Chief to transmit to the Regional Administrator the complete record of the permit proceedings before the Division of Water Resources, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within thirty (30) days of receipt of the Division of Water Resources submittal, it shall constitute an interim objection to the issuance of the permit and the full period of time specified (90 days) shall



be allowed, provided the Regional Administrator's request for information on the specific inadequacies of the draft permit is submitted with the request for the complete record.

10. Within ninety (90) days of receipt by the Chief of an objection by the Regional Administrator, the State or interstate agency may request that a public hearing be held by the Regional Administrator on the objection. The public hearing, in accordance with the procedures of 40 CFR Part 124.12(c) and (d) shall be held, and public notice provided in accordance with 40 CFR Part 124.10, whenever requested by the State or interstate agency.
11. A public hearing held in accordance with the above provisions shall be conducted by the Regional Administrator within sixty (60) days of the request by the State or interstate agency.
12. Following the public hearing, the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.
13. If no public hearing is held and the State does not resubmit a permit revised to eliminate the objection of the Regional Administrator within ninety (90) days of receipt of the objection, the Regional Administrator may issue the permit in accordance with 40 CFR Parts 121, 122 and 124 and any other guidelines and requirements of the CWA. The EPA shall maintain jurisdiction over any permit it issues, accordingly.
14. If a public hearing is held and the Regional Administrator does not withdraw the objection, and the State does not resubmit a permit revised to eliminate the objection or modified objection within thirty (30) days of the date of the receipt of the Regional Administrator's notification aforementioned, the Regional Administrator

may issue the permit in accordance with 40 CFR Parts 121, 122 and 124 and any other guidelines and requirements of the CWA. The EPA shall maintain jurisdiction over any permit it issues, accordingly.

{NOTE: In the case of draft general permits for discharges other than separate storm sewers, the Director, Office of Water Enforcement and Permits should be substituted for Regional Administrator whenever it appears above.}



## F. Formulation of Draft Permits

1. Concurrent with the staff of the Division of Water Resources determining an NPDES permit application is complete, a draft permit shall be prepared and subjected to public notice with copies of the complete permit application and draft permit for all categories of discharges, except those for which EPA has waived review, forwarded to EPA.
2. On NPDES permits for POTWs, where construction is required to obtain compliance with Section 301(b)(1) of the CWA, a compliance schedule for the construction of facilities shall be included, in accordance with the provisions of Chapter 20-5A-7(b).
3. In acquiring permit information for privately-owned treatment works, pursuant to Chapter 2, Section 4.04(b)(3) of the W. Va. Administrative Regulations, the Chief will require all users to be identified, except for residential users discharging only domestic waste.
4. All permits will contain conditions required by 40 CFR Part 122.60(a)(2), (c)(2) and (d).
5. All NPDES permits issued to major dischargers shall require copies of DMRs and non-compliance reports be submitted to EPA.
6. The types of samples required by 40 CFR Part 122.53(d)(7) will be required by NPDES permit applicants.
7. The Division of Water Resources and EPA acknowledge that during the period of application review and formulation of the draft permit, effective cooperation is essential. Therefore, EPA agrees to provide, when requested and to the extent possible, appropriate staff to advise and assist the staff of the Division of Water Resources.

8. On NPDES permits up for reissuance for categories of dischargers where BAT guidelines are not finalized, EPA agrees to make the necessary EPA staff available, on specifically requested applications, with the expertise to assist in development of permit terms and conditions which should be in the permit, and further, agrees to provide personnel to defend the terms and conditions of the permit in such cases where the permittee appeals the permit to the State Water Resources Board.
9. EPA agrees to assist the Division of Water Resources in the determination of fundamentally different factors, in accordance with Sections 301(b), 304, and 307(b) of the CWA and any regulations promulgated pursuant thereto, where the applicant claims such, when submitting the permit application to the Division of Water Resources.

G. Public Notice

1. The Division of Water Resources shall issue a permit only after public notice and opportunity for a public hearing.
2. The Division of Water Resources, upon its determination that an application is complete, shall concurrently prepare a draft permit and provide public notice and opportunity for a public hearing. Concurrent with the public notice, copies of the public notice, any required fact sheet and the draft permit, shall be forwarded to the applicant and EPA, except for those categories of dischargers where EPA has waived review.
3. The Division of Water Resources shall consider all comments received pursuant to the public notice in preparing the final permit.



#### H. Permit Issuance

1. After the public notice period and, if required, a public hearing, the final permit shall be issued, unless the Division of Water Resources proposes to issue a final permit which differs significantly from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment on the draft permit.
2. If any of the situations arise as delineated above, a proposed permit shall be forwarded to EPA for review and the procedures of Section II.E. shall be followed.
3. Within thirty (30) days after the EPA receives the proposed permit from the Division of Water Resources, the Regional Administrator shall provide in writing to the Chief, any comments or objections to the issuance of the proposed permit.
4. If no comments or objections are provided by the Regional Administrator during the thirty (30) day period, the Chief shall issue the permit.
5. If comments or objections, based on the proposed permit, are received from the Regional Administrator within the thirty (30) day period, the Chief shall promptly notify the applicant and follow the procedures outlined in Section II.E., just as for a draft permit on which EPA has documented objections.
6. The Division of Water Resources shall not issue an NPDES permit when the Regional Administrator has objected in writing.
7. All NPDES permits issued shall include an expiration date not to exceed five (5) years from the date of issuance.

I. EPA Review of Permit Modifications

1. When the Division of Water Resources proposes to modify a permit, not subject to the waiver provisions of Section II.B., the draft permit shall be submitted to EPA, put to public notice and issued in accordance with the outlined procedures of Section II.E., F., G., and H.

J. Variance Requests

1. When the Chief receives a completed request for a variance in accordance with Section 4.04(d), (e), and (f) of the State regulations, he shall process the variance request in accordance with Sections 10.02 of the regulations.
2. If the Chief grants a variance request in accordance with Section 10.02(a), the variance shall be included in a draft permit and the procedures of Part II. E., F., G., H., and I. of this Memorandum followed.
3. If the Chief sends to EPA with a written concurrent or sends to EPA without recommendation a completed variance request in accordance with Section 10.02(b) of the regulations, EPA shall have 90 days from receipt to approve or deny the request and to notify the Division, unless the Regional Administrator finds it necessary to obtain the review and assistance of EPA headquarters, in which case EPA shall have 150 days to make a decision.
4. If EPA denies a variance request under Section 10.02(b) of the regulations, the Chief shall so notify the requestor. If EPA approves such a variance request, the State may prepare a draft permit. The procedures of Sections II. E., F., G., H., and I. of this Memorandum shall be followed.

5. Any notice of EPA's denial of a variance request, and any public notice of a draft permit resulting from a variance request approved by EPA, shall identify the procedures for appealing the variance decision contained at 40 CFR Part 124.64.



### III. Pretreatment

#### A. General

The EPA and the Division of Water Resources recognizes that it is necessary to control pollutants from indirect dischargers which pass through or interfere with the treatment processes in POTWs or which may contaminate sewage sludge. In recognition of this, the EPA promulgated General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403. In this Part, a state must develop a requisite pretreatment program before making application for NPDES authority. The State initially prepared such a program and submitted to the Regional Administrator in August, 1979. Subsequently, revisions requested by EPA were made and the document was resubmitted for approval on December 29, 1980. Following receipt of EPA consultant comments, a second revised version of the document was submitted on October 21, 1981.

This section of the MOA is to delineate the Division of Water Resources' and EPA's responsibilities in carrying out the establishment and enforcement of National Pretreatment Standards (NPS) for new and existing sources pursuant to Section 307(b) and (c) of the CWA and 40 CFR Part 403.

Nothing in this section is intended to affect any pretreatment requirement, including any standards or prohibitions established by State law, as long as the State requirements are not less stringent than (1) any set forth in the NPS, or (2) other requirements or prohibitions established under the CWA or applicable regulations.

B. State Program

1. The Division of Water Resources has primary responsibility for:
  - a. Enforcement against discharges prohibited by 40 CFR Part 403.5;
  - b. Application and enforcement of any NPS established by the Administrator in accordance with Section 307(b) and (c) of the CWA;
  - c. Review, approval, and oversight of Publicly-Owned Treatment Works (POTW) Pretreatment Programs to insure that NPS are enforced in accordance with the procedures outlined in 40 CFR Part 403.11;
  - d. A POTW Pretreatment Program incorporated in permits issued to POTWs as required in 40 CFR Part 403.8 and as provided in Section 402(b)(8) of the CWA;
  - e. Review and approval of modifications of categorical NPS to reflect removal of pollutants by a POTW and enforcement of related conditions in the POTW permit.
2. The Division of Water Resources shall carry out inspection, surveillance, and monitoring procedures which will determine (independent of information supplied by the POTW) compliance or noncompliance by the POTW with pretreatment conditions incorporated into its permit.

The Division of Water Resources will also carry out inspection, surveillance, and monitoring procedures which will determine (independent of information supplied by the industrial discharger) if the industrial discharger is in compliance with the NPS. The number of inspections to determine compliance shall be agreed upon as part of the annual Section 106 program plan process and shall be consistent with State resources.

C. NPS Categorical Standards

The Division of Water Resources shall review requests from industrial dischargers or POTWs for industrial subcategory determinations received after the effective date of a NPS. The Division of Water Resources shall make a written determination as to whether the industrial discharger does or does not fall within that particular subcategory, in accordance with 40 CFR Part 403.6.

The EPA Enforcement Division Director waives the right to review the Chief's determinations.

D. Categorical NPS Credit Removal

The Division of Water Resources shall review POTW applications for removal credit and either approve or disapprove, in accordance with 40 CFR Part 403.7. The Regional Administrator waives the right to review and object to POTW submissions requesting removal credit.

E. POTW Pretreatment Program Approvals

Following determination by the Division of Water Resources that the submission of a request for a local POTW Pretreatment Program meets all appropriate requirements of 40 CFR Parts 403.9 and 403.11, the Chief shall provide a thirty (30) day public notice of the submission and opportunity for a public hearing. If written comments received are insufficient to warrant a public hearing, the Division of Water Resources shall approve the submission.



F. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors

The Division of Water Resources shall conduct an initial review of all categorical pretreatment standards fundamentally different factors variance requests from indirect dischargers and either deny the request and notify the indirect discharger or send the request to the EPA Enforcement Division Director with a recommendation for approval, in accordance with 40 CFR 403.13. EPA shall notify the State whether it denies or approves the variance request and the Division of Water Resources shall advise the indirect discharger making the request. If the EPA does not notify the Division of Water Resources of a determination within forty-five (45) days after its receipt, the Division of Water Resources shall consider the variance request denied and so notify the requester.

#### IV. Compliance Monitoring and Inspection

The State will expand its compliance monitoring capability to cover the entire State. The State will conduct a number of inspections to administer the program.

Inspections shall be of the following types:

- A. Compliance Sampling Inspection (CSI) - The Compliance Monitoring Section conducts these. Reports are to be sent to EPA for review.
- B. Compliance Evaluation Inspection (CEI) - The field inspection force is to be used for this function. This is a new responsibility for them and training will be required.
- C. Performance Audit Inspection (PAI) - The Division currently has a QA Officer whose projected responsibility will include PAIs.
- D. Routine Periodic Facility Inspections - conducted by Field Operations Inspections.
- E. Bioassays - conducted by the Biology Section for NPDES Compliance work and general effluent categorization.

Joint inspections (EPA and DWR) and/or independent EPA inspections shall be coordinated with DWR's Monitoring Section. Requests by EPA for specific site monitoring will be processed as they are now, however, the Division will have the program and our needs will take precedence. Copies of inspections conducted by EPA independent of DWR shall be forwarded to DWR for inclusion in State files in a timely manner.

The Division shall inspect every major at least once a year utilizing either a CSI, CEI or PAI. The number and type of other inspections will be determined by the Division, depending upon the need to assess permit compliance.

## V. Enforcement

### A. General

It is recognized by the Division of Water Resources and the EPA that an effective and aggressive enforcement program is necessary to obtain compliance with the requirements of the NPDES program. It is therefore necessary that these agencies coordinate any enforcement activities. A wide range of criminal, administrative and judicial actions may be brought by Federal and State laws to insure compliance. However, with the exceptions covered in II.C.3. and 4., the State will have the primary responsibility for taking appropriate enforcement actions against persons in violation of NPDES requirements, detected by either the State or EPA.

### B. State Enforcement Action

The Division of Water Resources shall insure that all appropriate enforcement proceedings are initiated within thirty (30) days after notification by the Regional Administrator of an alleged violation. The Regional Administrator shall be advised, from time to time, on the progress of any such ensuing enforcement proceedings. The Regional Administrator may participate in any enforcement proceedings and/or shall provide staff assistance upon request by the Chief.

Any civil penalty sought or agreed upon by the Chief shall be appropriate to the violation.

### C. EPA Notification to the Division of Water Resources

This MOA shall not be construed to limit the authority of the EPA to take action pursuant to Section 309 of the CWA, but, to provide the required enforcement activities, and for the coordination of enforcement activities, the EPA shall notify the Division of Water Resources of an alleged violation concurrently with the alleged violator.



D. EPA Enforcement Action

In the event the EPA pursues enforcement action against an NPDES violator, the EPA shall notify the Division of Water Resources. This notification shall be made regardless of the existence or extent of previous communication between EPA and the Division of Water Resources on the matter.

E. Endangerment to Health

The Division of Water Resources will insure that any pollution source or combination of sources which is presenting an imminent and substantial endangerment to the health or welfare of persons, is immediately subjected to appropriate enforcement proceedings, including, but not limited to, a request for injunctive relief.

F. Laboratory Assistance

The EPA will provide, through the Wheeling Field Office, laboratory assistance for DWR field inspectors in the Northern Panhandle area. This will include sample analysis and support that may later be needed.

## VI. Confidentiality of Information

- A. Any information obtained or used in the administration of the NPDES program shall be available to EPA upon request without restriction.
- B. If the information has been submitted to the State under a claim of confidentiality, the State will submit that claim to EPA when providing information under this section. The claim of confidentiality shall be treated in accordance with the requirements of 40 CFR Part 2.
- C. The Chief shall deny any claim of confidentiality related to effluent data, application forms, or permits under the NPDES program.
- D. EPA shall furnish to the State the information in its files not submitted under a claim of confidentiality which the State needs to implement its program. EPA shall furnish to the State information submitted to EPA under a claim of confidentiality, which the State needs to implement its program, subject to the conditions in 40 CFR Part 2.

## VII. Term of Agreement

This Memorandum of Agreement will take effect upon program approval by the Administrator of the EPA, pursuant to Section 402(b) of the CWA and will remain in effect until revised or terminated in writing, by the parties involved.

The State Water Resources Board is proposing amendments to the West Virginia NPDES regulations. The proposed amendments shall be filed in the Secretary of State's Office and publicly noticed on February 18, 1982 (see Appendix A for proposed amendments). DWR and EPA agree that the State's NPDES program cannot be approved until after these regulations have been adopted, and are fully effective.

Dated \_\_\_\_\_

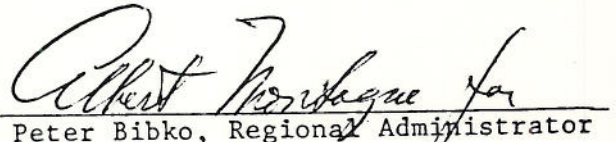
by



David W. Robinson, Chief  
Division of Water Resources

Dated 2-12-82

by



Peter Bibko, Regional Administrator  
Environmental Protection Agency

Dated 5/10/82

approved by



Anne M. Gorsuch, Administrator  
Environmental Protection Agency

**Acting**