

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6  
CONCERNING THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

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## I. GENERAL

The purpose of this Memorandum of Agreement, hereafter "MOA" is to establish policies, responsibilities and procedures pursuant to Title 40 Code of Federal Regulations (40 CFR) Parts 123, 403, 501 and 503 for program commitments between the Texas Commission on Environmental Quality (TCEQ or commission) and the Environmental Protection Agency, Region 6 (EPA) for administration of the National Pollutant Discharge Elimination System (NPDES) program by the TCEQ. This MOA shall constitute the agreement between the TCEQ and EPA. This MOA does not restrict EPA's oversight of TCEQ's administration of the NPDES program.

The TCEQ has primary responsibility for implementing the NPDES program for Texas, herein called the Texas Pollutant Discharge Elimination System (TPDES) program, for facilities within its jurisdiction. The TCEQ has authority under Texas Water Code (TWC) §§26.121 and 26.027 to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes except for those facilities classified as 1311, 1321, 1381, 1382, 1389, 4922, and 4925, which are regulated by the Texas Railroad Commission, under TWC §26.131. The TCEQ will not regulate those discharges under the Texas Railroad Commission jurisdiction, including oil and gas construction site runoff. Some activities within these SIC codes are regulated by the TCEQ, and a list of these activities is included in Appendix A. The TCEQ has authority under TWC §§26.121 and 26.047 to regulate discharges from publicly-owned treatment works (POTWs), privately-owned treatment works, and concentrated animal feeding operations (CAFOs). The TCEQ has authority to regulate discharges of stormwater associated with industrial activity and discharges of stormwater from municipal separate storm sewer systems. The TCEQ has primary responsibility for implementing a Pretreatment Program in accordance with TWC §26.047 and TCEQ rules contained in Title 30 Texas Administrative Code (30 TAC) Chapter 315, and a Sewage Sludge Program in accordance with Texas Health and Safety Code (THSC) §§361.011 and 361.024, and TCEQ rules contained in 30 TAC Chapter 312. TCEQ's authority for these programs is discussed in detail in the Attorney General's Statement.

The TCEQ shall operate the TPDES program in accordance with the Clean Water Act as amended, applicable federal regulations, applicable TCEQ legal authority, applicable state statutes and rules, and taking into consideration published EPA policy. The TCEQ has the primary responsibility to establish the TPDES program priorities, so long as they are consistent with Clean Water Act and NPDES goals and objectives. For the purposes of this MOA, all references to "days" are calendar days unless otherwise noted.

The strategies for issuance, compliance monitoring and enforcement of permits, as established by this MOA, may be set forth in more detail in work plans for the Clean Water Act (CWA) §106 water quality management grants awarded to TCEQ by EPA (herein referred to as TCEQ CWA §106 program grants), as well as in other TCEQ/EPA agreements. Each grant award contains terms and conditions regarding the appropriate use(s) of the respective grant funds. This MOA and TCEQ CWA §106 program grants shall be consistent with each other. Either the EPA or the TCEQ may initiate action to modify this MOA at any time, but this MOA may be modified only by the written consent of both agencies.

## II. SCOPE OF AUTHORIZATION

The TCEQ is authorized to administer NPDES permitting, compliance monitoring and enforcement activities, NPDES pretreatment activities, and NPDES sewage sludge program activities in Texas. This authority applies on land within the State of Texas and extends 3.0 statute miles<sup>1</sup> offshore into the Gulf of Mexico. TCEQ does not have NPDES authority for discharges from oil and gas facilities classified by SIC codes 1311, 1321, 1381, 1382, 1389, 4922, and 4925 or discharges located on Indian Country (federally established Indian reservations, etc.).

<sup>1</sup> A statute mile is used for measurements of distance on land. (1 statute mile = 5,280 feet)

### III. STATE AND FEDERAL RESPONSIBILITIES

The TCEQ program equivalent to NPDES under CWA §402 is the TPDES program, adopted under TWC Chapter 26, and implemented through TWC Chapter 26, THSC Chapter 361, and applicable TCEQ rules contained in Title 30 of the Texas Administrative Code (30 TAC).

#### A. TCEQ RESPONSIBILITIES

TCEQ shall:

1. Exercise the legal authority through TCEQ regulations and the state statutes required by the CWA to carry out the TPDES, Pretreatment, and Sewage Sludge programs. The legal authority to carry out the requirements for permitting (40 CFR §123.25), compliance evaluation (§123.26), enforcement authority (§123.27), the pretreatment program (§403.10), and the sewage sludge program (40 CFR §§501.15-501.17) are described in more detail in the Attorney General's Statement;
2. Process all incoming applications for TPDES permits in accordance with processing time standards as specified in 30 TAC Chapter 281;
3. Establish a permit term not to exceed five years for all TPDES permits (30 TAC §305.127(1)(C));
4. Require that a permittee submit an application to renew its permit not less than 180 days before its existing permit expires, unless permission for a later date has been granted by the executive director (30 TAC 305.65);
5. Process an EPA written request for issuance or reissuance of a specified permit within an agreed upon timeframe;
6. Process Pretreatment program requests and modifications, including local limit modifications, and conduct pretreatment audits, performing technical evaluations of all pretreatment programs (described in Section VI. of this MOA);
7. Evaluate and assess compliance with enforcement documents including permits, administrative orders, consent orders, and court orders which deal with CWA issues including effluent limitations reporting, compliance schedules, operation and maintenance, pretreatment, and sewage sludge;
8. Monitor compliance with approved pretreatment programs and with pretreatment standards, including industrial users outside approved POTW pretreatment programs;
9. Maintain an effective enforcement program by taking timely and appropriate actions for TPDES permit violations, unpermitted discharges, sewage sludge and pretreatment violations in accordance with Texas statutes, 30 TAC, federal NPDES requirements, and Clean Water Act. TCEQ will use EPA national and regional policies and guidance to the extent there is no conflict with Texas statutes, TCEQ rules, a specific state policy, or guidance adopted by TCEQ. TCEQ agrees to consider EPA national and regional policies and guidance when adopting corresponding or related state policies and guidance and will avoid state policies or guidance that would conflict with CWA §402(b) or applicable federal regulations or limit TCEQ's ability to implement the NPDES program;
10. Maintain adequate file information relating to each TPDES permit. This information will be readily available to EPA and shall include the following information:
  - a. Permit application;

- b. Current issued permit;
  - c. Draft permit submitted for public notice;
  - d. Public notice;
  - e. Public comments received orally and in writing;
  - f. Fact sheet or statement of basis, including effluent data;
  - g. Inspection reports and compliance information;
  - h. Enforcement orders and documents related to other enforcement actions;
  - I. Discharge monitoring reports (DMRs), including whole effluent toxicity (WET) and toxicity reduction evaluation (TRE) information;
  - j. Documents related to pretreatment;
  - k. Sewage sludge related documents;
  - l. Stormwater related documents, including Storm Water Management Plans (SWMPs) and Pollution Prevention Plans (SWPPPs) submitted to TCEQ;
  - m. Requests for hearing, motions for reconsideration and rehearing, and any order issued by the commission; and
  - n. Other pertinent information, memoranda, and correspondence;
11. Make available to the public all permit applications, permits, effluent data, inspection reports and other documents pertaining to the TPDES program consistent with the Texas Public Information Act (Texas Government Code Chapter 552), 30 TAC §§305.45 and 305.48 which describe in detail the contents of applications, and 30 TAC §1.5 which describes those materials which may be considered confidential;
  12. Regulate by rule or general permit in accordance with TWC §26.040 certain categories of discharges, including CAFOs (as defined in 40 CFR §§122.23-122.24), while preserving the ability to require individual permits for particular facilities as needed;
  13. Serve as the initial recipient for all data groups identified in 40 CFR Part 127 and submit permit and enforcement data to EPA's national NPDES database as specified in 40 CFR Part 127;
  14. Submit to EPA the information described in TCEQ CWA §106 program grants and other related TCEQ/EPA agreements. Additionally, upon request by the EPA, the TCEQ shall submit information and allow access to files for evaluating the TCEQ administration of the TPDES program;
  15. Provide information needed by EPA for the NPDES Noncompliance Report (NNCR) in accordance with 40 CFR §123.45;
  16. Maintain an approved Continuing Planning Process (CPP) adopted by the Commission in accordance with 40 CFR §130.5. A separate document describes how the Texas Surface Water Quality Standards (30 TAC Chapter 307) are implemented. This document is titled the *Procedures to Implement the Texas Surface Water Quality Standards*, which is maintained consistent with 40 CFR §130.5(b)(6). These procedures are typically revised, as necessary, concurrently with the triennial review of the Texas Surface Water Quality Standards and as needed between standards revisions;
  17. Initiate procedures to amend, revoke and reissue, suspend, renew, or terminate permits upon the request of EPA. The TCEQ will process the request in a timely manner in accordance with applicable state law and 30 TAC Chapters 281 and 305 or may require the permittee to submit an updated application if further information is requested before proceeding;
  18. Assess and collect administrative penalties, seek civil penalties, and criminal remedies as appropriate for noncompliance and take whatever steps are

- necessary to ensure a return to compliance within the shortest time possible;
19. Ensure new federal NPDES regulations are incorporated into state regulations within one year of federal promulgation or within two (2) years if a state statute must first be enacted;
  20. Not oppose intervention in a contested case enforcement hearing on a TPDES permit by a citizen who has standing to intervene pursuant to 30 TAC §80.109;
  21. Ensure that the EPA is kept fully informed and up-to-date regarding:
    - a. Draft and final policy and program development documents related to the TPDES program;
    - b. Draft, proposed, and final regulations related to the TPDES program;
    - c. New case law, settlement agreements, and remands of state regulations related to the TPDES program; and
    - d. Draft, proposed, and final technical guidance and policies which pertain to the TPDES program;
  22. Provide the EPA with a timely opportunity for meaningful involvement and input in developing and establishing TPDES policies, rules, strategies, and guidance, as appropriate and practical;
  23. Administer the TPDES program in compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, §§42 USC 2000d et seq. All public comment regarding such compliance which are received in accordance with Commission rules will be considered, responded to, and acted upon appropriately;
  24. TWC §5.758 will not be used by TCEQ to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under CWA §402(b), EPA regulations implementing that Section, or this MOA, including but not limited to inspection, monitoring or information collection requirements that are required under CWA §402(b), EPA regulations implementing that Section or this MOA to carry out implementation of the approved federal program; and
  25. Ensure that any proposed revision of the TPDES Program is submitted to EPA for approval in accordance with 40 CFR §123.62(b).

## **B. EPA RESPONSIBILITIES**

EPA shall:

1. To the maximum extent possible, provide funding to the TCEQ to support this effort. It is recognized that it is the TCEQ's responsibility after program approval to run and manage the TPDES, Pretreatment, and Sewage Sludge Programs with or without the assistance of federal funding;
2. Ensure that the TCEQ is kept fully informed and up-to-date regarding:
  - a. Draft and final policy and program development documents related to NPDES;
  - b. Draft, proposed, and final regulations related to NPDES;
  - c. Draft, proposed, and final changes to federal data systems and support for those data systems;
  - d. New case law, settlement agreements, and remands of federal regulations related to NPDES; and
  - e. Draft, proposed, and final technical guidance and policies which pertain to NPDES;
3. Provide the TCEQ with a timely opportunity for meaningful involvement and

- input in developing and establishing CWA policies, rules, strategies, and guidance, as appropriate and practical;
4. Review and comment on draft permits, proposed permits, variance requests, pretreatment program actions, and any future TPDES program modifications in a timely manner in accordance with Section IV.C. of this MOA;
  5. Oversee the TCEQ administration of the TPDES, Pretreatment, and Sewage Sludge programs for consistency with the CWA, this MOA, any TCEQ/EPA agreements, EPA's National Oversight Guidance, the TCEQ CWA §106 program grants and all applicable federal regulations. Consistency includes meeting EPA's timely and appropriate criteria for initiation of formal enforcement actions, the assessment and collection of penalties in formal enforcement actions, and the assessment and collection of administrative penalties and judicial actions. EPA shall consider, as part of its assessment of the TPDES program, reports and enforcement actions submitted by the TCEQ and may also consider comments from permittees, the public, and Federal and local agencies concerning the TCEQ's administration of TPDES. EPA shall promptly transmit to TCEQ substantial or unresolved comments that EPA receives from permittees, the public, and federal and local agencies. Any information obtained or used by the TCEQ shall be made available to EPA upon request by EPA without restriction to claims of confidentiality. If such information has been submitted to the TCEQ under a claim of confidentiality, the TCEQ shall inform EPA of that claim. Information claimed confidential which is used to develop permit conditions shall be treated in accordance with 40 CFR Part 2, Subpart B, 40 CFR §122.7, and 30 TAC §1.5;
  6. Provide technical assistance regarding the interpretation of effluent guidelines for the development of draft and proposed permits within forty-five (45) days from receipt of a request. Mutually agreeable time extensions may be required; and
  7. Ensure that information relative to NPDES permittees including file information, names, addresses, and any known corresponding state permit information is submitted to TCEQ in a mutually agreed upon format and time frame.

### **C. JURISDICTION AND TRANSFER OF PERMITS AND ENFORCEMENT**

1. Authorizations by Rule  
TCEQ has promulgated several rules which authorize discharges into and adjacent to water in the state, in accordance with TWC §26.040. TCEQ agrees it will not authorize TPDES discharges into waters of the United States under these rules until they are amended to include all necessary NPDES requirements, in accordance with 30 TAC §321.141 and subject to public notice, opportunity for comment, TCEQ response to comments, and EPA review (as described in Section IV.C. of this MOA). These rules include:
  - a. 30 TAC Chapter 321, Subchapter E, relating to Surface Coal Mining, Preparation & Reclamation Activities;
  - b. 30 TAC Chapter 321, Subchapter F, relating to Shrimp Industry; and
  - c. 30 TAC Chapter 321, Subchapter L, relating to Motor Vehicle Cleaning Facilities.These rules may be either repealed and replaced by a general permit issued by TCEQ or amended to authorize discharges to waters of the United States only in accordance with NPDES requirements.



## IV. PERMIT PROCESSING, REVIEW AND ISSUANCE

The TCEQ is responsible for drafting permits, providing for public notice, providing for opportunity for public comment and hearings, issuing permits, amending (modifying) and renewing (reissuing) permits, and revoking permits in accordance with applicable State and Federal statutes, rules, and regulations and this MOA. All TPDES permits will be developed in accordance with procedures established for TPDES/NPDES permits.

### A. ADMINISTRATIVE REVIEW OF APPLICATIONS

The TCEQ shall be responsible for the administrative review of all wastewater and stormwater discharge permit applications within the TCEQ's jurisdiction. TCEQ will make completeness determinations and inform permittees of their application status, and application information will be submitted to EPA's national NPDES database in accordance with 40 CFR Part 127.

### B. PERMIT DEVELOPMENT

A technical review will begin promptly after an application is administratively complete, and a draft permit will be developed in accordance with State and Federal statutes, official guidance, agency policies, and regulations. Technology-based effluent limits will be at least as stringent as Effluent Limitations and Standards specified for categorical industries as found in 30 TAC Chapter 305, Subchapter P or secondary treatment as found in 30 TAC §305.535 and in Chapters 309 and 319. Disposal or use of sewage sludge will be regulated in accordance with 30 TAC §305.531, 30 TAC Chapter 312, 40 CFR Parts 123, 501 and 503, and site specific Best Professional Judgement. Permit requirements will be considered on a case-by-case basis and on best professional judgment in accordance with 40 CFR §125.3 as adopted by 30 TAC §308.1, when specific regulations do not apply to a particular discharge. The TCEQ will include standard provisions in TPDES permits as described in detail in the Permitting Program description, and TCEQ agrees that it will not refer to the defense afforded in TWC §7.251 and 30 TAC §70.7 in TPDES permits.

Water quality-based effluent limitations will be included in TPDES permits for all discharges to ensure compliance with approved water quality standards. Water quality-based effluent limitations are part of the federally approved program and the State will impose such limitations in TPDES permits unless technology-based effluent limitations are more stringent. Water quality-based effluent limitations and toxic controls will be developed in accordance with 30 TAC Chapter 307, §305.531(3), and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* which is maintained in a separate document within the Continuing Planning Process. The implementation procedures and 30 TAC Chapter 307 describe procedures for variances from surface water quality standards and the subsequent development of site-specific water quality standards. The following specific procedure will supersede procedures described in the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* approved by the Commission and in effect:

1. Development of Water Quality-Based Effluent Limitations for Discharges into the Rio Grande. Effluent limits will be derived using a methodology which allocates half the DO-related assimilative capacity of the river to Mexican discharges and half to Texas discharges. Each nation's discharges will be evaluated separately

assuming that the 50% of assimilative capacity available in the river is apportioned to them. The model will use all of the appropriate headwater flow. This methodology would only be used when Texas and Mexican dischargers are in proximity to one another. Otherwise, standard modeling techniques will be used.

### **C. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT REVOCATIONS AND ACTIVITIES AUTHORIZED BY RULE**

1. EPA waives the review of draft wastewater, stormwater, or sewage sludge permits except for the following categories:
  - a. Discharges to territorial seas of the United States;
  - b. Discharges or sewage sludge management which may affect another state(s), the Republic of Mexico, or Indian Country (federally established Indian reservation, etc.) other than the one in which the discharge originates;
  - c. Discharges from POTWs with permitted daily average flows greater than 1.0 million gallons per day (MGD);
  - d. Discharges from POTWs with approved pretreatment programs;
  - e. Discharges of uncontaminated cooling tower blowdown with permitted daily average flows greater than 500 MGD;
  - f. Discharges from all designated major facilities;
  - g. Discharges from all categorical industries as listed in 40 CFR Part 122 Appendix A;
  - h. Discharges from other sources with permitted daily average flows greater than 0.5 MGD, except for those facilities that discharge only non-process wastewater may be waived regardless of flow;
  - i. Class I sludge management facilities as defined in Section VII.C. of this MOA;
  - j. Permits for the disposal of sewage sludge from other states;
  - k. Permits for municipal separate storm sewer systems (MS4s);
  - l. Permits which authorize a sanitary sewer overflow (SSO) or a combined sewer overflow (CSO); and
  - m. All general permits or authorizations by rule.
2. EPA waives review of minor amendments, permit endorsements, and ownership transfers as defined in 30 TAC Chapter 305. These type amendments are consistent with minor modifications, per 40 CFR §122.63.
3. Where EPA review is not waived, EPA agrees to review draft permits rather than proposed permits. For purposes of this MOA, a draft permit is a document indicating the executive director's tentative recommendation to issue or deny, amend, revoke, or renew a permit. Such draft permits are subject to public notice. For purposes of this MOA, a proposed permit means a TPDES permit prepared after the close of public notice, a public meeting, or a contested case hearing, which will be forwarded for action by the Commission or the Executive Director. In accordance with 40 CFR §123.44(j), for those TPDES draft permits (listed in Section IV.C.1. above) subject to EPA review, the proposed permit need not be transmitted to EPA for review unless the State proposes to issue a permit which differs from the draft permit reviewed by EPA, EPA has objected to the draft permit, or there is significant public comment. EPA may choose to waive review of proposed permits that differ

from draft permits when the alterations have not affected compliance with applicable regulatory requirements. When a proposed permit is forwarded to EPA for review, EPA shall have the opportunity for re-review of the proposed permit and the ability to provide additional comments or objections within thirty (30) days after its receipt of the proposed permit.

TCEQ will transmit the draft permit to EPA at the same time as it issues the public notice. The public notice will be transmitted to EPA concurrently with mailing to the permit applicant. EPA may comment in writing on draft permits or proposed permits including amendments, as described below:

- a. The permit application package to be submitted to EPA for review of either draft or proposed permits shall include:
  - i. Draft or proposed permit;
  - ii. Permit application and all information submitted by the applicant relating to the draft or proposed permit, as applicable;
  - iii. Fact Sheet or Statement of Basis, as the case may be;
  - iv. New Source determination, if applicable;
  - v. Water quality standards variance request/response, if applicable; and
  - vi. "Major" classification if applicable and the rationale for "Majors" which detail permit limit calculations.
- b. EPA shall provide written comments, objections (general or interim) to, or recommendations with respect to draft permits within forty-five (45) days from its receipt of a permit application package. Upon a written request by EPA, if a general or interim objection to a draft permit is made, EPA will have up to an additional forty-five (45) days to submit specific objections.
- c. If no interim or general objections are submitted by the EPA in writing within forty-five (45) days after EPA's receipt of a permit application package, the TCEQ may proceed with issuance of the permit in the form submitted to EPA.
- d. If EPA has made interim or general objections within the initial forty-five (45) day review period, but has not provided specific objections in writing within ninety (90) days from its receipt of a permit application package, the TCEQ may proceed with issuance of the permit as submitted.
- e. Where EPA has objected to a draft or proposed permit, EPA will set forth in writing its objections in accordance with the specific requirements of 40 CFR §123.44(c), also including in its objections all citations to the CWA and specific federal regulations that support the comment(s). EPA shall also include the specific action that the TCEQ must take to satisfy the objection including the specific effluent limitations and conditions which the permit would include if issued by EPA and any other action EPA requires TCEQ to take to satisfy the objection.
- f. Prior to notifying TCEQ of an objection, EPA shall consider all data transmitted in the permit application package and may request all or portions of the information in TCEQ's files for review. Such requests must be made within forty-five (45) days from receipt of the permit application package and will be considered an interim objection. After receipt by EPA of the requested material or of notification that TCEQ does not have what was requested, EPA will have up to forty-five (45) days to provide any specific objections, as described above in IV.C.3.b.
- g. If EPA makes a specific objection to a draft permit under CWA §402(b)

and 40 CFR §123.44(c) that is not resolved by TCEQ, exclusive authority to issue the NPDES permit passes to EPA. During the interim between transfer of the application processing to EPA, the existing TPDES permit shall remain in force until EPA issues a permit.

- h. Where EPA has provided specific recommendations along with its objection, as described above in IV.C.3.e., and TCEQ has completely complied with those recommendations, TCEQ will transmit the proposed permit to EPA along with a transmittal letter stating it satisfies the objection.
4. The EPA shall be notified whenever the TCEQ intends to revoke and reissue or terminate any permit or NOI coverage by a general permit. If the terms of any permit are affected in any manner by court action or by the final disposition of an administrative appeal, the TCEQ shall promptly transmit to the EPA a copy of the amended permit and the supporting judicial or administrative decision.
5. In the case of authorizations by rule or general permits, EPA agrees to review drafts prior to publication for public comment in the *Texas Register*. EPA shall have ninety (90) days from the date of receipt of the draft, prior to publication in the *Texas Register*, to comment, object, or make recommendations on the draft rule or general permit. If EPA fails to do so within ninety (90) days from receipt of the draft, the TCEQ may propose the rule or general permit in the *Texas Register*. The Director, Office of Water, or the appropriate officials at EPA Region 6 or Headquarters may comment, object, or make recommendations on any draft authorization by rule or general permit on behalf of EPA. If public comments are received resulting in changes to the rule or general permit, EPA shall have the opportunity for re-review of the proposed rule or general permit and the ability to provide additional comments or objections within thirty (30) days after its receipt of the proposed rule or permit. Re-review will be limited to those instances as described in Section IV.C.3. of this MOA.
6. When a request for an emergency order (EO) is filed with the Commission or the Executive Director under the requirements in 30 TAC Chapter 35, Subchapter F, TCEQ shall transmit to EPA a copy of the draft EO, along with supporting information. EPA agrees to review and provide any comments or objections to the proposed action within twenty-one (21) days from receipt. EPA understands that its response may be received by TCEQ after approval of the EO by the Commission or Executive Director. Where EPA objects to the EO and has provided specific recommendations along with its objection, as described above in Section IV.C.3.e., the Executive Director or Commission will modify, set aside, or cancel the EO to satisfy the objection of EPA. Regardless of an EPA objection, the EO remains in effect until canceled or modified by the Executive Director or Commission.
7. When a temporary order (TO) request, under the requirements in 30 TAC Chapter 35, Subchapter F, is filed with the Office of Chief Clerk for public notice, TCEQ shall transmit to EPA a copy of the draft TO, along with supporting information. EPA agrees to review and provide comments or object to the proposed action within twenty-one (21) days from receipt. Where EPA objects to the TO and has provided specific recommendations along with its objection, as described above in Section IV.C.3.e.2., the draft TO will be modified to satisfy the EPA objection prior to issuance of an order by the Executive Director or Commission.
8. Any waiver of EPA review shall not be construed to authorize the issuance of a permit by the TCEQ that does not comply with applicable provisions of federal

or state statutes or rules. EPA does not relinquish the right to petition the TCEQ for review of a permit action or inaction because of possible violation of federal or state statutes, rules, and policies. The EPA may terminate a waiver as to future permit actions, in whole or in part, at any time, by sending the TCEQ a written notice of termination.

9. EPA shall not hold a hearing under 40 CFR §123.44(e) - (g) after it has filed objections to a draft or proposed permit, including objections it raises under Section IV.D.4. of this MOA, until after TCEQ has had sixty (60) days to respond to the comments and objections EPA has raised. If TCEQ does not respond within sixty (60) days, then EPA may proceed with the hearing.
10. Within ninety (90) days from receipt of an objection from EPA to a draft or proposed permit, TCEQ (or any interested person) may request a public hearing on the objection. Upon such a request by the state (or significant public interest), EPA will hold a public hearing on the objection. Public notice of the hearing, the public hearing and the response from EPA shall be carried out in accordance with 40 CFR §123.44(e) - (g) and 40 CFR §124.10.

#### **D. STATE & FEDERAL AGENCY COORDINATION**

TCEQ will involve federal and state agencies including the United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and Texas Parks and Wildlife Department (TPWD) during the permitting process to address endangered species issues in TPDES permits. Additionally, notice will be sent to the state historical preservation officer (SHPO) to address any potential impacts on properties listed or eligible for listing in the National Historic Register of Historic Places. TCEQ will address effects on endangered species and historic properties through establishing and enforcing water quality standards in TPDES permits, which undergo EPA approval with USFWS, NMFS, SHPO, and TPWD consultation. TCEQ will also consider endangered species and historic preservation issues identified by NMFS, USFWS, or the SHPO. Although it is not authorized to enter into any formal agreement with NMFS, USFWS, or the SHPO, TCEQ agrees there is benefit in exchanging information and meeting informally with these agencies on a periodic basis to discuss upcoming applications TCEQ projects it will process. TCEQ agrees to the following process while evaluating TPDES wastewater and sewage sludge permit applications:

1. Prior to December 1 of each calendar year TCEQ will provide TPWD, NMFS, SHPO and USFWS (collectively “the Services”) with a list of all TPDES permits expiring during the following calendar year, identifying them by stream segment.
2. Except for those classes and categories of permits for which a Service waives notice, TCEQ will mail notice and a copy of all draft permits to each of the Services, together with a copy of the permit application. Upon request by a Service, TCEQ will furnish copies of the draft permit and permit application for any permit in a class or category of TPDES permits for which the Service has waived notice.
3. If any Service comments during the public comment period in accordance with procedures set out in TCEQ’s public comment rules to express endangered species or historical preservation concerns, TCEQ will coordinate with that Service in an attempt to resolve the relevant issue(s). If TCEQ does not change the draft permit in response to the responding Service’s comments, EPA will be notified and provided the opportunity to review the draft or proposed permit following the procedures set out in Section IV.C.3 of this MOA. The time periods

- provided in that section will begin when EPA receives notice from TCEQ that the permit has not been changed in response to a Service's comment.
4. EPA may provide general or specific objections to the proposed permit as described in Section IV.C.3. of this MOA, within the time limits specified there. In its objection, EPA shall include a statement of the reasons for the objection (including the section of the CWA or regulations that support the objection). EPA's objection must be based on one or more of the grounds for objection at 40 CFR §123.44(c).
  5. If TCEQ does not revise the permit to comply with the objection, EPA shall assume jurisdiction and issue the NPDES permit to the extent so authorized under 40 CFR §123.44(h).
  6. Notification, receipt of comments, or discussion with the various agencies over endangered species or historical preservation issues shall not automatically result in a TCEQ or SOAH hearing on a permit application or entitle the NMFS, USFWS, or SHPO or other persons to become a party to any hearing convened. Determinations related to granting hearing requests are solely within the jurisdiction of the commission.
  7. This MOA sets forth procedures under which the EPA and TCEQ will coordinate their actions, consistent with their respective legal obligations and authorities, in the administration of the CWA §402. Nothing herein shall be construed as expanding the respective authority of either agency or as requiring or authorizing TCEQ to implement or administer any federal law, including the Endangered Species Act, other than those portions of the CWA that EPA has authorized TCEQ to implement and administer pursuant to the CWA §§402(b) and 402(n)(3).

## **E. PUBLIC NOTICE**

The TCEQ shall prepare public notice and cause the notice to be published as required in 30 TAC Chapter 39. The notice shall be mailed concurrently to EPA, U.S. Fish and Wildlife Service, the Advisory Council on Historical Preservation, Texas Historical Commission, an affected State or federally established Indian reservation, the U.S. Army Corps of Engineers, National Marine Fisheries Service (for discharges to coastal or estuary areas, or territorial seas), any industrial user identified in the permit application of a POTW or privately-owned treatment works, the designated CWA §208 planning agencies, other persons who request notice, or who are otherwise on the TCEQ mailing list or who in the judgment of the TCEQ may be affected. TCEQ will also provide a copy of the draft permit and the permit application to the U.S. Fish and Wildlife Service, the State Historical Preservation Officer, the Advisory Council on Historical Preservation, an affected state or federally established Indian reservation, the U.S. Army Corps of Engineers, or National Marine Fisheries Service for all permits for which such notice or copies have not been waived. Personal service or electronic transfer may be substituted for mailing if agreed upon by the TCEQ/EPA permit program managers.

The public notice for draft permits shall set a deadline in which to file public comments or requests for public meetings or contested case hearings. The public comment period for draft permits will be not less than thirty (30) days. In addition to the above notices, for new and major amendment applications, affected landowners named in the permit application will receive mailed notice of the application when it is declared administratively complete and an additional mailed notice after the draft permit has

been filed with the Commission's Chief Clerk. The contents of all notices prepared by the TCEQ will include at a minimum those items specified in 30 TAC Chapter 39.

#### **F. PUBLIC COMMENTS AND HEARINGS, PERMIT ISSUANCE AND APPEALS**

Public comments and requests for contested case hearing are accepted, considered and responded to, and public meetings and hearings are conducted pursuant to 30 TAC Chapters 39, 50, 55 and 80 and Texas Government Code Chapters 2001, 2003 and 551. Appeals are governed by those Chapters and by TWC §5.351.

State law requires the Commission to act as the final administrative authority on contested proposed permits. The Commission may act to adopt the proposed permit, to adopt the proposed permit with changes, or to deny the permit application. A person affected by a final decision by the Commission on a permit may file a petition for judicial review; however, a motion for rehearing is a prerequisite to an appeal. If such a motion is timely filed relating to a permit application subject to EPA review, TCEQ shall notify EPA of such filing, and furnish a copy of any Proposal for Decision (PFD) or altered permit issued in response to the motion. EPA shall have thirty (30) days to comment on a revised PFD or permit before the record is closed on a proposed permit which contains provisions which differ from the draft or proposed permit reviewed by EPA, as specified in Section IV.C.3. of this MOA, relating to re-reviews. EPA may object in accordance with the grounds and procedures set out in Section IV.C.3 of this MOA. TCEQ staff will transmit to the Commissioners and place into the record of the contested case hearing, if any, all EPA comments and objections on a proposed permit prior to their decision. TCEQ shall promptly transmit the Commission's decisions regarding the final disposition of the application to EPA. If the final decision by the Commission does not satisfy EPA's objection, EPA will assume jurisdiction and issue the permit. For draft permits subject to EPA review, TCEQ shall notify EPA of judicial appeals of permit decisions when the petitions are served and shall promptly transmit decisions of the court in regard to such appeals.

#### **G. ACTION ON APPLICATIONS IN UNCONTESTED CASES**

The Executive Director may sign, approve, and issue permits where there are no requests for contested case hearings. In addition to providing notice of a final permit decision, the Executive Director responds to all written comments received during the comment period and to oral comments received during a public meeting, (30 TAC §55.156). For draft permits subject to review by EPA, if public comment results in change to a draft permit reviewed by EPA, EPA shall have the opportunity to review the proposed permit pursuant to Section IV.C.3. of this MOA, relating to re-reviews. As noted in Section IV.C.3, EPA may choose to waive review of proposed permits that differ from draft permits when the alterations have not affected compliance with applicable regulatory requirements. 30 TAC Chapter 50, Subchapter G prescribes procedures and permit actions that may be taken by the Executive Director and the procedures for invoking commission review of the Executive Director's actions.

## V. COMPLIANCE MONITORING AND PERMIT ENFORCEMENT

### A. BACKGROUND

The TCEQ has been authorized by EPA to administer a partial NPDES program and retain lead responsibility for the Clean Water Act (CWA) in the State with respect to sources, activities and facilities within TCEQ's jurisdiction. EPA has continuing responsibility for oversight of the TPDES program in Texas in order to assure adherence to federal statutory and regulatory requirements implementing the CWA and to maintain national consistency. This section of the MOA provides a set of criteria for evaluating and overseeing the pre-enforcement procedures that are consistent with the principles in the EPA's National Enforcement Management System (EMS) and the TCEQ's Enforcement Initiation Criteria (EIC). Specifically, this agreement discusses two operational elements of the NPDES EMS: compliance monitoring (including inspections) and enforcement response. In addition, it covers program authority, penalty policy, conflict resolution, and overriding federal interest.

Should it become necessary to make modifications to this MOA in order to reflect program changes, any TCEQ/EPA Agreement will serve as the mechanism to complete such an action until the MOA can be adjusted accordingly.

### B. COMPLIANCE MONITORING

For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the TCEQ to assure full compliance with TPDES program requirements.

1. The TCEQ agrees to implement compliance procedures as described in the Enforcement Program Description in the application for delegation.
2. The TCEQ shall review Discharge Monitoring Reports (DMRs):
  - a. The TCEQ will receive DMRs by the permittee through the EPA's NetDMR system. Permittees that have been granted a waiver will submit data on EPA approved DMRs.
  - b. The TCEQ shall conduct reviews of DMRs to determine if the required reports are submitted in a timely manner and are complete and accurate. All reports shall be reviewed and evaluated to determine a permittee's compliance status.
  - c. The TCEQ enforcement responses to non-receipt, incomplete, or unacceptable DMR forms shall be consistent with the time frames established in the Enforcement Program Description. Failure to submit DMR forms within thirty (30) days of the required date, or submittal of incomplete or unacceptable DMR forms without subsequent submittal of acceptable revisions within thirty (30) days of the required date will result in referral for enforcement where appropriate action will be taken to resolve the violation.
  - d. The EPA shall perform routine reviews of a random sample of DMR forms entries during periodic audits of the TCEQ program. These audits will not normally exceed two per year.
3. The TCEQ shall conduct timely and substantive reviews and maintain complete records of all written material relating to the compliance status of TPDES permittees, including compliance schedule reports, compliance inspection reports, and any other reports that a permittee may be required to submit under



the terms and conditions of a TPDES permit, approved pretreatment program, or Enforcement Order to ensure that the permit conditions and pretreatment requirements have been met. The TCEQ shall follow the Enforcement Initiation Criteria in the evaluation of possible enforcement actions.

4. The TCEQ shall review and update or correct NPDES data submissions for all required facilities on an NPDES noncompliance report (NNCR) in accordance with the requirements and time frames outlined in 40 CFR §123.45.

### **C. INSPECTIONS FOR TPDES ENTITIES**

1. TCEQ shall conduct scheduled compliance inspections and follow-up inspections for TPDES entities to monitor compliance with applicable federal and state requirements for all TPDES permits.
2. Scheduled compliance inspections will include compliance evaluation inspections (CEI), compliance sampling inspections (CSI), compliance biomonitoring inspections (CBI), performance audit inspections (PAI), sludge compliance inspections, and pretreatment compliance inspections (PCI). In addition, inspections of industrial users (IUs) for POTWs with approved pretreatment programs will be conducted routinely as part of a pretreatment audit and on an as-needed basis as part of a PCI if the PCI findings indicate a problem or concern which would warrant IU inspection(s). Inspections will also be conducted as necessary for categorical IUs of POTWs without approved pretreatment programs.
3. TCEQ shall use risk-based inspection targeting strategies as outlined in the Enforcement Program Description to select TPDES entities for scheduled compliance inspections. Factors that will be taken into account will include: watershed impairment, severe and/or chronic effluent noncompliance, prior compliance history, and time since the last scheduled compliance inspection. TCEQ will also consider EPA inspection guidance, the watershed strategy and the annual Office of Enforcement and Compliance Assurance MOA guidance when targeting TPDES permittees for scheduled compliance inspections.
4. TCEQ has the procedures and ability for inspecting the facilities of all major dischargers and all Class I sludge management facilities where applicable at least annually. TCEQ will inspect 100% of the majors and Class I sludge facilities on an annual basis, or a universe of majors/minors agreed upon annually by EPA and TCEQ. EPA and TCEQ are committed to a process for targeting inspections according to the priorities established by TCEQ to protect the waters in Texas. TCEQ will develop an annual plan which establishes these priorities, lists the major and minor dischargers to be inspected under the plan and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities where applicable. EPA is committed to review TCEQ's annual inspection priority plan and upon the determination that it is substantially equivalent to the inspection of the facilities of all major dischargers and all Class I sludge management facilities, approve it. The inspection priority plan will be negotiated annually in the timeframes and under the procedures specified for the TCEQ/EPA multimedia, multi-year enforcement memorandum of understanding (MOU), and when approved by EPA, the inspection priority plan will become part of the enforcement MOU.
5. In the first year under this Memorandum of Agreement, should EPA and TCEQ not reach agreement on TCEQ's proposed annual inspection priority plan within

- ninety (90) days of its submittal, TCEQ agrees to perform inspections in accordance with the currently existing inspection priority plan approved under TCEQ CWA §106 program grants for the remainder of TCEQ's fiscal year. In subsequent years, should EPA fail to act on TCEQ's proposed annual inspection priority plan within ninety (90) days of its submittal, TCEQ agrees to perform inspections in accordance with the last approved inspection priority plan until the end of that fiscal year. In any year, if EPA disapproves the proposed annual inspection priority plan, it shall notify TCEQ of specific reasons the plan does not, in EPA's opinion, describe the substantial equivalent of the inspection of all major dischargers and Class I sludge management facilities. If no agreement is reached on EPA's objection(s) by December 31st, the disagreement will be referred to the Regional Administrator and the Executive Director of the TCEQ. In all years, if there is no agreement on an annual inspection priority plan by the beginning of the following fiscal year, TCEQ agrees to inspect all major dischargers and all Class I sludge management facilities where applicable.
6. TCEQ shall notify TPDES entities in writing of the findings of scheduled compliance inspections. When violations are noted, TCEQ will pursue necessary action to ensure resolution of noncompliance.
  7. In addition to compliance inspections, TCEQ shall conduct complaint investigations in accordance with the procedures for prioritizing and processing complaints which are outlined in the Enforcement Program Description. If a written complaint is filed with the Commission, TCEQ shall provide quarterly responses to parties to the complaint regarding the status of the complaint until the time of final disposition of the complaint, in accordance with TWC §5.177.
  8. TCEQ will provide EPA with copies of compliance inspection reports and inspection letters for major and minor WWTPs that are selected for mandatory inspection under TCEQ's inspection targeting strategy. The inspection reports/letters will be sent to EPA within thirty-five (35) days of completion of the documents. The number of majors selected for mandatory inspection will be equal to the number of inspections for majors that TCEQ negotiates with EPA as described in Section V.C.4 of this MOA. Copies of inspection reports and inspection letters for other TPDES entities will be provided to EPA on a case-by case basis at the request of EPA. Inspection data will also be available to EPA through EPA's national NPDES database and through review of TCEQ files during TCEQ program audits. TCEQ shall be responsible for submitting TCEQ compliance inspection data to EPA's national NPDES database and for updating or correcting NPDES data submissions as required by 40 CFR §123.45.
  9. EPA may participate in joint compliance inspections with TCEQ and may conduct independent compliance inspections in order to assess the effectiveness of TCEQ activities and assess compliance of the permittee. EPA will normally provide TCEQ with advance notice seven (7) days prior to conducting compliance inspections and provide copies of the results to TCEQ. When EPA provides advance notice of an inspection, TCEQ will not inform the permittee of the impending inspection without EPA's prior approval.

#### **D. ENFORCEMENT RESPONSE**

The CWA §309 requires the EPA, or NPDES Program delegated states, to respond to unpermitted discharges, violations of the CWA and NPDES violations (including, but not limited to pretreatment standards and requirements, compliance schedules, effluent limits and reporting requirements and all other permit conditions) by initiating

appropriate enforcement action(s). The TCEQ shall hold primary responsibility for these activities in Texas. Enforcement response involves a series of actions, starting with the initial reaction to the identification of a violation and ending with the permittee's return to full compliance and formal close out of any enforcement action taken.

1. The TCEQ shall use pre-enforcement procedures that are consistent with the principles in the EPA's National EMS and the TCEQ's EIC. The procedures shall include:
  - a. screening DMR data and inspection findings to determine the significance of the violations;
  - b. procedures and time frames for applying appropriate initial response options to identified violations; and
  - c. procedures for maintaining a chronological summary of all violations.
2. The TCEQ shall screen all DMR forms from permittees to determine the level and frequency of violations and shall evaluate instances of noncompliance by all major permittees, and significant minor permittees within thirty (30) days from the identification of a violation. The TCEQ shall determine the appropriate initial response and document any action taken or not taken (including the technical reason).
3. The TCEQ shall maintain current enforcement procedures. The procedures should set forth:
  - a. an analytical process for determining the appropriate level of action for specific categories of violation;
  - b. procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and
  - c. the time frames for escalating enforcement responses where the noncompliance has not been resolved.
4. The TCEQ will be able to demonstrate that its enforcement procedures result in:
  - a. appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent, and timely manner;
  - b. a formal enforcement action put in place in accordance with all TCEQ requirements that requires actions to achieve compliance, specifies a timetable, contain consequences for noncompliance that are independently enforceable without having to prove the original violation, and subject the violator to adverse legal consequences for noncompliance;
  - c. the assessment of an administrative or judicial penalty, when appropriate (administrative penalties will be developed in accordance with the applicable TCEQ Penalty Policy, civil penalties are set forth in TWC Chapter 7) and the amount appropriate to the violation;
  - d. opportunity for the public to comment on the proposed TCEQ order prior to consideration by the Commissioners;
  - e. opportunity for permissive intervention in administrative hearings under 30 TAC §80.109, under which the Executive Director agrees he will not oppose intervention by persons having a justiciable interest in circumstances that do not, in his opinion, present a risk of undue delay or prejudice to the original parties; and
  - f. compilation of complete and accurate permanent records that can be used in future formal enforcement actions.
5. TCEQ will take timely and appropriate enforcement actions to implement the

- TPDES program. In cases where TCEQ cannot meet the criteria in EPA's oversight guidance, TCEQ agrees to notify EPA forty-five (45) days following the facility appearing on the NNCR list for two quarters. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner. EPA may also initiate enforcement action at the request of the TCEQ. During semi-annual audits of the TPDES program, EPA will assess the frequency with which TCEQ meets timely and appropriate criteria (this includes assessment of adequate penalties). The results of these audits will be used to evaluate the program against the criteria in 40 CFR §123.63(a)(3) and (4).
6. The TCEQ shall prepare and submit to the EPA semi-annually an enforcement activities report in accordance with the terms of the TCEQ/EPA Multi-media, Multi-year Enforcement MOU; the report shall summarize enforcement activities for the preceding six months. Included in this report will be an update of the TCEQ's actions relating to Administrative Order (AO) issuance, AO closeouts, civil or criminal actions, penalties assessed/collected, judicial decree data, and other required information.
  7. The EPA shall verify the timeliness and appropriateness of the TCEQ's enforcement actions through periodic audits and meetings as described in this MOA and TCEQ/EPA Multi-media, Multi-year Enforcement MOU. The TCEQ shall develop enforcement actions in accordance with the TCEQ's EIC and adopted policies related to enforcement.
  8. The TCEQ will evaluate noncompliances disclosed by permittees under the Texas Environmental, Health and Safety Audit Privilege Act, as amended, as described in the Enforcement Program Description and ensure that noncompliances are appropriately addressed in a reasonable amount of time. The TCEQ may choose not to issue an administrative order but will monitor the permittee to ensure final resolution of the noncompliance. However, the TCEQ will issue an AO order if circumstances warrant (e.g., the permittee requires a lengthy compliance schedule to achieve final resolution and issuance and tracking of interim limits are needed to ensure the facility is operated as efficiently as possible during the compliance schedule period). Immunity from penalties will not apply if the noncompliance has resulted in substantial economic benefit which gives the permittee a clear advantage over its business competitors.

## **E. EPA ENFORCEMENT ACTIONS**

If EPA determines that the TCEQ has not taken timely and appropriate enforcement action against a violator and has not properly escalated enforcement action or has not assessed and collected an adequate penalty, EPA may proceed with any or all of the enforcement options available under Section 309 of the Clean Water Act after notice to and consultation with the TCEQ. Prior to proceeding with an enforcement action, EPA shall give the TCEQ thirty (30) days to initiate such enforcement action. This notification shall be made through written communication in accordance with the TCEQ/EPA Multi-media, Multi-year Enforcement MOU. Such notification shall not be required when EPA is exercising its emergency power under Section 504 of the Clean Water Act.

## **F. CONFLICT RESOLUTION**

Specific actions that shall be coordinated or discussed with the TCEQ prior to EPA action are: results of joint inspections or parallel inspections of the same permittee; permit/compliance audits; and unresolved violations which will result in issuance of a §§309 NOV letter. Participants in this information exchange will normally be the EPA Compliance Section and/or Branch Chiefs and corresponding individuals from TCEQ. If decisions are required where there are significant differences of opinion, the EPA and the TCEQ participants should present the divergent viewpoints to their respective Branch Chief or Division Directors, who will make the ultimate decision in discussions with each other. Decisions should be escalated to the Branch Chief/Division Director level as the exception rather than the rule.

## **VI. PRETREATMENT PROGRAM**

### **A. PROGRAM REQUIREMENTS**

The TCEQ pretreatment program shall include responsibility as an Approval Authority for publicly-owned treatment works (POTWs), as defined by 40 CFR §403.3(o) and adopted by 30 TAC Chapter 315, and as a Control Authority for Industrial Users (IUs) for non-pretreatment POTWs. The TCEQ shall operate the program consistent with 30 TAC Chapter 315. All sections of 40 CFR Part 403 referenced in this Section VI. of the MOA are adopted by reference in 30 TAC Chapter 315.

Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users, pollutants which may cause pass through or interfere with the operation of the POTW may be required to develop and implement a POTW Pretreatment Program. TCEQ may also require that a POTW with a design flow of five (5) MGD or less develop a POTW Pretreatment Program in order to prevent interference with the POTW or pass through. TCEQ would do so if it finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant such an action. POTWs that do not have pretreatment programs will be re-evaluated during each reissuance of the facility's TPDES permit. The TCEQ shall implement a program that may require a POTW to develop and implement a pretreatment program if it receives wastewater from categorical IUs and significant non-categorical IUs which contribute process waste streams which makes up 5% of a POTWs dry weather hydraulic or organic capacity, which have known toxics in the discharge, or which have the potential to interfere, pass through, or contaminate the sludge of a POTW. The TWC §26.047, provides TCEQ with the authority to require a pretreatment program for any POTW and require an IU to obtain a permit to discharge into a POTW.

### **B. PRETREATMENT PROGRAM REVIEW AND APPROVAL**

1. Once a new pretreatment program is submitted and complete, the TCEQ will review it, with the goal of completing the review within ninety (90) days. Substantial modification requests to existing programs will be reviewed, with the goal of completing the review within ninety (90) days. The POTW shall notify the TCEQ of any non-substantial modification at least forty-five (45) days prior to implementation by the POTW. Non-substantial (minor) modifications to existing programs will be reviewed with the goal of approving or disapproving the non-substantial modification within forty-five (45) days. If the TCEQ does not notify the POTW within forty-five (45) days of its decision to approve or deny the modification, or to treat the modification as substantial under this section, the POTW may implement the modification. (Processing times are non-jurisdictional) Substantial modifications include the following:
  - a. Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under 40 CFR §403.5(c);

- b. Changes that relax POTW's legal authority, except for modifications that directly reflect a revision to 40 CFR Parts 403 to 471 and are reported pursuant to approval procedures for nonsubstantial modifications;
  - c. Decreases in required IU self-reporting/monitoring;
  - d. Decreases in IU inspections or sampling by a POTW;
  - e. Changes in confidentiality procedures;
  - f. Changes to POTW control mechanisms as described in 40 CFR §403.8(f)(1)(iii);
  - g. Other modifications designated as substantial modifications by the TCEQ on the basis that the modification could:
    - 1) have a significant impact on the operation of the POTW's Pretreatment Program such as significant reductions in POTW and pretreatment program resources (including personnel commitment, equipment, funding levels, etc.);
    - 2) result in an increase in pollutant loadings at the POTW; or
    - 3) result in less stringent requirements being imposed on Industrial Users of the POTW; and
  - h. Changes in POTW sewage sludge disposal and management criteria.
2. Minimum Requirements. The TCEQ shall review all program submissions in accordance with 40 CFR §§403.11 and 403.18 to determine that they meet the pretreatment requirements. At a minimum, all pretreatment program submissions for approval shall contain the items required in 40 CFR §403.9(b) or such other documents the TCEQ determines to be necessary under the circumstances.
  3. Additional Requirements. In addition to these minimum requirements, the TCEQ will review pretreatment program procedures to evaluate the proper calculation of equivalent limits (40 CFR §403.6(c)) and the proper use of the combined wastestream formula (40 CFR §403.6(e)) during on-site inspections. Dilution will not be allowed as a substitute for proper pretreatment (40 CFR §403.6(d)). The TCEQ will reevaluate existing approved programs for the proper calculation of local limits. POTWs will be required to develop Local Limits, or to recalculate local limits as necessary, as required by 40 CFR §403.5(c)(1). Removal credits will be processed and granted in accordance with 40 CFR §403.7. Pretreatment programs must be consistent with any Water Quality Management Plans before they can be approved (40 CFR §403.9(g)).
  4. Variance and Categorical Determinations. As an Approval Authority, the TCEQ will also make written determinations on all category classification requests made in accordance with 40 CFR §403.6(a) from either IUs or POTWs. TCEQ will forward its determination with a copy of the request and supporting information to EPA for concurrence. If EPA does not object or modify the TCEQ determination within ninety (90) days of receipt, the determination is final. If EPA modifies the decision, then EPA's decision is final, and a copy of the final decision will be sent to the applicant and the TCEQ. EPA shall be responsible for processing all requests for hearings, pursuant to 40 CFR §403.6(a)(5). EPA shall provide the TCEQ with its determination after acting on petitions contesting a final decision. The TCEQ will also review requests by IUs or POTWs for Fundamentally Different Factor (FDF) variances as allowed by CWA §301(b). FDF variance requests will be reviewed by the TCEQ, but must be forwarded to EPA for final approval. EPA shall review the FDF request and prepare and transmit a response within sixty (60) days in accordance with 40 CFR §403.13(l). EPA shall provide for a hearing on the FDF decision in accordance with 40 CFR

§403.13(m).

5. Notice, Hearings, and Issuance. When the TCEQ has preliminarily determined that a submission meets the requirements of 40 CFR §403.9(b), and where a removal allowance approval is sought in accordance with 40 CFR §§403.7(d) and 403.9(d), a public notice will be developed and sent to the POTW for publication in a newspaper regularly published and generally circulated within the county and area where the POTW discharge is located and within each county and area where persons reside who would be affected by the discharge. Public notice is not required for a non-substantial modification.

When public notice and opportunity for public comment are required, it will be provided in accordance with 40 CFR §403.11. Mailed notice will be provided to EPA, the designated CWA §208 planning agencies, National Marine Fisheries Service (for discharges to coastal or estuary areas, or territorial seas), U.S. Fish and Wildlife Service, and Texas Parks and Wildlife Department (unless such agencies have asked not to be sent the notices). Mailed notice will also be provided to other persons required by the TCEQ rules or who in the judgment of the TCEQ, may be affected, including those persons requesting to be on the mailing list. Notices will provide for a thirty (30) day comment period and notice will be provided at least thirty (30) days prior to any public meeting which may be held. A public meeting, if held, will be conducted by a TCEQ attorney. All comments will be considered in the decision whether or not to approve the submission. All written comments shall be retained by TCEQ. TCEQ staff will schedule the submission for final decision by the Commission or the Executive Director and, as necessary, will incorporate the program or modification into the TPDES permit as a minor amendment in accordance with 30 TAC §305.62(c)(2)(D).

EPA will be afforded the opportunity for re-review if TCEQ proposes to approve a program (or revise a TPDES permit), in that EPA shall also review the proposed permit or program requirements if either the TCEQ proposes to issue one which contains less stringent provisions than the draft information reviewed by EPA, as specified in Section IV.C.3. of this MOA, relating to re-reviews.

The TCEQ will transfer copies of the approved or modified pretreatment programs and modified permits to EPA within thirty (30) days of the final decision on approval/issuance. TCEQ need not publish a notice of decision under 40 CFR §403.11(e) provided: the notice of request for approval under 40 CFR §403.11(b)(1) states that the request will be approved, if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change. Notices required by 40 CFR §403.11 may be performed by the POTW provided that the TCEQ finds that the POTW notice otherwise satisfies the requirements of 40 CFR §403.11.

6. EPA Review of Program Submittals. EPA may provide written objections within thirty (30) days from receipt of the public notice, as a result of the public notice. The TCEQ shall not approve any pretreatment program, or significant modification thereof, if EPA has objected under 40 CFR §403.11(d).

### **C. PRETREATMENT ENFORCEMENT**

This section of the MOA defines the TCEQ's responsibilities for the implementation and enforcement of the National Pretreatment Program in accordance with CWA §§307 and



403(b), and as described in the Enforcement Program Description.

1. TCEQ Responsibilities for Enforcement of Pretreatment. The TCEQ will have primary responsibility for:
  - a. enforcing the National prohibited discharge standards established in 40 CFR §403.5;
  - b. enforcing the National categorical pretreatment standards established by the EPA in accordance with CWA §§307(b) and (c), and established as separate regulations under 40 CFR Parts 403 to 471;
  - c. reviewing, and approving or denying POTW Pretreatment Programs in accordance with the procedures discussed in 40 CFR §§403.8, 403.9, and 403.11;
  - d. requiring a Pretreatment Program as an enforceable condition in TPDES permits as required in 40 CFR §403.8;
  - e. requiring POTWs to develop and enforce local limits as set forth in 40 CFR §403.5(c);
  - f. overseeing POTW Pretreatment Programs to ensure compliance with requirements specified in 40 CFR §403.8;
  - g. performing monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit; and
  - h. applying and enforcing all other pretreatment regulations as required by 40 CFR Part 403.
2. Pretreatment Compliance Monitoring Activities:
  - a. The TCEQ will establish procedures and time frames for:
    - (1) reviewing monitoring reports, including annual reports submitted by POTWs and semi-annual reports submitted by categorical users in areas without local programs;
    - (2) establishing and maintaining a complete inventory of POTWs with pretreatment programs;
    - (3) conducting pretreatment audits for approved pretreatment programs. TCEQ will perform audits for approximately 20% of approved pretreatment programs each year to attain the goal of auditing each approved pretreatment program at least once in the five-year cycle of the permit. Audit coverage may be less, as described in TCEQ CWA §106 program grants;
    - (4) conducting pretreatment compliance inspections (PCIs) for a selected number of POTWs with approved pretreatment programs using the risk-based inspection targeting strategy outlined in the Enforcement Program Description. The number of PCIs to be conducted will be negotiated annually as described in Section V.C. of this MOA;
    - (5) conducting inspections of industrial users (IUs) of POTWs with approved pretreatment programs; these inspections will be conducted routinely as part of a pretreatment audit and on an as-needed basis as part of a PCI if the PCI findings indicate a problem or concern which would warrant IU inspection(s);
    - (6) monitoring significant categorical and non-categorical industrial users of POTWs without approved pretreatment programs;
    - (7) conducting compliance inspections as necessary for categorical

- industrial users of POTWs without approved pretreatment programs; and
      - (8) entering data from audits or PCIs into EPA's national NPDES database within thirty (30) days of completion of these reports.
    - b. Pretreatment audits shall be reported pursuant to the schedule of reporting identified in TCEQ CWA §106 program grants.
    - c. The TCEQ will have oversight as Control Authority of categorical and significant non-categorical IUs in areas without local pretreatment programs (until a local program is required by the TCEQ), modeled after current EPA practices, which will include:
      - (1) review and evaluate semi-annual monitoring reports and any other applicable reports required under 40 CFR §403.12 submitted by categorical users to ensure compliance with the National categorical pretreatment standards;
      - (2) review various sources of information, which may include the *Directory of Texas Manufacturers* and the TCEQ enforcement case list, to identify categorical and significant non-categorical IUs in areas outside the jurisdiction of approved pretreatment programs; and
      - (3) determine whether any Existing Source or New Source categorical IU (as defined in 40 CFR §403.3), identified outside the jurisdiction of approved pretreatment programs, is in violation of the reporting requirements established under 40 CFR §403.12.
  - 3. Integration of Pretreatment Enforcement Activities into the Established TPDES Program:
    - a. The TCEQ will have procedures and time frames for tracking compliance and initiating appropriate enforcement action where POTWs:
      - (1) fail to meet milestone dates in enforceable schedules for submitting approvable pretreatment programs;
      - (2) have violations of effluent limits;
      - (3) fail to implement approved pretreatment programs; and/or
      - (4) fail to submit annual reports or submit delinquent annual reports.
    - b. The TCEQ shall also have procedures and time frames for evaluating whether POTWs are initiating timely and appropriate enforcement responses to violations by industrial users consistent with their established procedures. The TCEQ is expected to initiate timely and appropriate enforcement action against permittees having pretreatment programs that are listed on the NNCR and are in significant noncompliance. This applies to failure to:
      - (1) meet milestones in enforceable schedules for submitting required local pretreatment programs and for implementing that program;
      - (2) respond to violations of effluent limits;
      - (3) submit POTW pretreatment reports in accordance with permit provisions;
      - (4) address other non-compliances as described in current EPA guidance for pretreatment program implementation; and
      - (5) act, or where POTW enforcement actions have been determined to be either untimely or inappropriate.
    - c. In addition, the TCEQ shall conduct audits and PCIs of local pretreatment programs to ensure that POTWs comply with their approved program procedures for taking action against significant violations by industrial

users. The criteria for an industrial user found to be in significant noncompliance is described below. In accordance with the terms and conditions of its pretreatment program, the POTW shall provide for annual public notification of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements in the largest daily newspaper published in the municipality in which the POTW is located.

- d. Criteria for Significant Noncompliance. By authorizing POTWs to operate approved pretreatment programs, EPA and TCEQ place primary responsibility for enforcement standards on the POTW (TPDES permittee). Only when the POTW has failed to take appropriate action to ensure compliance by industrial users should TCEQ, as the approval authority, intervene, and then only as prescribed in CWA §309(f). The criteria listed below apply to all significant industrial users. The POTW or Control Authority may, at its own discretion, apply these criteria to any other industrial user including retail establishments. Also, at its own discretion, the POTW may use more stringent criteria to identify significantly violating industrial users in its municipality. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:
- (1) chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
  - (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
  - (3) any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
  - (4) discharged a pollutant to the POTW which has caused an "imminent endangerment" to human health, welfare and/or to the environment; or has resulted in the POTW's exercise of its emergency authority under 40 CFR §403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
  - (5) failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
  - (6) failure to provide, within forty-five (45) days after the due date, required reports such as baseline monitoring reports, ninety (90)-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
  - (7) failed to accurately report a noncompliance;
  - (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or

- implementation of the local pretreatment program; or
    - (9) caused or substantially contributed to any violations of the POTW's TPDES permit requirements or has impaired the use or disposal of the POTW's sewage sludge.
  - e. A significant industrial user is defined as any industry which discharges to a POTW that:
    - (1) is subject to categorical standards;
    - (2) discharges a process wastestream of 25,000 gallons per day (0.025 MGD) or more;
    - (3) contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW; or
    - (4) has a reasonable potential, in the opinion of the POTW, to adversely affect the POTW (inhibition, pass through of pollutants, sludge contamination, endangerment of POTW workers, or known toxic in discharge) or for violating any pretreatment standard or requirement.

## VII. SLUDGE MANAGEMENT PROGRAM

TCEQ is responsible for drafting sewage sludge permits, providing for public notice of permits, and amending (modifying), renewing (reissuing), and revoking these permits. TCEQ is responsible for a program of monitoring compliance with sewage sludge permits. The sludge management program will include procedures for taking appropriate enforcement actions to ensure resolution of compliance issues. The sludge management program will be carried out in accordance with applicable state and federal statutes, regulations, and this MOA.

### A. SEWAGE SLUDGE PERMITS

TPDES permits will authorize the use and disposal of sewage sludge and will comply with all applicable provisions of CWA Section 405 and will be issued to all treatment works treating domestic sewage as defined at 40 CFR §122.2. Requirements will be included in such TPDES permits which require compliance with federal sewage sludge requirements as found in 40 CFR Part 503 and all TCEQ sewage sludge requirements as found in 30 TAC Chapter 312. TPDES permits will also be issued to all treatment works treating domestic sewage including sewage sludge processors, blenders, and surface disposal facilities that do not allow discharge of a wastewater effluent to water in the state. Specific sewage sludge provisions are included in each TPDES permit issued to a permittee generating, processing, using, or disposing of sewage sludge. All TPDES permittees must comply with the TCEQ sewage sludge regulations in its management of sewage on-site at the POTW, as well as any management of sewage sludge at a sludge-only facility not holding a TPDES permit. These permits will include the following requirements, as applicable to the permittee, in accordance with 40 CFR Part 503, 30 TAC Chapter 312 and other TCEQ regulations:

1. Permit conditions governing land application of sewage sludge for a beneficial use, including management practices, record keeping, and notification;
2. Monitoring requirements and permit limitations for heavy metals, hazardous waste toxic characteristics (TCLP), and pathogen testing (for both Class A and Class B quality) of sewage sludge generated or otherwise managed by the permittee, including monitoring frequency;
3. Permit conditions governing Processes to Significantly (or Further) Reduce Pathogens (PSRP or PFRP) and vector attraction reduction;
4. Permit conditions governing sewage sludge metal concentration and loading limits onto beneficial use sites;
5. Permit conditions governing disposal in municipal solid waste landfills, sewage sludge monofills, or surface disposal sites under methods which prevent significant contamination of ground water, in accordance with 30 TAC Chapters 330 and 312;
6. Permit conditions governing marketing and distribution of exceptional quality sewage sludge to the public;
7. Special requirements which authorize processing of sewage sludge; and
8. Record keeping, certifications and reporting related to sewage sludge handling.

Each permit will be processed to allow for public notice and opportunity for hearing. The procedures followed in the development and issuance of these permits will be the same as described in Section IV. of this MOA.

TPDES processing permits will be issued to all treatment works treating domestic sewage, which specifically will include activities where sludge is prepared for final use or disposal, including but not limited to thickening, stabilization, composting, and dewatering of sewage sludge.

## **B. PERMIT FOR BENEFICIAL USE OF SEWAGE SLUDGE**

TCEQ may issue state permits to persons who land apply sewage sludge for beneficial use. EPA agrees that permits for land application sites for beneficial use are administered solely under state authority and are not sewage sludge permits required under the TPDES program and is a greater scope of coverage consistent with the scenario described in 40 CFR Section 501.1(j). In all instances, the quality of the sewage sludge must meet the quality standards specified under 30 TAC Chapter 312, consistent with and more stringent than NPDES requirements.

## **C. EPA REVIEW OF DRAFT AND PROPOSED PERMITS**

1. EPA waives its review of draft or proposed TPDES permits for all classes and categories of permit applications which authorize sewage sludge management, except for a draft permit for a Class I sludge management facility. All procedures for submittal of application information to EPA relating to TPDES sewage sludge permits. The categories of TPDES permits subject to EPA review or objection of sewage sludge permits will be the same procedures as described in Section IV.C of this MOA.
2. Definition of Class I Sludge Management Facilities. Class I sludge management facilities shall be considered as:
  - a. A POTW or combination of POTWs operated by the same authority with a design flow greater than 5.0 MGD and receiving from industrial users pollutants which pass through or interfere with the operation of the treatment plant as being required to have an approved pretreatment program or are otherwise subject to pretreatment standards; and
  - b. Any other treatment works treating domestic sewage classified as a Class I Sludge Management Facility by Regional Administrator in conjunction with TCEQ because of the potential for its sludge use and disposal practices to adversely affect public health or the environment.

## **D. SEWAGE SLUDGE PROGRAM ENFORCEMENT AND COMPLIANCE MONITORING**

The enforcement procedures, compliance monitoring activities, and inspection sections, and all agreements contained therein, within this MOA shall also apply to sludge uses and disposal practices. Additionally, the following provisions have been agreed upon:

1. The TCEQ and the EPA shall coordinate formal enforcement activities involving violations of sludge requirements. Specifically, the TCEQ shall provide notification to EPA of all pending formal enforcement actions.
2. The EPA shall have the opportunity to independently initiate a formal enforcement action involving violations of sludge management rules and/or regulations using the EPA enforcement action criteria stated in Section V.E of this MOA.
3. TCEQ shall inspect Class I sludge management facilities that are associated with a wastewater treatment facility that is selected for a scheduled compliance

inspection using the TCEQ inspection targeting strategy outlined in the Enforcement Program Description. The number of Class I sludge management facilities to be inspected will be negotiated annually as described in Section V.C. of this MOA.

4. EPA may participate in joint inspections with the TCEQ or conduct independent inspections of sewage sludge management facilities.

## VIII. TRANSMITTAL OF INFORMATION

The TCEQ and EPA agree to transmit information in accordance with the schedule listed below. Both agencies also agree to transmit other general information requested in writing as soon as possible. Information obtained or used by the TCEQ in the administration of the TPDES program shall be available to EPA upon request, and information in EPA's files which the TCEQ needs to implement its program shall be made available to the TCEQ upon request.

Whenever either party furnishes information to the other that has been claimed as confidential, the party furnishing the information will also furnish the confidentiality claim and the results of any legal review of the claim. Information which is confidential in nature shall be transmitted as confidential and handled in accordance with 40 CFR Part 2, 40 CFR §122.7, and 30 TAC §1.5. The TCEQ and EPA will deny all claims of confidentiality for self-reported effluent data, permit applications, and the name and address of any permittee.

### A. SUMMARY OF TRANSMITTALS FROM TCEQ TO EPA

As prescribed in the preceding sections of this MOA, the following information shall be transmitted to EPA from the TCEQ:

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
1. For all permits for which EPA has not waived review, a copy of the draft permits and permit applications (and supplemental information as specified in this MOA), including the Fact Sheet or Statement of Basis (details further described above in Section IV.C. of this MOA)	At time of completion of draft permit, simultaneous to filing of the draft permit for public notice
2. For all permits for which EPA has not waived review, a copy of public notices	As issued
3. For all permits for which EPA has not waived review, a copy of any proposal for decision or settlement agreement	As made
4. For all permits for which EPA has not waived review, a copy of all motions for rehearing and judicial appeals	As made
5. A copy of every TPDES permit issued along with a letter of transmittal (including TPDES permit number, name, location, date issued, and date of expiration); permits including sewage sludge permits and permits with pretreatment program modifications	Monthly, by the fifth day of the month



DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
6. For all permits which EPA has waived review, copies of the application, draft permit, final permit, or any other documents related to the permit	Within 10 days of a request by EPA
7. Copies of proposed and modified permits with associated documentation, for all permits which EPA has not waived review and in accordance with EPA re-review requirements in Sections IV.C.3. and VI.B.5. of this MOA	At time of completion
8. Report summarizing TRE activities or similar activities for each of these permittees and a report showing all permittees that have failed biomonitoring tests in the previous quarter	Quarterly
9. Semi-annual enforcement activities report, including sludge enforcement activities as specified in this MOA	Semi-annually
10. A list of major facilities and Class I sewage sludge management facilities scheduled for inspection	Annually, by September 1
11. Draft authorizations by rule or general permit packages	At least 90 days prior to official publication in the Texas Register
12. Proposed authorizations by rule or general permits, where public comment resulted in a less stringent permit or rule	At least 30 days prior to adoption by the Commission
13. Copies of public notices for pretreatment removal allowances, pretreatment program approvals, substantial modification approvals, and other program submittals	Concurrent with the public notice
14. Pretreatment audit reports and correspondence associated with processing pretreatment program submittals	As requested by EPA
15. Copies of TCEQ compliance inspection reports and transmittal letters for all major permittees, Class I sludge management facilities, and mandatory minors which were inspected as agreed upon between EPA and the state	Within 35 days of completion of the document
16. Decisions on variance and categorical determinations, with supporting information	At time of completion

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
17. Temporary order and emergency order packages recommended for approval	At time of recommendation
18. Information on final enforcement orders and judicial actions	Within 10 days of the effective date

**B. SUMMARY OF TRANSMITTALS FROM EPA TO TCEQ**

<b>DESCRIPTION OF TRANSMITTAL</b>	<b>FREQUENCY OF TRANSMITTAL</b>
1. General written comments, recommendations, and objections to draft or proposed permits	Within 45 days from receipt of the draft or proposed permit.
2. Specific written objections to draft or proposed permits, along with CWA and federal regulation citations supporting the objection, and specific actions TCEQ must take	Within 90 days from receipt of draft or proposed permit, or 45 days after receipt of general objections.
3. Written withdrawal of objection, following receipt from TCEQ of draft permit and letter specifying all EPA recommendations have been met	Within 21 days from receipt of draft or proposed permit
4. Written comments or objections to a Proposal for Decision (PFD) by an administrative law judge	Within 30 days from receipt of the PFD
5. Written comments or objections to a temporary or emergency order (TO or EO)	Within 21 days from receipt of the EO or TO package
6. Notification that enforcement actions are finalized	Upon occurrence
7. Draft, proposed, and final technical guidance which pertains to the NPDES program	Within 10 working days of issuance.
8. Draft, proposed, and final regulations, including general permits	Within 10 working days of issuance.
9. New case law, settlement agreements, and remands of Federal regulations	Within 30 calendar days of issuance.
10. Copies of EPA compliance inspection reports	At time of report completion.
11. Draft, proposed, and final changes regarding federal data systems and support for those data systems	Within 10 working days of the change.

## IX. TPDES PROGRAM REVIEW BY EPA

EPA is responsible for verifying that the TPDES program is consistent with all federal regulations, EPA policies and guidance, all requirements of this MOA, TCEQ CWA §106 program grants, and applicable regulations in 40 CFR Parts 122-125, 127, 130, 401-471 (Subchapter N), 501, and 503. To fulfill this responsibility, EPA shall:

1. Review all information submitted by the TCEQ regarding TCEQ administration of the TPDES program.
2. Meet with TCEQ officials for records audits and program reviews, at a minimum of every three years or on an as needed basis, to discuss or evaluate electronic reporting of NPDES information, permit processing and development, compliance monitoring, pretreatment processes, and enforcement procedures.
3. Examine in detail the TCEQ files and documentation of selected facilities to determine:
  - a. whether permits are processed and issued consistent with federal requirements;
  - b. whether the TCEQ maintains a system allowing for discovery of permit violations as they occur;
  - c. whether TCEQ reviews meet timeliness requirements;
  - d. whether TCEQ-initiated enforcement actions are appropriate, effective, and timely; and
  - e. whether penalties and penalty amounts for violations are appropriate and are collected.

The EPA shall in all cases notify the TCEQ at least two weeks in advance of any review under this paragraph so that TCEQ officials may be available to discuss individual case circumstances and problems. The EPA shall provide to the TCEQ at least five (5) working days in advance a list of permits to be examined.

1. In the event EPA determines that elements of the TCEQ's TPDES Program are in any way deficient and/or inconsistent with this MOA, the State Program Plan, or applicable federal and state regulations and/or statutes, EPA shall notify the TCEQ in writing of these inconsistencies or other deficiencies. The TCEQ shall respond in writing within thirty (30) days of this determination, indicating whether noted inconsistencies and/or deficiencies have been rectified. If they have not been corrected, EPA may proceed in accordance with CWA §402(c).
2. Review, on an annual basis, the legal authority upon which the TCEQ's TPDES program is based, including State statutes and regulations.
3. When appropriate, upon introduction of a new program or major modification of an existing program, hold public hearings on the TCEQ's TPDES program.
4. Review, on an annual basis, if necessary, the TCEQ's public participation policies, practices, and procedures.
5. Review a representative sample of permits waived from permit issuance review during the annual program reviews.

## **X. AMENDMENTS TO BE APPROVED BY EPA**

- A. Prior to initiating any action to propose or effect any substantial amendment, rescission or repeal of any statute, or regulation, which had been previously approved by either the TCEQ or EPA, and prior to the adoption of any new statute, or regulation, the agency proposing/recommending the change (either the TCEQ or EPA) shall notify the designated official of the affected agency and shall transmit the text of any such change (see 40 CFR §123.62 which provides that the change may result in a program review, which will not become effective until approved by EPA).
- B. If an amendment, rescission, or repeal of any statute, or regulation, described in paragraph (A) above shall occur for any reason, including action by the State or Federal legislature or a court, the affected agency shall be notified as soon as possible of such event and a copy of the text of such revision will be transmitted to the designated official of the affected agency.
- C. Prior to the approval of any test method as an alternative to those specified as required for TPDES permitting, the TCEQ shall obtain the concurrence of EPA. EPA shall review requests for alternate test methods as soon as possible.

**XI. APPROVAL, EFFECTIVE DATE AND TERM OF THE MOA**

- A. This MOA shall be reviewed by the EPA and the TCEQ and revised as appropriate at least within five (5) years of its effective date.
- B. Either the EPA or the TCEQ may, at any time, initiate action to modify the MOA pursuant to the following guidelines:
  - 1. No modification to this MOA shall become effective without the concurrence of both agencies.
  - 2. Time frames stated in Section VIII, Transmittal of Information, of this MOA may be changed by the written consent of the appropriate TCEQ and EPA managers.
  - 3. Any revisions or modifications to this MOA must be in writing and must be signed by the Executive Director and the Regional Administrator with prior concurrence by the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water.
- C. Either the TCEQ or the EPA may terminate this MOA upon appropriate notice to the other party pursuant to 40 CFR §123.64.
- D. Nothing in this MOA shall be construed to limit the authority of the EPA pursuant to CWA §§308, 309, 311, 402, 504 and other applicable sections of the CWA.
- E. Nothing in this MOA should be construed to constitute or create a valid defense to regulated parties in violation of National or State environmental statutes, regulations, or permits.
- F. This agreement shall become binding upon final signature.



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Toby Baker  
Executive Director  
Texas Commission on Environmental Quality

Dated: June 6, 2020



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Ken McQueen  
Regional Administrator  
U.S. Environmental Protection Agency,  
Region 6

Dated: June 12, 2020

**APPENDIX A**  
**FACILITIES PERMITTED BY THE TCEQ**  
**HAVING STANDARD INDUSTRIAL CLASSIFICATION CODES**  
**1311, 1321, 1381, 1382, 1389, 4922, AND 4925**

<u>SIC</u>	<u>Permittee</u>	<u>TCEQ Permit No.</u>	<u>EPA ID</u>
1311:	None		
1321:	Enterprise Products Operating LLC WRB Refining LP	WQ0002940000 WQ0001064000	TX0102326 TX0009148
1381:	None		
1382:	None		
1389:	FMC Technologies Inc	WQ0005157000	TX0136158
4922:	None		
4925:	MarkWest Javelina Company LLC	WQ0003137000	TX0105481