

### NYSDEC and EPA R2 NPDES MOAs

- 1) Signed April 28, 1975; MOA between NYSDEC and EPA R2. (Cover letter dated October 28, 1975)
- 2) Signed August 14, 1975. MOA between the Chairman of the New York State Board on Electric Generation Siting and Environment and EPA R2.
  - a. Signed September 8, 1975. Amendment to the August 14, 1975 MOA between the Chairman of the New York State Board on Electric Generation Siting and Environment and EPA R2.
- 3) Signed August 26, 1975. MOA between NYSDEC and EPA R2. *Amends and supercedes April 28, 1975 MOA.*
- 4) June 16, 1980. Authorizes NYSDEC to administer NPDES permits to Federal facilities.
- 5) Signed March 6 and March 26, 1984. MOU between EPA and NYSDEC relative to Management of the Pretreatment Program.
- 6) Signed September 17 and October 15, 1992. Amendment to the MOA between NYSDEC and EPA R2 relating to General Permits.
- 7) Signed February 26 and March 16, 1998. Amendment to the MOA between NYSDEC and EPA R2 relating to the Implementation of the Requirements of the Great Lakes Water Quality Guidance in the Great Lakes Basin.
  - a. Signed September 22 and September 27, 2000. Amendment to the MOA between NYSDEC and EPA R2 relating to Implementation of the Requirements of the Great Lakes Water Quality Guidance in the Great Lakes Basin. *Supplements March 16, 1998 MOA.*
- 8) Signed September 29 and October 6, 2000. Amendment to the MOA between NYSDEC and EPA R2. (Cover letter dated October 27, 2000)
- 9) June 9, 2005. EPA R2 terminates waiver of review for NPDES permits that are determined to be significant sources of nutrients to the Chesapeake Bay watershed.



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

OCT 28 1975

*WY03E*

THE ADMINISTRATOR

Dear Governor Carey:

I am delighted to inform you that the State of New York's request for approval to conduct a State permit program pursuant to the provisions of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Federal Water Pollution Control Act Amendments of 1972 (the Act) is hereby approved. Accordingly, as of this date I am suspending the issuance of permits by the Environmental Protection Agency (EPA) under section 402(a) of the Act as to all discharges in the State of New York other than those from agencies and instrumentalities of the Federal Government.

The program that you conduct pursuant to this authority must at all times be in accordance with section 402 of the Act, all guidelines promulgated pursuant to section 304(h)(2) of the Act, and the enclosed Memoranda of Agreement between the Regional Administrator of EPA's Region II, the Commissioner of the State of New York's Department of Environmental Conservation (DEC) and the Chairman of the New York State Board on Electric Generation Siting and the Environment (the Board), which I have also approved today. Because of the split in permitting authority between the DEC and the Board, I believe it is extremely important to the effective implementation of the State program that close cooperation between these State agencies be maintained, particularly regarding the issuance of certificates of environmental compatibility and public need (certificates) by the Board to major steam electric generating facilities.

It is equally important that there be effective enforcement of permits and the permit program. The Memoranda of Agreement, which indicate that the Regional Administrator generally intends to undertake direct enforcement of State issued permits or certificates only when the State does not take appropriate enforcement action, are not intended to and will not foreclose federal enforcement action in any case where EPA determines that a violation has occurred and federal enforcement proceedings are warranted.

I understand that several adjustments and clarifications are being made to the New York permit program in order to avoid any uncertainty as the program is being implemented. For example, there was some ambiguity concerning the burden of proof in connection with New York's thermal water quality standards. That ambiguity has been substantially resolved as a result of a September 5, 1975, DEC legal opinion. My approval of the New York program today is based in part upon assurances that the Attorney General of New York agrees with the DEC on the thermal water quality standard burden of proof question and has rendered a supplemental opinion on this issue.

I also understand the Attorney General's Statement has been supplemented to reflect legislative amendments enacted subsequent to the date of the original Statement and to reflect the State Pollutant Discharge Elimination System (SPDES) regulations which became effective on August 29, 1975. This supplement will be most helpful in completing the record and informing the public of the positive actions taken by the New York Legislature and the DEC to prepare for administration of the State's permit program.

Finally, the Public Service Commission's regulations regarding the issuance of certificates by the Board must be revised in conformance with applicable NPDES provisions set forth in 40 CFR Part 124. It is my understanding that the necessary revisions will be finally adopted by the Board prior to its issuance of any certificates to new electric power generating facilities. I am delighted to know that the effort to revise the regulations is underway and have no doubt that the revised regulations will be promulgated in the near future.

As currently in effect, the DEC's SPDES regulations, in section 751.3, exclude certain categories of point sources from New York's SPDES permit program. These exclusions were authorized by section 124.11 of EPA's regulations setting forth guidelines for State NPDES programs, 40 CFR Part 124 (37 FR 28390; December 22, 1972). However, the District Court for the District of Columbia in the recent case of Natural Resources Defense Council, Inc. v. Train (Civil No. 1629-73), held that the Act does not authorize such exclusions and, in an order issued June 10, 1975, directed EPA to amend its regulations accordingly. EPA has filed a Notice of Intent to Appeal the Court's decision. Should the Court order be upheld, however, EPA will be required to publish final amendments to its regulations by February 1976 to remove the exclusions from the NPDES program. Following such amendments New York would similarly be required to amend its regulations in order to continue to comply with the NPDES requirements. We are

holding hearings and soliciting suggestions to minimize the potential impact of the program changes required by the Court order. We welcome any suggestions that you or your staff may make to assist us in this effort.

The State of New York has demonstrated great capability, patience, and cooperation in the development of its permit program. You, your staff, the New York Legislature, and personnel of the DEC should feel justifiable pride and satisfaction upon assuming administration of this important environmental program.

We look forward to working with you and the DEC in continuing the progress you have made towards cleaner water in New York.

Sincerely yours,

*Deputy*

*for*

Russell E. Train

Honorable Hugh L. Carey  
Governor of New York  
Albany, New York 12224

Enclosures

cc: Mr. Ogden Reid, Commissioner, State of New York  
Department of Environmental Conservation

Mr. Alfred E. Kahn, Chairman, State of New York  
Board on Electric Generation Siting and the Environment

Mr. Louis J. Lefkowitz, State of New York  
Attorney General

bcc: AX (3)  
OE Chron & Reading, EN-329  
B. Emmett, EN-338  
J. Molloy, EN-338  
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Regional Administrator, Region II  
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Prepared by JBell/cmc/9-16-75/EN-338/x58731  
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THE STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

WHEREAS, the Federal Water Pollution Control Act Amendments of 1972 ("the FWPCA") expresses the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution;

WHEREAS, the State of New York has had enforceable water quality standards since 1950 and has administered a State discharge permit system since 1962, and since September 1, 1973 the State of New York ("the State") has conducted a State Pollution Discharge Elimination System ("SPDES") permit program pursuant to article 17, title 8 of the Environmental Conservation Law ("the ECL");

WHEREAS, pursuant to the FWPCA, the Administrator of the United States Environmental Protection Agency ("the Administrator" and the "Agency", respectively) is authorized to establish and administer a National Pollution Discharge Elimination System ("NPDES") for discharges of pollutants into navigable waters of the United States;

WHEREAS, the FWPCA allows the Administrator to suspend the issuance of federal discharge permits within any State which desires to administer its own permit program for discharges into navigable waters within its jurisdiction in accordance with a program meeting the criteria set forth in §402 of the FWPCA and regulations set forth in 40 CFR Part 124 "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System" ("the State Program Elements");

WHEREAS, the State has promulgated regulations under article 17, title 8 of the ECL, and has taken other necessary steps in order to meet said criteria;

WHEREAS, the State, acting through its Governor, has submitted an application for approval by the Administrator of the State's pollutant discharge elimination system permit program;

WHEREAS, the Regional Administrator, Region II, United States Environmental Protection Agency ("the Regional Administrator") and the Commissioner, Department of Environmental Conservation, State of New York, hereinafter (the "Commissioner" and the "Department," respectively) wish to set forth their mutual understanding as to procedural and other arrangements for coordinating the administration of the State's pollutant discharge elimination system permit program with the NPDES program following approval by the Administrator of the State's program;

WHEREAS, the Administrator has promulgated regulations, the State Program Elements, which call for, among other things, the establishment, by agreement between the Regional Administrator and the Commissioner, of procedures for transmission of certain data and other information concerning the NPDES program to the Regional Administrator;

WHEREAS, the Department acting through the Commissioner is authorized pursuant to article 17, title 8 ECL to administer an NPDES program on behalf of the State, and to enter into agreements with the Regional Administrator incidental to that authority;

NOW, THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set out herein, agree as follows:

## ARTICLE I

### TRANSFER OF AUTHORITY

1. The Regional Administrator and the Commissioner hereby agree that the Regional Administrator shall be responsible for the issuance of substantially all NPDES permits based upon applications which have been sent to the Department for certification by the State pursuant to Section 401 of the FWPCA for which Public Notice requests have been made by the Department.

2. After the date upon which the Administrator approves the State's permit program, all new applications for NPDES permits shall be directed to the Commissioner.

3. After the date upon which the Administrator approves the State's permit program, the Commissioner shall have sole responsibility for the issuance of NPDES permits within the State of New York, and shall have primary responsibility for the enforcement of the terms or conditions of all NPDES permits within the State of New York; except as follows: the Regional Administrator will retain the responsibility for compliance monitoring inspections of major dischargers prior to June, 1975 pursuant to currently existing agreements with the Commissioner and primary responsibility for the enforcement of permits issued by the Regional Administrator for a six (6) month period subsequent to the date upon which the Administrator approves the State's permit program. Thereafter the Regional Administrator retains the right, pursuant to Section 308 of the FWPCA, to conduct such compliance monitoring inspections of NPDES permittees as the Regional Administrator may deem necessary. Further, all adjudicatory hearings, hearings with respect to Section 316 of the FWPCA, citizen suits or other litigation concerning NPDES permits issued by the Regional Administrator prior to the date upon which the Administrator approves the State's permit program will be defended by the

Regional Administrator with such participation by the Commissioner as may be appropriate to each specific case in dispute. Any modifications to the terms and conditions of an NPDES permit issued by the Regional Administrator because of deficiency in certification requirements before the date upon which the Administrator approves the State's permit program, or which is required as the direct result of any adjudicatory hearing, Section 316 hearing, citizen suit or other litigation pending as of the date upon which the Administrator approves the State's permit program will be made by the Regional Administrator; provided, however, that the State retains its right of certification of any such modifications under Section 401 of the FWPCA. All other modifications to any NPDES permit issued by the Regional Administrator will be made by the Commissioner in accordance with Article VII of this Agreement.

4. Nothing in this Agreement shall pertain to NPDES permits issued to federal facilities, or certificates of environmental compatibility and public need to be issued to major steam electrical generating facilities by the New York State Board on Electric Generation Siting and the Environment, unless such Siting Board specifically agrees in writing to be bound hereby.

5. Specific workload responsibilities to be undertaken by EPA and DEC covering the identification and orderly transfer of unprocessed applications on file with EPA to the Department will be identified in a separate agreement and shall foster an orderly transition of such responsibilities.

## ARTICLE II

### RECEIPT AND USE OF DATA

1. The Regional Administrator hereby agrees that no later than sixty (60) days prior to the date upon which the Administrator approves the State's permit program, the Regional Administrator shall provide to the Commissioner a list of all valid NPDES or Refuse Act permits issued by him or by the United States Army Corps of Engineers for all discharges into the navigable waters of the State of New York. This list shall include the permit number, the date issued, the term for which the permit is valid, the name and address of the permittee, the date the permit expires and recorded actions taken for noncompliance with all permit requirements when copies of such actions have not previously been submitted to the Department. If the Commissioner, in reviewing such list, finds that his files are incomplete with respect to such permit, he shall so notify the Regional Administrator, and the Administrator shall ensure that a copy of the final permit, including all changes, modifications and corrections thereto has been furnished to the Commissioner within sixty (60) days of such notification. In addition, the Regional Administrator

shall provide to the Commissioner a list of all applications received together with their basic status, i.e., untouched, complete, draft permits and/or PSTs complete, in Public Notice phase, Public Notice phase complete.

2. No later than thirty (30) days after the date upon which the Administrator approves the State's permit program, the Regional Administrator will submit to the Commissioner a complete list of all nonfilers known to the Regional Administrator within the State of New York. This list shall include the name and address of the nonfiler, and any information available relative to the nonfiler's type of operation and steps taken by the Regional Administrator to obtain permit applications from said nonfilers and current status of each case.

3. The Regional Administrator agrees that he will maintain all the files containing the documents upon which NPDES permits issued by him were based in a readily accessible condition and that employees of the Department will be permitted unlimited access to such documents on five (5) days prior notice to the Regional Administrator or his designee. Any documents required by the Department will be furnished or reproduced by EPA promptly and without charge to the Department.

4. All new applications received by the Regional Administrator subsequent to the effective date of the list described in paragraph 1 of this Article will be transmitted within 10 days of receipt to the Commissioner.

5. The Commissioner hereby agrees that he will provide to the Regional Administrator periodic, statistical reports on all new NPDES applications received by him, and on the progress of all NPDES permits proposed to be issued by him.

### ARTICLE III

#### TRANSITTAL OF DRAFT PERMITS TO THE REGIONAL ADMINISTRATOR

1. The Commissioner hereby agrees that for all permits proposed to be issued by him for which the Regional Administrator has not waived his right to object to, review and receive information pursuant to Section 402(d) of the FWPCA, the Commissioner will transmit to the Regional Administrator a copy of the application, the public notice, the draft permit and the fact sheet, if applicable, and the rationale detailing the basis for the limits appearing in the draft permit at the time of the publication of public notice for the issuance of a permit. The Regional Administrator shall be afforded a period of thirty (30) days from receipt of such documents during which to make written comments upon, objections to, or recommendations with respect to such a draft permit.

2. The Commissioner agrees that if any draft permit received by the Regional Administrator pursuant to paragraph 1 of this Article is substantially changed subsequent to the initial transmission to the Regional Administrator, the Commissioner shall so notify the Regional Administrator and shall transmit to the Regional Administrator a copy of such changed permit. The Regional Administrator shall have a period of twenty (20) days from receipt of such changed permit during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the final permit. For the purposes of this paragraph, a substantial change in a draft permit is a change which either results in the increase of any effluent load (which may be expressed as a percentage of influent allowed to be discharged) by more than 20 percent, provided, however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original draft permit.

3. If the Regional Administrator so requests in writing, the Commissioner shall extend the period of time during which the Regional Administrator may make written comment upon, objection to, or recommendation with respect to any draft permit proposed to be issued by the Department except that in no event will the total of time, as extended, be greater than 90 days from the original receipt of the draft permit.

4. If the Regional Administrator objects to any permit proposed to be issued pursuant to his right to object provided in Section 402(d)(2) of the FWPCA, such objection shall be in writing, shall state with particularity the provisions of the FWPCA or regulations, guidelines and national program guidance adopted thereunder upon which the objection is based, and shall set forth the terms and conditions required by the Regional Administrator as a condition to elimination of his objections to the proposed permit. Whenever the Regional Administrator objects to a permit, no permit shall be issued by the Department until all objections of the Regional Administrator have been resolved.) The Regional Administrator and the Commissioner agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as is possible. (When an objection of the Regional Administrator has been resolved to his satisfaction, he shall notify the Commissioner in writing of the withdrawal of his objection.)

5. The Regional Administrator hereby waives his right, pursuant to Section 402(d)(2) of the FWPCA, to object to any permit proposed to be issued by the Department or routinely to receive any information thereon other than a copy of the final permit for (a) any industrial discharge which has a yearly average flow, based on days of discharge, of less than .1 MGD, or (b) any discharge from a publicly or privately owned sewage treatment works which has an average daily design flow of less than 0.5 MGD.



unless such discharge described in (a) or (b) either (i) affects the quality of the waters of any other state, or (ii) contains toxic substances in excess of standards promulgated by the Administrator pursuant to Section 307(a) of the FWPCA.

6. The Commissioner may impose additional requirements, limitations and conditions as he deems necessary as long as such requirements, limitations and conditions do not conflict with federal guidelines and requirements.

ARTICLE IV

RECEIPT OF PERMITS AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Commissioner agrees to transmit a copy of every NPDES permit and modifications there- to issued by him to the Regional Administrator no later than thirty (30) days after the issuance of such permit and modifications thereto.

ARTICLE V

MONITORING AND REPORTING

1. The Commissioner or his designee, in accordance with §124.61 of the State Program Elements and 3 NYCRR 756.1, shall apply monitoring conditions in NPDES permits, and shall establish such monitoring requirements for additional pollutants in any NPDES permit, as may be required. (The Commissioner shall cooperate with the Regional Administrator on the requirement that copies of all reports required of a permittee under a permit originally issued by the Regional Administrator will continue to be submitted to the Regional Administrator by the permittee.)



2. The Commissioner agrees to condition all NPDES permits issued by him for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement so as to require that copies of all reports to be submitted by the permittee to the Commissioner shall also be submitted to the Regional Administrator.

3. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of a publicly or privately owned treatment works containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection

shall complete and transmit to the Regional Administrator a copy of EPA form 7500-5. This does not cover Reconnaissance Inspection Visits for which the Department's Form 216 is usually completed.

4. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of an industrial facility containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of the inspection report.

5. The Regional Administrator shall continue to provide effluent compliance monitoring assistance to the Commissioner. Monitoring, sampling strategy and the degree of assistance to be provided shall be determined and mutually agreed upon through negotiation of the State's annual strategy and water pollution control program plan (\$106 plan).

6. While the Regional Administrator retains responsibility for compliance monitoring pursuant to paragraph 3 of Article I of this Agreement, the Regional Administrator shall transmit to the Commissioner a copy of all such inspection reports together with any other pertinent papers such as letters to the permittee.

#### ARTICLE VI

##### TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK

1. Until a national repository of information is permanently established the Regional Administrator will perform this function with regard to NPDES permits. Therefore, transmission by the Commissioner or his designee of permit applications and final permits, and the conditioning of all NPDES permits to require direct submission of copies of self-monitoring and compliance schedule reports to the Regional Administrator as required in previous Articles shall satisfy the requirement of transmittal of data to the National Data Bank for these permits.

2. The Commissioner and the Regional Administrator shall cooperate in providing each other, in a timely manner, basic information and data needed to carry out their respective programs.

#### ARTICLE VII

##### MODIFICATIONS, SUSPENSIONS AND REVOCATIONS OF ISSUED PERMITS

1. Whenever the Commissioner intends to suspend, revoke or modify an issued NPDES permit for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, he shall notify the Regional Administrator, and shall transmit a copy of any permit which is proposed to be modified or revised in respect to a compliance schedule, increased effluent limitation, or sampling and monitoring requirement to the Regional Administrator, together with the proposed changes.

2. The Regional Administrator shall be afforded a period of thirty (30) days following such notice or receipt of such transmitted changes, which ever shall occur later, to comment upon, make recommendations with respect to, or object to the proposed modifications and revisions. If no objections are made within the 30-day period, the Commissioner will issue the modified permit.

3. If any permit is revised or modified in any manner by court action, the Commissioner or his designee shall notify the Regional Administrator of such revision or modification and, upon request, shall transmit a copy of such permit with the changes to the Regional Administrator. Where implementing action by the Commissioner or his designee is required by the court, the Commissioner or his designee, unless prohibited by court order, shall, prior to taking such implementing action, allow the Regional Administrator a period of ten (10) days following such notice or receipt of such transmittal, whichever shall later occur, in which to appeal the court's decision.

#### ARTICLE VIII

#### ENFORCEMENT

1. The Department shall continuously monitor compliance with all requirements contained in NPDES permits issued by the Commissioner and the Regional Administrator, including requirements that permittees submit monitoring and compliance reports.

2. On the last day of the months of April, July, October and January the Commissioner shall send the Regional Administrator a quarterly status report which shall contain all known instances, as of 30 days prior to the date of submission of such report, of failure to comply with permit requirements during the reporting period preceding the date of such status report or continuing to remain in noncompliance from any previous quarterly reporting period. The quarterly status report shall set forth the following information for each reported instance of non-compliance:

- 5
- a. The name and address of the permittee;
  - b. The permit number;
  - c. The nature of the instance of noncompliance;
  - d. A short description of any actions or proposed actions by the permittee or by the Commissioner to comply or enforce compliance with the permit requirements; and
  - e. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

3. Whenever the Regional Administrator receives any information that any permittee is in violation of any term or condition of any issued NPDES permit, he shall immediately forward a copy of such information to the Commissioner. The Commissioner will advise the Regional Administrator of the action to be taken. The Regional Administrator agrees to make available to the Commissioner appropriate assistance which may be necessary in any action, administrative or judicial, taken by the Commissioner. Such assistance may include, but is not limited to, investigative reports, laboratory analyses, and appropriate Agency personnel to provide sworn testimony.

4. The Commissioner will transmit to the Regional Administrator a copy of any order or directive, administrative or judicial, related to compliance with the terms and conditions of an NPDES permit originally issued by the Regional Administrator.

5. Nothing contained in this Agreement shall be construed to limit the authority of the Regional Administrator to take appropriate action pursuant to Sections 308 and 309 of the FWPCA, either on his own motion or when requested to do so by the Commissioner.

#### ARTICLE IX

#### ASSISTANCE

From time to time the Commissioner and the Regional Administrator shall consult as to whether or not it will be necessary for the Regional Administrator to assist the Commissioner in some manner to insure that the State's pollutant discharge elimination system permit program is at all times in conformance with the applicable requirements of the FWPCA and the State Program Elements. Such assistance shall be rendered as the Commissioner and Regional Administrator may agree.

ARTICLE X

CHANGES IN STATE STATUTES, REGULATIONS,  
DIRECTIVES, OR STANDARD TEST METHODS

1. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directive, which the Commissioner has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, the Commissioner shall notify the Regional Administrator by transmittal of the text of any such change to the Regional Administrator. The Regional Administrator shall have 30 days in which to determine whether the proposed change would mean that the State's permit program would not be in accordance with the FWPCA and the State Program Element.
2. If an amendment, rescission, or repeal of any statute, regulation, or directive, described in paragraph 1 above shall occur for any reason including action by the New York Legislature or a court, the Commissioner shall notify the Regional Administrator by transmittal of a copy of the text of such revision to the Regional Administrator.
3. Prior to his approval of any test methods other than those specified by a standard permit form, the Commissioner shall obtain the approval of the Regional Administrator.

ARTICLE XI

FURTHER ASSURANCES

The Commissioner shall seek such legislation, adopt such regulations, and take all further actions which may be needed in order to preserve and maintain any authorities, programs, or commitments described in this Agreement or contained elsewhere in the State's description of its pollutant discharge elimination system permit program submitted to the Administrator.

ARTICLE XII

ACTION THROUGH STAFF PERSONNEL

The Commissioner and the Regional Administrator may designate personnel on their respective staffs to carry out any duty or action required or described herein.

ARTICLE XIII

EFFECT, RESCISSION, MODIFICATION

This Agreement shall take effect upon program approval by the Administrator pursuant to §402(b) of the FWPCA and shall remain in effect for the duration of such approved program or until this Agreement is rescinded. In the event that federal grants to the State of New York to assist in administering programs for the prevention, reduction and elimination of pollution, including enforcement, should be terminated or reduced to the point that insufficient federal funds are provided to administer the federal portion of the NPDES program, or if the Legislature of the State of New York should fail to authorize or appropriate sufficient State funds to provide for full implementation of this Agreement, or for other good and sufficient reasons which in the opinion of the Commissioner prevent the full accomplishment of this program, the Agreement shall be rescinded on 30 day's notice in writing from the Commissioner to the Regional Administrator.

In witness whereof, the parties have executed this agreement on this 28<sup>th</sup> day of April, 1975.

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION II

By:   
Ogden R. Reid  
Commissioner

By:   
Eric B. Outwater  
Acting Regional Administrator

for

Cerald M. Hansler, P.E.  
Regional Administrator

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE CHAIRMAN OF THE NEW YORK STATE  
BOARD ON ELECTRIC GENERATION  
SITING AND THE ENVIRONMENT  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

WHEREAS, the Federal Water Pollution Control Act Amendments of 1972 ("the FWCAA") expresses the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution;

WHEREAS, the State of New York has had enforceable water quality standards since 1950 and has administered a State discharge permit system since 1962, and since September 1, 1973 the State of New York ("the State") has conducted a State Pollutant Discharge Elimination System ("SPDES") permit program pursuant to article 17, title 8 of the Environmental Conservation Law ("ECL");

WHEREAS, pursuant to the FWCAA, the Administrator of the United States Environmental Protection Agency ("the Administrator" and the "Agency", respectively) is authorized to establish and administer a National Pollutant Discharge Elimination System ("NPDES") for discharges of pollutants into navigable waters of the United States;

WHEREAS, the FWCAA allows the Administrator to suspend the issuance of federal discharge permits within any State which desires to administer its own permit program for discharges into navigable waters within its jurisdiction in accordance with a program meeting the criteria set forth in § 402 of the FWCAA and regulations set forth in 40 CFR Part 124 "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System" ("the State Program Elements");

WHEREAS, the State has promulgated regulations under article 17, title 8 of the ECL, and has taken other necessary steps in order to meet said criteria;

WHEREAS, the State, acting through its Governor, has submitted an application for approval by the Administrator of the State's pollutant discharge elimination system permit program;

WHEREAS, the Regional Administrator, Region II, United States Environmental Protection Agency ("the Regional Administrator") and the Chairman of the New York State Board on Electric Generation Siting and the Environment (hereinafter the "Chairman" and the "Board", respectively) wish to set forth their mutual understanding as to procedural and other arrangements for coordinating the administration of the State's pollutant discharge elimination system permit program for major steam electric generating facilities as defined in Section 140(2) of the New York Public Service Law ("generating facilities") with the NPDES program following approval by the Administrator of the State's program;

WHEREAS, the Administrator has promulgated regulations, the State Program Elements, which call for, among other things, the establishment by agreement between the Regional Administrator and the appropriate State agency of procedures for transmission of certain data and other information concerning the NPDES program to the Regional Administrator;

WHEREAS, the Board is authorized pursuant to article 17, title 8 ECL to administer an NPDES program for generating facilities on behalf of the State, and its Chairman is authorized to enter into agreements with the Regional Administrator incidental to that authority;

NOW, THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set out herein, agree as follows:

#### ARTICLE I

##### TRANSFER OF AUTHORITY

1. After the date upon which the Administrator approves the State's permit program, all pending and new applications for NPDES permits for generating facilities (hereinafter "certificates of environmental compatibility and public need" or "certificates") shall be directed to the Chairman.

2. After the date upon which the Administrator approves the State's permit program, the Board shall have sole responsibility for the issuance of certificates within the State of New York.

## ARTICLE II

### RECEIPT AND USE OF DATA

1. The Regional Administrator agrees that he will maintain all the files containing the documents upon which NPDES permits issued by him were based in a readily accessible condition and that employees of the Departments represented on the Board will be permitted unlimited access to such documents on five (5) days prior notice to the Regional Administrator or his designee. Any documents required by the Departments will be furnished or reproduced by EPA promptly and without charge to the Departments.

2. The Chairman hereby agrees that he will provide to the Regional Administrator periodic, statistical reports on all applications for certificates received by him, and on the progress of all applications for certificates before the Board.

## ARTICLE III

### TRANSMITTAL OF APPLICATIONS FOR CERTIFICATES TO THE REGIONAL ADMINISTRATOR

1. The Chairman hereby agrees that for all applications for certificates before the Board for which the Regional Administrator has not waived his right to object to, review and received information pursuant to Section 402(d) of the FWPCA, the Chairman will transmit to the Regional Administrator a copy of those portions of the application pertaining to NPDES and the related public notices, the recommendations of the Public Service Commission Staff or the Department of Environmental Conservation Staff, or both, pertaining to NPDES, the fact sheet, and the rationale detailing the basis for the limits appearing in the staff recommendations at the time of the publication of public notice of the staff recommendations. The Regional Administrator shall be afforded a period of thirty (30) days from receipt of such documents during which to make written comments upon, objections to, or recommendations with respect to such staff recommendations.

2. The Chairman agrees that if any staff recommendation received by the Regional Administrator pursuant to paragraph 1 of this Article is substantially changed subsequent to the initial transmission to the Regional Administrator, the Chairman shall so notify the Regional Administrator and shall transmit to the Regional Administrator a copy of such changed recommendations. The Regional Administrator shall have a period of twenty (20) days from receipt of such changed recommendations during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the certificate. For the purposes of this paragraph, a substantial change in a staff recommendation is a change which either results in the increase of any effluent load (which may be expressed as a percentage of influent allowed to be discharged) by more than 20 percent, provided, however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original staff recommendation.
3. If the Regional Administrator so requests in writing, the Chairman shall extend the period of time during which the Regional Administrator may make written comment upon, objection to, or recommendations with respect to any staff recommendation, except that in no event will the total of time, as extended, be greater than 90 days from the original receipt of the staff recommendation.
4. If the Regional Administrator objects to any portion of a certificate relating to NPDES proposed to be issued pursuant to his right to object provided in Section 402(d)(2) of the FWPCA, such objection shall be in writing, shall state with particularity the provisions of the FWPCA or regulations, guidelines and national program guidance adopted thereunder upon which the objection is based, and shall set forth the terms and conditions required by the Regional Administrator as a condition to elimination of his objections to those portions of the certificate. Whenever the Regional Administrator objects to those portions of the certificate pertaining to NPDES, no certificate shall be issued by the Board until all objections of the Regional Administrator have been resolved. The Regional Administrator and the Chairman agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as is possible. When an objection of the Regional Administrator has been resolved to

his satisfaction, he shall notify the Chairman in writing of the withdrawal of his objection.

5. The Board may impose additional requirements, limitations and conditions as it deems necessary as long as such requirements, limitations and conditions are not less stringent than federal guidelines and requirements.

#### ARTICLE IV

##### RECEIPT OF CERTIFICATES AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Chairman agrees to transmit a copy of every certificate and modifications thereto issued by the Board to the Regional Administrator no later than thirty (30) days after the issuance of such certificate and modifications thereto.

#### ARTICLE V

##### MONITORING AND REPORTING

1. The Board, in accordance with § 124.61 of the State Program Elements and 3 NYCRR 756.1, shall include monitoring conditions in certificates, and shall establish such monitoring requirements for additional pollutants in any certificates, as may be required.

2. The Chairman agrees that copies of all reports to be submitted by the certificate holder to the Chairman or the Board shall also be submitted to the Regional Administrator.

3. Recognizing that the New York State Departments of Environmental Conservation and Health have the responsibility for monitoring discharges under section 17-0823 of the ECL, whenever the Chairman or his designee receives a monitoring report from any source, other than such Departments, relating to a discharge from a generating facility, the Chairman shall transmit to the Regional Administrator and the Department of Environmental Conservation the results of that report.

## ARTICLE VI

### TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK

1. Until a national repository of information is permanently established, the Regional Administrator will perform this function with regard to NPDES permits. Therefore, transmission by the Chairman or his designee of all documents required in previous Articles shall satisfy the requirement of transmittal of data to the National Data Bank.
2. The Chairman and the Regional Administrator shall cooperate in providing each other, in a timely manner, basic information and data needed to carry out their respective programs.

## ARTICLE VII

### MODIFICATIONS OF CERTIFICATES

1. Whenever the Board intends to modify those portions of the certificate pertaining to NPDES, the Chairman shall notify the Regional Administrator, and shall transmit a copy of any certificate which is proposed to be so modified or revised to the Regional Administrator, together with the proposed changes.
2. The Regional Administrator shall be afforded a period of thirty (30) days following such notice or receipt of such transmitted changes, whichever shall occur later, to comment upon, make recommendations with respect to, or object to the proposed modifications and revisions. If no objections are made within the 30-day period, the Board may issue the modified certificate.
3. If any portion of a certificate relating to NPDES is revised or modified in any manner by court action, the Chairman or his designee shall notify the Regional Administrator of such revision or modification and, upon request, shall transmit a copy of such certificate with the changes to the Regional Administrator. Where implementing action by the Board is required by the court, the Board, unless prohibited by court order, shall, prior to taking such implementing action, allow the Regional Administrator a period of ten (10) days following such notice or receipt of such transmittal, whichever shall later occur, in

which to appeal the court's decision.

ARTICLE VIII  
NOTIFICATION OF VIOLATIONS

Whenever the Regional Administrator receives any information that any certificate holder is in violation of any term or condition of any issued certificate, he shall immediately forward a copy of such information to the Chairman and Commissioner of Environmental Conservation.

ARTICLE IX  
ASSISTANCE

From time to time the Chairman and the Regional Administrator shall consult as to whether or not it will be necessary for the Regional Administrator to assist the Board in carrying out its responsibilities under this agreement. Such assistance shall be rendered as the Chairman and Regional Administrator may agree.

ARTICLE X  
CHANGES IN STATE STATUTES, REGULATIONS,  
OR DIRECTIVES

1. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directives, which the Chairman has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, the Chairman shall notify the Regional Administrator by transmittal of the text of any such change to the Regional Administrator. The Regional Administrator shall have 30 days in which to determine whether the proposed change would mean that the State's permit program would not be in accordance with the FWPCAA and the State Program Elements.

2. If an amendment, rescission, or repeal of any statute, regulation, or directive, described in paragraph 1 above

shall occur for any reason, including action by the New York Legislature or a court, the Chairman shall notify the Regional Administrator by transmittal of a copy of the text of such revision to the Regional Administrator.

ARTICLE XI  
FURTHER ASSURANCES

The Chairman shall seek the adoption of such regulations, and shall take all further actions which may be needed in order to preserve and maintain any authorities, programs, or commitments described in this Agreement.

ARTICLE XII  
ACTION THROUGH STAFF PERSONNEL

The Chairman and the Regional Administrator may designate personnel to carry out any duty or action required or described herein.

ARTICLE XIII  
EFFECT AND RESCISSION

This Agreement shall take effect upon program approval by the Administrator pursuant to § 402(b) of the FWCAA and shall remain in effect for the duration of such approved program or until this Agreement is rescinded.

In witness whereof, the parties have executed this agreement on this 14th day of August, 1975.

STATE OF NEW YORK  
BOARD ON ELECTRIC GENERATION  
SITING AND THE ENVIRONMENT

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION II

By: Alfred E. Kahn  
Alfred E. Kahn  
Chairman

By: Gerald M. Hansler  
Gerald M. Hansler, P. E.  
Regional Administrator

Approved: October 8, 1975  
(Date)

John Deaules Deputy  
Administrator  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

AMENDMENT TO THE  
MEMORANDUM OF AGREEMENT  
BETWEEN THE BOARD AND EPA

Now therefore, the parties to the Memorandum of Agreement dated August 14, 1975, in consideration of the covenants and stipulations set forth therein, agree to the following supplementary provisions:

(A) Article I, paragraph 3.

3. In carrying out its duties, the Board shall insure full compliance with the substantive content and spirit of the FWPCAA, relevant regulations promulgated under the FWPCAA, and title 8 of article 17 of the Environmental Conservation Law.

(B) The following language shall be added to Article X(1):

If the Regional Administrator objects to any proposed change as not being in compliance with the FWPCAA, or any regulations promulgated thereunder, he shall set forth his objections with reasonable specificity. The Chairman and the Regional Administrator agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as possible.

(C) The following language shall be added to Article XI.

Before the Board issues any certificate, the Commission shall revise its regulations to insure full

compliance with the FWPCA, any relevant regulations promulgated thereunder, and with title 8 of article 17 of the Environmental Conservation Law.

In witness whereof, the parties have executed this agreement on this 8<sup>th</sup> day of September, 1975.

STATE OF NEW YORK  
BOARD ON ELECTRIC GENERATION  
SITING AND THE ENVIRONMENT

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION II

By: Alfred E. Kahn  
Alfred E. Kahn  
Chairman

By: Gerald M. Hansler, P. E.  
Gerald M. Hansler, P. E.  
Acting Regional Administrator

Approved: October 18, 1975  
(Date)

John Zearles Deputy  
for Administrator  
United States Environmental  
Protection Agency

NY  
1/2/74

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

WHEREAS, the Federal Water Pollution Control Act Amendments of 1972 ("the FWPCA") expresses the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution;

WHEREAS, the State of New York has had enforceable water quality standards since 1950 and has administered a State discharge permit system since 1962, and since September 1, 1973 the State of New York ("the State") has conducted a State Pollutant Discharge Elimination System ("SPDES") permit program pursuant to article 17, title 8 of the Environmental Conservation Law ("the ECL");

WHEREAS, pursuant to the FWPCA, the Administrator of the United States Environmental Protection Agency ("the Administrator" and the "Agency", respectively) is authorized to establish and administer a National Pollutant Discharge Elimination System ("NPDES") for discharges of pollutants into navigable waters of the United States;

WHEREAS, the FWPCA allows the Administrator to suspend the issuance of federal discharge permits within any State which desires to administer its own permit program for discharges into navigable waters within its jurisdiction in accordance with a program meeting the criteria set forth in §402 of the FWPCA and regulations set forth in 40 CFR Part 124 "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System" ("the State Program Elements");

WHEREAS, the State has promulgated regulations under article 17, title 8 of the ECL, and has taken other necessary steps in order to meet said criteria;

WHEREAS, the State, acting through its Governor, has submitted an application for approval by the Administrator of the State's pollutant discharge elimination system permit program;

WHEREAS, the Regional Administrator, Region II, United States Environmental Protection Agency ("the Regional Administrator") and the Commissioner, Department of Environmental Conservation, State of New York, hereinafter (the "Commissioner" and the "Department", respectively) wish to set forth their mutual understanding as to procedural and other arrangements for coordinating the administration of the State's pollutant discharge elimination system permit program with the NPDES program following approval by the Administrator of the State's program;

WHEREAS, the Administrator has promulgated regulations, the State Program Elements, which call for, among other things, the establishment, by agreement between the Regional Administrator and the appropriate State agency, of procedures for transmission of certain data and other information concerning the NPDES program to the Regional Administrator;

WHEREAS, the Department acting through the Commissioner is authorized pursuant to article 17, title 8 ECL to administer an NPDES program on behalf of the State, and to enter into agreements with the Regional Administrator incidental to that authority; and

WHEREAS, the parties to this agreement have entered into a prior agreement, dated on or about April 28, 1975 which they now desire to amend and supersede by this agreement,

NOW, THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set out herein, agree as follows:

## ARTICLE I

### TRANSFER OF AUTHORITY

1. The Regional Administrator and the Commissioner hereby agree that the Regional Administrator shall be responsible for the issuance of substantially all NPDES permits based upon applications which have been sent to the Department for certification by the State pursuant to Section 401 of the FWPCA for which Public Notice requests have been made by the Department.

2. After the date upon which the Administrator approves the State's permit program, all new applications for NPDES permits shall be directed to the Commissioner.

3. After the date upon which the Administrator approves the State's permit program, the Commissioner shall have sole responsibility for the issuance of NPDES permits within the State of New York, and shall have primary responsibility for the enforcement of the terms or conditions of all NPDES permits within the State of New York, except as follows: the Regional Administrator will retain the responsibility for compliance monitoring inspections of major dischargers prior to June, 1975 pursuant to currently existing agreements with the Commissioner and primary responsibility for the enforcement of permits issued by the Regional Administrator for a six (6) month period subsequent to the date upon which the Administrator approves the State's permit program. Thereafter the Regional Administrator retains the right, pursuant to Section 308 of the FWPCAA, to conduct such compliance monitoring inspections of NPDES permittees as the Regional Administrator may deem necessary. Further, all adjudicatory hearings, hearings with respect to Section 316 of the FWPCAA, citizen suits or other litigation concerning NPDES permits issued by the Regional Administrator prior to the date upon which the Administrator approves the State's permit program will be defended by the Regional Administrator with such participation by the Commissioner as may be appropriate to each specific case in dispute. Any modifications to the terms and conditions of an NPDES permit issued by the Regional Administrator because of deficiency in certification requirements before the date upon which the Administrator approves the State's permit program, or which is required as the direct result of any adjudicatory hearing, Section 316 hearing, citizen suit or other litigation pending as of the date upon which the Administrator approves the State's permit program will be made by the Regional Administrator; provided, however, that the State retains its right of certification of any such modifications under Section 401 of the FWPCAA. All other modifications to any NPDES permit issued by the Regional Administrator will be made by the Commissioner in accordance with Article VII of this Agreement.

4. Nothing in this Agreement shall pertain to the issuance of certificates of environmental compatibility and public need ("certificates") for major steam electrical generating facilities by the New York State Board on Electric Generation Siting and the Environment ("Board") which is covered by a separate agreement between the Chairman of such Board and EPA.

5. Specific workload responsibilities to be undertaken by EPA and DEC covering the identification and orderly transfer of unprocessed applications on file with EPA to the Department will be identified in a separate agreement and shall foster an orderly transition of such responsibilities.

## ARTICLE II

### RECEIPT AND USE OF DATA

1. The Regional Administrator hereby agrees that no later than sixty (60) days prior to the date upon which the Administrator approves the State's permit program, the Regional Administrator shall provide to the Commissioner a list of all valid NPDES or Refuse Act permits issued by him or by the United States Army Corps of Engineers for all discharges into the navigable waters of the State of New York. This list shall include the permit number, the date issued, the term for which the permit is valid, the name and address of the permittee, the date the permit expires and recorded actions taken for noncompliance with all permit requirements when copies of such actions have not previously been submitted to the Department. If the Commissioner, in reviewing such list, finds that his files are incomplete with respect to such permit, he shall so notify the Regional Administrator, and the Administrator shall ensure that a copy of the final permit, including all changes, modifications and corrections thereto has been furnished to the Commissioner within sixty (60) days of such notification. In addition, the Regional Administrator shall provide to the Commissioner a list of all applications received together with their basic status, i.e., untouched, complete, draft permits and/or PSTs complete, in Public Notice phase, Public Notice phase complete.

2. No later than thirty (30) days after the date upon which the Administrator approves the State's permit program, the Regional Administrator will submit to the Commissioner a complete list of all nonfilers known to the Regional Administrator within the State of New York. This list shall include the name and address of the nonfiler, and any information available relative to the nonfiler's type of operation and steps taken by the Regional Administrator to obtain permit applications from said nonfilers and current status of each case.

3. The Regional Administrator agrees that he will maintain all the files containing the documents upon which NPDES permits issued by him were based in a readily accessible condition and that employees of the Department will be permitted unlimited access to such documents on five (5) days prior notice to the Regional Administrator or his designee. Any documents required by the Department will be furnished or reproduced by EPA promptly and without charge to the Department.

4. All new applications received by the Regional Administrator subsequent to the effective date of the list described in paragraph 1 of this Article will be transmitted within 10 days of receipt to the Commissioner.

5. The Commissioner hereby agrees that he will provide to the Regional Administrator periodic, statistical reports on all new NPDES applications received by him, and on the progress of all NPDES permits proposed to be issued by him.

### ARTICLE III

#### TRANSMITTAL OF DRAFT PERMITS TO THE REGIONAL ADMINISTRATOR

1. The Commissioner hereby agrees that for all permits proposed to be issued by him for which the Regional Administrator has not waived his right to object to, review and receive information pursuant to Section 402(d) of the FWPCA, the Commissioner will transmit to the Regional Administrator a copy of the application, the public notice, the draft permit and the fact sheet, if applicable, and the rationale detailing the basis for the limits appearing in the draft permit at the time of the publication of public notice for the issuance of a permit. The Regional Administrator shall be afforded a period of thirty (30) days from receipt of such documents during which to make written comments upon, objections to, or recommendations with respect to such a draft permit.

2. The Commissioner agrees that if any draft permit received by the Regional Administrator pursuant to paragraph 1 of this Article is substantially changed subsequent to the initial transmission to the Regional Administrator, the Commissioner shall so notify the Regional Administrator and shall transmit to the Regional Administrator a copy of such changed permit. The Regional Administrator shall

-6-

have a period of twenty (20) days from receipt of such changed permit during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the final permit. For the purposes of this paragraph, a substantial change in a draft permit is a change which either results in the increase of any effluent load (which may be expressed as a percentage of influent allowed to be discharged) by more than 20 percent, provided, however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original draft permit.

3. If the Regional Administrator so requests in writing, the Commissioner shall extend the period of time during which the Regional Administrator may make written comment upon, objection to, or recommendations with respect to any draft permit proposed to be issued by the Department, except that in no event will the total of time, as extended, be greater than 90 days from the original receipt of the draft permit.

4. If the Regional Administrator objects to any permit proposed to be issued pursuant to his right to object provided in Section 402(d)(2) of the FWPCA, such objection shall be in writing, shall state with particularity the provisions of the FWPCA or regulations, guidelines and national program guidance adopted thereunder upon which the objection is based, and shall set forth the terms and conditions required by the Regional Administrator as a condition to elimination of his objections to the proposed permit. Whenever the Regional Administrator objects to a permit, no permit shall be issued by the Department until all objections of the Regional Administrator have been resolved. The Regional Administrator and the Commissioner agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as is possible. When an objection of the Regional Administrator has been resolved to his satisfaction, he shall notify the Commissioner in writing of the withdrawal of his objection.

5. The Regional Administrator hereby waives his right, pursuant to Section 402(d)(2) of the FWPCA, to object to any permit proposed to be issued by the Department or routinely to receive any information thereon other than a copy of the final permit for (a) any industrial

discharge which has a yearly average flow, based on days of discharge, of less than .1 MGD, or (b) any discharge from a publicly or privately owned sewage treatment works which has an average daily design flow of less than 0.5 MGD unless such discharge described in (a) or (b) either (i) affects the quality of the waters of any other state, or (ii) contains toxic substances in excess of standards promulgated by the Administrator pursuant to Section 307(a) of the FWPCA.

6. The Commissioner may impose additional requirements, limitations and conditions as he deems necessary as long as such requirements, limitations and conditions are not less stringent than federal guidelines and requirements.

#### ARTICLE IV

##### RECEIPT OF PERMITS AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Commissioner agrees to transmit a copy of every NPDES permit and modifications thereto issued by him to the Regional Administrator no later than thirty (30) days after the issuance of such permit and modifications thereto.

#### ARTICLE V

##### MONITORING AND REPORTING

1. The Commissioner or his designee, in accordance with §124.61 of the State Program Elements and 6 NYCRR 756.1, shall apply monitoring conditions in NPDES permits, and shall establish such monitoring requirements for additional pollutants in any NPDES permit, as may be required. The Commissioner shall cooperate with the Regional Administrator on the requirement that copies of all reports required of a permittee under a permit originally issued by the Regional Administrator will continue to be submitted to the Regional Administrator by the permittee.

2. The Commissioner agrees to condition all NPDES permits issued by him for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement so as to require that copies

of all reports to be submitted by the permittee to the Commissioner shall also be submitted to the Regional Administrator.

3. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of a publicly or privately owned treatment works containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of EPA form 7500-5. This does not cover Reconnaissance Inspection Visits for which the Department's Form 216 is usually completed.

4. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of an industrial facility containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of the inspection report.

5. The Regional Administrator shall continue to provide effluent compliance monitoring assistance to the Commissioner. Monitoring, sampling strategy and the degree of assistance to be provided shall be determined and mutually agreed upon through negotiation of the State's annual strategy and water pollution control program plan (\$106 plan).

6. While the Regional Administrator retains responsibility for compliance monitoring pursuant to paragraph 3 of Article I of this Agreement, the Regional Administrator shall transmit to the Commissioner a copy of all such inspection reports together with any other pertinent papers such as letters to the permittee.

#### ARTICLE VI

#### TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK

1. Until a national repository of information is permanently established, the Regional Administrator will perform this function with regard to NPDES permits. Therefore, transmission by the Commissioner or his designee of permit

applications and final permits, and the conditioning of all NPDES permits to require direct submission of copies of self-monitoring and compliance schedule reports to the Regional Administrator as required in previous Articles shall satisfy the requirement of transmittal of data to the National Data Bank for these permits.

2. The Commissioner and the Regional Administrator shall cooperate in providing each other, in a timely manner, basic information and data needed to carry out their respective programs.

## ARTICLE VII

### MODIFICATIONS, SUSPENSIONS AND REVOCATIONS OF ISSUED PERMITS

1. Whenever the Commissioner intends to suspend, revoke or modify an issued NPDES permit for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, he shall notify the Regional Administrator, and shall transmit a copy of any permit which is proposed to be modified or revised in respect to a compliance schedule, increased effluent limitation, or sampling and monitoring requirement to the Regional Administrator, together with the proposed changes.

2. The Regional Administrator shall be afforded a period of thirty (30) days following such notice or receipt of such transmitted changes, whichever shall occur later, to comment upon, make recommendations with respect to, or object to the proposed modifications and revisions. If no objections are made within the 30-day period, the Commissioner will issue the modified permit.

3. If any permit is revised or modified in any manner by court action, the Commissioner or his designee shall notify the Regional Administrator of such revision or modification and, upon request, shall transmit a copy of such permit with the changes to the Regional Administrator. Where implementing action by the Commissioner or his designee is required by the court, the Commissioner or his designee, unless prohibited by court order, shall, prior to taking such implementing action, allow the Regional Administrator a period of ten (10) days following such notice or receipt of such transmittal, whichever shall later occur, in which to appeal the court's decision.

ARTICLE VIII

ENFORCEMENT

1. The Department shall continuously monitor compliance with all requirements contained in NPDES permits issued by the Commissioner and the Regional Administrator and in certificates issued by the Board, including requirements that permittees submit monitoring and compliance reports.

2. On the last day of the months of April, July, October and January the Commissioner shall send the Regional Administrator a quarterly status report which shall contain all known instances, as of 30 days prior to the date of submission of such report, of failure to comply with permit requirements during the reporting period preceding the date of such status report or continuing to remain in non-compliance from any previous quarterly reporting period. The quarterly status report shall set forth the following information for each reported instance of noncompliance:

- a. The name and address of the permittee;
- b. The permit number;
- c. The nature of the instance of noncompliance;
- d. A short description of any actions or proposed actions by the permittee or by the Commissioner to comply or enforce compliance with the permit requirements; and
- e. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

3. Whenever the Regional Administrator receives any information that any permittee is in violation of any term or condition of any issued NPDES permit or certificate, he shall immediately forward a copy of such information to the Commissioner. The Commissioner will advise the Regional Administrator of the action to be taken. The Regional Administrator agrees to make available to the Commissioner appropriate assistance which may be necessary in any action, administrative or judicial, taken by the Commissioner. Such assistance may include, but is not limited to, investigative reports, laboratory analyses, and appropriate Agency personnel to provide sworn testimony.

4. The Commissioner will transmit to the Regional Administrator a copy of any order or directive, administrative or judicial, related to compliance with the terms and conditions of an NPDES permit originally issued by the Regional Administrator.

5. Nothing contained in this Agreement shall be construed to limit the authority of the Regional Administrator to take appropriate action pursuant to Sections 308 and 309 of the FWPCAA, either on his own motion or when requested to do so by the Commissioner.

#### ARTICLE IX

#### ASSISTANCE

From time to time the Commissioner and the Regional Administrator shall consult as to whether or not it will be necessary for the Regional Administrator to assist the Commissioner in some manner to insure that the State's pollutant discharge elimination system permit program is at all times in conformance with the applicable requirements of the FWPCAA and the State Program Elements. Such assistance shall be rendered as the Commissioner and Regional Administrator may agree.

#### ARTICLE X

#### CHANGES IN STATE STATUTES, REGULATIONS, DIRECTIVES, OR STANDARD TEST METHODS

1. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directives, which the Commissioner has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, the Commissioner shall notify the Regional Administrator by transmittal of the text of any such change to the Regional Administrator. The Regional Administrator shall have 30 days in which to determine whether the proposed change would mean that the State's permit program would not be in accordance with the FWPCAA and the State Program Elements.

2. If an amendment, rescission, or repeal of any statute, regulation or directive, described in paragraph 1 above shall occur for any reason, including action by the New York Legislature or a court, the Commissioner shall notify the Regional Administrator by transmittal of a copy of the text of such revision to the Regional Administrator.

3. Prior to his approval of any test methods other than those specified by a standard permit form, the Commissioner shall obtain the approval of the Regional Administrator.

#### ARTICLE XI

##### FURTHER ASSURANCES

The Commissioner shall adopt such regulations, and shall take all further actions which may be needed in order to preserve and maintain, in accordance with the FWPCA and the State Program Elements, any authorities, programs, or commitments described in this Agreement or contained elsewhere in the State's description of its pollutant discharge elimination system permit program submitted to the Administrator in April, 1974, as modified and supplemented to date, except as any change herein or therein may be approved by the Regional Administrator.

#### ARTICLE XII

##### ACTION THROUGH STAFF PERSONNEL

The Commissioner and the Regional Administrator may designate personnel to carry out any duty or action required or described herein.

#### ARTICLE XIII

##### EFFECT, RESCISSION, MODIFICATION

This Agreement shall take effect upon program approval by the Administrator pursuant to §402(b) of the FWPCA and shall remain in effect for the duration of such approved program or until this Agreement is rescinded. In the event

that federal grants to the State of New York to assist in administering programs for the prevention, reduction and elimination of pollution, including enforcement, should be terminated or reduced to the point that insufficient federal funds are provided to administer the federal portion of the NPDES program, or if the Legislature of the State of New York should fail to authorize or appropriate sufficient State funds to provide for full implementation of this Agreement, or for other good and sufficient reasons which in the opinion of the Commissioner prevent the full accomplishment of this program, the Agreement shall be rescinded on 30 day's notice in writing from the Commissioner to the Regional Administrator.

ARTICLE XIV

The agreement between the parties entered into on or about April 28, 1975 in substantially the same form as this agreement is hereby rescinded and superseded in its entirety by this agreement.

In witness whereof, the parties have executed this agreement on this 26<sup>th</sup> day of August, 1975.

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

Ogden Reid  
Commissioner

By: Paul J. Elston  
Paul J. Elston  
First Deputy Commissioner

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION II

By: Erio B. Gutwater  
Acting Regional Administrator  
Gerald M. Mansler  
Regional Administrator

Approved: October 27, 1975  
(DATE)

John Zuccheri Deputy  
Russell E. Train, Administrator  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY



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

NPDES  
11

JUN 16 1980

OFFICE OF ENFORCEMENT

Honorable Hugh Carey  
Governor of New York  
Albany, New York

Dear Governor Carey:

On October 28, 1975, New York received authority to administer the National Pollutant Discharge Elimination System (NPDES) within its borders. EPA's approval letter indicated that we would retain authority to issue permits for Federal facilities within the State. The reservation of authority over Federal facilities was necessary because the Federal Water Pollution Control Act (FWPCA) precluded State regulation of these facilities.

The 1977 amendments to the FWPCA specifically authorize the States to administer the NPDES permit program for Federal facilities. Accordingly, I have today approved the State of New York's request to assume this responsibility. This approval overrides any contrary language in EPA's October 28, 1975 letter approving the State's NPDES program.

We are glad to transfer the administration of the NPDES permit program for Federal facilities to the State of New York. Region II will be working with the New York State Department of Environmental Conservation and the New York State Board on Electric Generation Siting and the Environment to facilitate this transfer in a timely manner.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jeffrey G. Miller".

Jeffrey G. Miller  
Acting Assistant Administrator  
for Enforcement

cc: Mr. Robert F. Flacke  
Honorable Chas. Zielinski  
Mr. Charles S. Warren

*Jim - keep this w/ those file - I could not find it in our file*  
*Paul*  
*Sec.*

Memorandum of Understanding  
between the  
United States Environmental Protection Agency  
and the  
New York State Department of Environmental Conservation  
Relative to Management of the  
Pretreatment Program

I. Introduction and Purpose

Pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317 (1978 and Supp. 1982), the United States Environmental Protection Agency (EPA) and the New York State Department of Environmental Conservation (DEC) agree to cooperate in controlling the introduction of wastes from non-domestic sources into publicly owned treatment works through implementation of Title 40 Part 403 of the Code of Federal Regulations, entitled "General Pretreatment Regulations for Existing and New Sources of Pollution".

The purpose of this agreement is to establish between EPA and DEC the conditions and procedures to be followed in implementing the General Pretreatment Regulations.

II. General Provisions and Responsibilities

Upon mutual approval of this interim agreement, while EPA will remain the "approval authority", as defined by 40 CFR 403.3 for the purposes of approving local Publicly Owned Treatment Works' (POTWs) pretreatment programs, DEC will become the recommending authority. EPA, while retaining responsibility for approval, will rely upon DEC certification and appropriate supporting documents in making such determinations. EPA will respond to DEC in writing within 30 days of each recommendation. DEC will assume responsibility to require and enforce, through SPDES, the implementation of approved local pretreatment programs.

EPA will remain the "control authority" as defined by 40 CFR 403.12 for the purposes of regulating industries subject to categorical pretreatment standards, except in the case of delegation of "control authority" to municipalities with approved local pretreatment programs.

III. Specific Provisions and Responsibilities which become effective upon execution of this agreement

A. Local POTW Pretreatment Programs

1. EPA Responsibilities/Activities

- a) Remain the "approval authority" as defined by 40 CFR 403.3 for the purposes of approving local Public Owned Treatment Works (POTW's) pretreatment programs.
- b) Provide assistance to DEC and POTW's on the general pretreatment regulations and policy issues.

- c) Manage operation of program activities conducted by EPA contractor and submit within five (5) days of receipt contractor study outputs to DEC for use in reviewing programs.
- d) In coordination with DEC, utilize EPA contractor services to disseminate program guidance and information.
- e) Assist DEC, as necessary, in the development and enforcement of compliance schedules for the development of local POTW pretreatment programs.
- f) Conduct periodic overview/evaluation of NYSDEC management of the pretreatment program. This includes POTW program certifications, overall program status, compliance/enforcement activities, and EPA field inspections as appropriate.

## 2. DEC Responsibilities/Activities

- a) Provide technical and program assistance to local POTWs required to develop and implement pretreatment programs.
- b) Provide legal review, with assistance from EPA when appropriate and their consultant, to local POTWs required to develop pretreatment programs in the review of formal POTW pretreatment program submissions.
- c) Establish and enforce compliance schedules for local POTW pretreatment program development and implementation.
- d) Review and recommend for approval by USEPA, formal submissions by POTW's for approval of local pretreatment programs. With such recommendation submit the Pretreatment Program Review check list attached to this MOU as well as copies of all review/comment letters, on-site inspection reports, direct sampling analysis reports and any overview reports on the subject.

NOTE: The Pretreatment Program Review check list content can be modified upon mutual agreement of the signers of this MOU without need to revise the MOU.

- e) Review and certify to EPA local POTW program requests for removal credits and modify POTW SPDES discharge permits as appropriate.
- f) Overview and regulate implementation of local POTW pretreatment programs through review of program and special reports, on-site inspections, discharge monitoring reports and analysis of direct sampling as necessary to assure that the primary goals of the program are being met.

## B. Industries Subject to Categorical Pretreatment Standards

### 1. EPA Responsibilities/Activities

- a) Maintain and manage an information system for monitoring industrial discharges, including baseline reports, progress reports, and status of compliance for all industries affected by promulgated categorical pretreatment standards.
- b) When appropriate, transfer the information from this system to local POTWs as these entities assume responsibility, as the control authority, to ensure compliance through the municipality's pretreatment program.
- c) With the input of DEC, develop a mutually acceptable long-term categorical industry management strategy and implement it in the short-term. The strategy will be used to manage compliance with categorical standards by industrial users discharging to municipal systems not covered by approved local POTW pretreatment programs.
- d) Maintain communication with DEC and affected municipalities in the implementation of the strategy called for in item (c).

### 2. DEC Responsibilities/Activities

Maintain communication with EPA on its strategy to manage compliance with categorical standards by industrial users discharging to municipal systems not covered by approved local POTW pretreatment programs.

## IV. Specific Provisions and Responsibilities which modify this Memorandum of Understanding on April 1, 1986 - Full and Formal Program Delegation

DEC will become both the "approval authority" and "control authority" and assume all powers thereof.

## IV. Amendments

To the extent that any modifications to the responsibilities or procedures to be performed by DEC and EPA under this Agreement are necessitated, the DEC and EPA will mutually agree to such modifications prior to their implementation.

## V. Resources

EPA will continue to financially support DEC's role in administering the Pretreatment Program.

## VI. Effective Date

This Agreement will take effect immediately upon execution by the Director, Division of Water, DEC and Director, Water Management Division, USEPA-Region II.

VII. Termination

This Agreement may be terminated on 30 day's written notice of either signatory.

It is the expressed intent of EPA and DEC to evaluate the effectiveness of this agreement toward possible continuance, modification, or termination on April 1, 1985 and April 1, 1986. Both parties want to assure the existence of an effective pretreatment program over the long term for New York State.

For the United States Environmental  
Protection Agency, Region II

For the New York State  
Department of Environmental Conservation



William Moezynski  
Director  
Water Management Division



Daniel Barolo  
Director  
Division of Water

Date:

3/26/84

Date:

3/6/84

ORIGINAL NOA 12/18  
PMS Section 1.3 "NOA"

AMENDMENT TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II  
RELATING TO GENERAL PERMITS

The Memorandum of Agreement between the United States Environmental Protection Agency, Region II (hereinafter EPA) and the Department of Environmental Conservation (hereinafter DEC) is hereby amended to include DEC and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereinafter NPDES) general permits as follows:

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

The DEC will include in each general permit conditions which require the permittee(s) to comply with the following provisions of 40 CFR §122.28.

- §122.28(b)(2) notices of intent
- §122.28(b)(3)(i) requiring dischargers to apply for and obtain an individual permit; petitions by interested parties
- §122.28(b)(3)(iii) providing that a general permit holder may request to be excluded from coverage under the general permit by applying for an individual permit
- §122.28(b)(3)(iv) providing that when an individual permit is issued to a discharger subject to a general permit, the applicability of the general permit is automatically terminated on the effective date of the individual permit
- §122.28(b)(3)(v) providing that a source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered under the general permit which shall apply to the source upon revocation of the individual permit

Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development and will be transmitted to the following EPA offices:

Water Management Division Director  
U.S. EPA, Region II  
26 Federal Plaza  
New York, NY 10278

Director, Office of Wastewater Enforcement and Compliance\*  
U.S. EPA (WH-546)  
401 M Street, SW  
Washington, D.C. 20460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the DEC. In the event EPA does object to a general permit it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The State has the right to a public hearing on the objection in accordance with 40 CFR §123.44 and Article III of the MOA. If the state does not request a public hearing within ninety (90) days of receipt of the objections and EPA's objections are not withdrawn, exclusive authority to issue the general permit passes to EPA. If the state does request a public hearing, one will be held, and a decision will be made which reaffirms the original objections, modifies the terms of the objections, or withdraws the objections. The state will be given notification of this decision. If the state does not resubmit a draft general permit in response to the decision within thirty (30) days of the notification, exclusive authority to issue the general permit passes to EPA.

At the time the DEC transmits a copy of the draft general permit to EPA, the DEC will also publicly notice the draft general permit in accordance with 6 NYCRR Part 621, including publication in the Environmental Notice Bulletin. The DEC will also issue and administer general permits in accordance with 6 NYCRR Part 621 and 40 CFR §122.28.

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

All specific State commitments regarding the issuance and enforcement of general permits will be determined through the

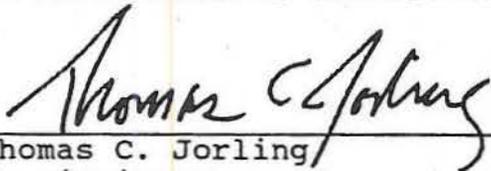
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\*General permits for discharges from separate storm sewers need not be sent to EPA Headquarters for review.

annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the DEC general permit program application by the Regional Administrator of EPA Region II.

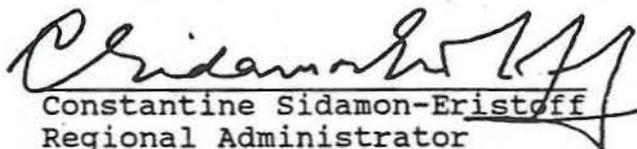
New York State Department  
of Environmental Conservation



Thomas C. Jorling  
Commissioner

Dated: Albany, New York  
September 17, 1992

United States Environmental  
Protection Agency



Constantine Sidamon-Eristoff  
Regional Administrator

Dated: New York, New York  
October 15, 1992

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AMENDMENT TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II  
RELATING TO IMPLEMENTATION OF THE REQUIREMENTS  
OF THE GREAT LAKES WATER QUALITY GUIDANCE  
IN THE GREAT LAKES BASIN

**I. Background**

1. The Great Lakes Water Quality Guidance (GLWQG) is found at 40 C.F.R. Part 132 and is the result of a six-year effort begun by the eight Great Lakes States and EPA in 1989 to develop more consistent water quality standards in the Great Lakes Basin.
2. The GLWQG establishes minimum water quality criteria (including for the first time criteria to specifically protect wildlife), antidegradation policies, and implementation procedures using an ecosystem approach for waters of the Great Lakes Basin within the States of Illinois, Indiana, Michigan, Minnesota, New York, Pennsylvania, Ohio and Wisconsin, including waters within the jurisdiction of Indian tribes. These procedures will be used to establish "consistent" water quality goals and to control point and nonpoint source discharges from industrial and municipal facilities within the Great Lakes Basin.
3. The New York State Department of Environmental Conservation (NYSDEC) has adopted certain methodologies, policies and procedures to meet the requirements of the GLWQG and has submitted them to EPA for review. In certain instances, these methodologies, policies and procedures will be implemented through the NYSDEC's SPDES permit program. EPA and NYSDEC are entering into this Amended Memorandum of Agreement (MOA) to ensure that the methodologies, policies and procedures implemented through the SPDES permit program within the Great Lakes System in New York State are consistent with the GLWQG found at 40 C.F.R. Part 132.
4. The duties in this MOA apply only to those portions of NYSDEC's SPDES permit program which concern discharges to the Great Lakes System in New York.

**II. Technical Operational Guidance Series (TOGS)**

1. The NYSDEC has used a series of documents, known as the Technical Operational Guidance Series (TOGS), as the basis for providing NYSDEC staff with the technical guidance necessary to implement the State's water quality protection program for over twenty years. Therefore, NYSDEC has elected to implement certain requirements of the

GLWQG through the continued use of these TOGS. NYSDEC has modified the applicable TOGS to be consistent with the requirements of the GLWQG.

2. The applicable State TOGS which have been modified by NYSDEC to comply with the requirements of the GLWQG, and will be used by the State to implement these GLWQG-based requirements are:
  - TOGS 1.1.3: Procedures for Derivation of Site-specific Standards and Guidance Values for Protection of Aquatic Life;
  - TOGS 1.1.4: Procedures for Derivation of Bioaccumulation Factors;
  - TOGS 1.1.5: Procedures for Deriving Ambient Water Quality Standards and Guidance Values for the Protection of Wildlife;
  - TOGS 1.2.1: Industrial Permit Writing;
  - TOGS 1.3.1: Total Maximum Daily Loads and Water Quality-Based Effluent Limits;
  - TOGS 1.3.2: Toxicity Testing in the SPDES Program;
  - TOGS 1.3.3: SPDES Permit Development for POTWs; and,
  - TOGS 1.3.9: Implementation of the NYSDEC Antidegradation Policy - Great Lakes Basin (Supplement to Antidegradation Policy dated September 9, 1985).

#### **IIA. Purpose**

1. The purpose of this MOA is to set forth the basic covenants and commitments between EPA Region II and the NYSDEC, with respect to NYSDEC's use of TOGS to issue SPDES permits in the Great Lakes Basin in conformance with the requirements of the GLWQG.
2. EPA Region II and the NYSDEC hereby agree that it is NYSDEC's full intention to implement its water quality program for waters of the Great Lakes System in a manner that is consistent with (as protective as) the GLWQG. SPDES permits issued in the Great Lakes Basin will follow the procedures included in the applicable State TOGS.

#### **IIB. NYSDEC and EPA Responsibilities**

1. Under this Amended MOA, NYSDEC agrees that in order to implement the requirements of the GLWQG, as found at 40 C.F.R. Part 132, it will issue SPDES permits in the Great Lakes Basin in accordance with the procedures included in the applicable State TOGS.

2. If for any reason, on a case by case basis, NYSDEC is unable, or does not believe it is appropriate, to follow the procedures included in the TOGS in issuing a SPDES permit in the Great Lakes Basin, NYSDEC shall submit such permit for review by EPA Region II, notwithstanding any other provision in the MOA that might waive EPA review. NYSDEC shall specifically note in its transmittal to EPA and in the fact sheet or statement of basis for the permit, its decision to depart from the TOGS and rationale for doing so.
3. Both NYSDEC and EPA understand that should NYSDEC not follow the TOGS in any particular case, EPA would have the authority to object to the SPDES permit pursuant to 40 C.F.R. 123.44(c)(3) and (c)(9).
4. Any revisions to the above referenced TOGS with respect to the GLWQG shall be submitted to EPA in accordance with 40 C.F.R. Section 123.62(a).

### **III. Variations**

1. The NYSDEC has revised its regulations at 6 NYCRR §702.17 to enable the State to grant variances similar to those allowed in 40 C.F.R. Part 132, Appendix F, Procedure 2 of the GLWQG. To ensure that any variance granted pursuant to 6 NYCRR §702.17 is consistent with and as protective of water quality as variances that would be issued under 40 C.F.R. Part 132 Appendix F, Procedure 2, EPA and NYSDEC agree as follows:
2. Upon receipt of a complete SPDES application in accordance with 6 NYCRR 621, which includes a request for a variance, NYSDEC shall submit a copy of such request to Region II.
3. If NYSDEC determines that the variance request should be issued in accordance with the requirements of 6 NYCRR Part 702.17, it shall submit a draft permit and explanation of how the variance, if issued, will be as protective as a variance issued in accordance with 40 C.F.R. Part 132 Appendix F, Procedure 2, to EPA Region II on or before the date it notices said permit and variance request in the State's Environmental Notice Bulletin.
4. EPA Region II shall be granted at least 30 days, but no longer than the public comment period, to review and comment on NYSDEC's explanation that the variance would be as protective as a variance issued in accordance with the GLWQG.
5. In the event that EPA provides comments on the proposed application, NYSDEC shall consider EPA's comments to the explanation and proposed variance and prepare a written response to EPA's comments.
6. Upon submission of NYSDEC's response to EPA Region's comments on the explanation, EPA shall have 30 days to provide additional comments.

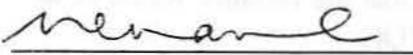
7. Nothing in this MOA obviates the NYSDEC's obligations to conform with the public notice, comment and hearing requirements contained in its regulations at 6 NYCRR Parts 621 and 624.
8. If EPA determines that the explanation provided by NYSDEC does not demonstrate that the granting of a variance pursuant to 6 NYCRR Section 702.17 would be as protective as that which would be required by 40 C.F.R. Part 132, Appendix F, Procedure 2, it may object to the issuance of such variance in the permit as being outside the guidelines and requirements of the Act. If EPA determines that the explanation supporting the issuance of the variance demonstrates the variance is as protective as that which would be required by 40 C.F.R. Part 132, Appendix F, Procedure 2, EPA will not object to the issuance of the permit or modification based solely on the grounds that the permit contains a variance to a water quality-based effluent limit.
9. In accordance with the Environmental Benefit Permit Strategy (EBPS), NYSDEC will give priority review for any permit containing a variance granted under 6 NYCRR Section 702.17 to assess whether there is new information which indicates that the standard in question is achievable.

**IV. Effective Date**

This MOA shall become effective upon the later of the date that all applicable TOGS have been approved by NYSDEC's Commissioner or the date that the revisions to NYCRR Parts 700-706 become effective. This MOA shall become void in the event that EPA Region II does not approve all or part of NYSDEC's submission in accordance with the GLWQG.

New York State Department of  
Environmental Conservation

United States Environmental  
Protection Agency

  
N.G. Kaul  
Director, Division of Water

  
Jeanne M. Fox  
Regional Administrator

Dated: Albany, New York  
FEB 26 1998

Dated: New York, NY  
3-16-98

**AMENDMENT  
TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN  
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2  
RELATING TO IMPLEMENTATION OF THE REQUIREMENTS OF  
THE GREAT LAKES WATER QUALITY GUIDANCE  
IN THE GREAT LAKES BASIN**

The federal Water Quality Guidance for the Great Lakes System (Guidance), 40 CFR Part 132, contains the minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes system to protect human health, aquatic life, and wildlife. The Great Lakes states were required to adopt provisions consistent with (as protective as) the Guidance for their waters within the Great Lakes system. The New York State Department of Environmental Conservation (NYSDEC) submitted revisions to water quality standards and implementation procedures to the U.S. Environmental Protection Agency Region 2 (EPA) on February 27, 1998. These rules and revisions to the NYSDEC Division of Water's Technical and Operational Guidance Series (TOGS) became effective on or before March 12, 1998.

EPA and NYSDEC enter into this Amendment to their National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement to ensure that New York State implements its authorities with respect to the waters of the Great Lakes system in a manner consistent with the Guidance.

**I. Applicability of Modified Water Quality-Based Effluent Limits (WQBELs) taking into account treatability, analytical detectability and natural background (6 NYCRR 702.16(b))**

6 NYCRR 702.16(b) states that where factors, including but not limited to analytical detectability, treatability, natural background levels and the waste assimilative capacity of the receiving waters indicate that achieving a WQBEL would be clearly unreasonable, NYSDEC may substitute a modified effluent limit.

NYSDEC and EPA Region 2 agree that NYSDEC will not utilize 6 NYCRR 702.16(b) as a basis for modifying or otherwise adjusting WQBELs. NYSDEC and EPA Region 2 further agree that when the State computes a WQBEL, based either on a TMDL, or a source specific WLA to attain WQS, and NYSDEC determines that the permit falls within the scope of 6 NYCRR 702.16, the following procedures will be followed:

- The permit shall contain, as the final effluent limit for that pollutant, the WQBEL as calculated (with the WQBEL referring to the limit derived from the WLA that attains water quality standards without consideration of the factors contained in 6 NYCRR 702.16(b)).
- The "compliance levels" mentioned in TOGS 1.2.1 and 1.3.3 that are based on consideration of detectability, treatability and natural background as provided in 6 NYCRR 702.16(b) may constitute interim limits only in those circumstances where such interim limits would be allowed by the compliance schedule procedures contained in 40 C.F.R. Part 132, Appendix F, Procedure 9 or the corresponding approved State procedure.
- Unless NYSDEC and EPA Region 2 agree to an alternate procedure, any such compliance schedule and interim limits which are not consistent with Procedure 9 in Appendix F of the Guidance (Procedure 9) (e.g., where compliance with a new or more restrictive WQBEL is not required until more than five years after the date of issuance or modification of the permit) will be in an enforcement instrument, such as an administrative order; the permit itself will be consistent with Procedure 9.

NYSDEC and EPA Region 2 agree that NYSDEC will not utilize 6 NYCRR 702.16(b) as a basis for modifying or otherwise adjusting WQBELs derived as a result of procedures approved by EPA as being consistent with the Guidance, except when interim limits are allowed by the compliance schedule procedures contained in 40 C.F.R. Part 132, Appendix F, Procedure 9 or the corresponding approved State procedure. In order to ensure that 6 NYCRR 702.16(b) is implemented consistent with the requirements of the Guidance, NYSDEC and EPA Region 2 agree to the following:

1. If NYSDEC drafts a proposed permit to include interim limits based on 6 NYCRR 702.16(b), NYSDEC shall submit the proposed permit to EPA Region II notwithstanding any prior waiver of review by EPA for any category or class of dischargers. When submitting the permit to EPA, NYSDEC shall include a written explanation of how such interim limits are allowed by Procedure 9.
2. EPA Region II shall have 30 days (which period shall be automatically extended upon request by EPA) to provide general comments upon, objections to, or recommendations with respect to the permit, including whether NYSDEC has demonstrated that any interim limits are allowed by Procedure 9.

3. In the event that EPA provides comments on the proposed permit, NYSDEC shall consider EPA's comments and prepare a written response to EPA.
4. Upon submission of NYSDEC's response to EPA Region II's comments on the explanation, EPA shall have 30 days to provide additional comments.
5. If EPA determines that NYSDEC has not demonstrated that interim limits are allowed by Procedure 9, EPA may object to the permit pursuant to 40 C.F.R. § 123.44.
6. In accordance with the Environmental Benefit Permit Strategy (EBPS), NYSDEC will give priority for review to any permit developed under 6 NYCRR 702.16(b). This review will assess whether there is new information which indicates that the standard in question is achievable.
7. Nothing in this MOA obviates the NYSDEC's obligations to conform with the public notice, comment and hearing requirements contained in its regulations at 6 NYCRR Parts 621 and 624, nor does it impair EPA's authority to take 90 days from receipt of a proposed permit to object to a proposed permit. See 40 C.F.R. § 123.44(a)(1).

## **II. Reasonable Potential Determinations When There is Existing Effluent Data**

TOGS 1.2.1 and 1.3.3 include procedures for determining projected effluent quality (PEQ) and making reasonable potential determinations.

NYSDEC and EPA Region 2 agree that NYSDEC will use all existing valid representative data to make reasonable potential determinations and include a WQBEL where reasonable potential is found regardless of the number of data points available for the reasonable potential analysis.

## **III. Statistically-Based Projected Effluent Quality (PEQ)**

TOGS 1.2.1 and 1.3.3 contain procedures for calculating PEQ and making reasonable potential determinations.

NYSDEC and EPA Region 2 agree that for purposes of implementing TOGS 1.3.3 for municipal discharges where there are 10 or more data points which are a mixture of detect and non-detect data, the PEQ will be set at the 99th percentile or, alternatively, based on the method set forth in Procedure 5.B.1 of Appendix F of the Guidance or an alternative method that meets the criteria in Procedure 5.B.2 of Appendix F of the Guidance.

Where there are 10 or more data points *greater than the level of detection*, EPA believes that a point estimate of the 95<sup>th</sup> percentile without a confidence interval, while less conservative than the procedure in 5.B.1, meets the requirement for an alternative procedure under B.2 of procedure 5 of Appendix F to 40 CFR part 132.

Where there are 9 or fewer data points, the PEQ shall be established by multiplying the maximum observed value by the multiplying factors contained in Table F6-1 of Procedure 5 of Appendix F of the Guidance. Further, when calculating PEQ for industrial discharges in cases where it has 9 or fewer data points for determining reasonable potential, NYSDEC will multiply the maximum observed value by the multiplying factors contained in Table F6-1 of Procedure 5 of Appendix F of the Guidance.

#### **IV. Section 132.4(a)(7) and Appendix F, Procedure 5: Fish Tissue Reasonable Potential and Policy of Independent Applicability**

NYSDEC does not have specific provisions for fish tissue reasonable potential and independent applicability as called for in Procedure 5.F. of Appendix F of the Guidance.

NYSDEC and EPA Region 2 agree NYSDEC will determine that reasonable potential exists when a discharger that has a detectable amount of a pollutant discharges to receiving waters where the geometric mean of fish tissue data exceed the fish tissue value upon which a Tier I criterion or Tier II value are based.

In addition, NYSDEC and EPA Region 2 agree that NYSDEC will follow a policy of independent applicability that is consistent with Procedure 5.F.3 of the Guidance, which requires that when determining whether WQBELs are necessary, information from chemical-specific, whole effluent toxicity, and biological assessments shall be considered independently.

#### **V. Consideration of Intake Credits**

TOGS 1.2.1 and TOGS 1.3.3 address the consideration of intake pollutants in water quality-based permitting.

NYSDEC and EPA Region 2 agree that intake pollutant procedures will only be utilized if the intake pollutants are from the same body of water (SBOW) as the discharge as defined in Section I.B.9 of TOGS 1.2.1 and Section VI.C.5.a.4 of TOGS 1.3.3. Further NYSDEC will not utilize its intake pollutant procedures to make a finding of no reasonable potential if (1) the facility alters the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream, or (2) the timing and location of the discharge would cause adverse water quality impacts to occur that would not occur if the pollutants were left in-stream.

In addition, NYSDEC and EPA Region 2 agree that upon making a finding under NYSDEC's intake pollutant procedure that an intake pollutant in the discharge does not cause, or have the reasonable potential to cause or contribute to an excursion above an applicable water quality standard, NYSDEC will include a statement in the fact sheet that the discharge of the identified intake pollutant will not cause or contribute to violation of water quality standards, and include a monitoring requirement in the permit to assure that the conditions under which the no net addition limits were developed remain the same.

Finally, NYSDEC and EPA Region 2 agree that any no net additional limits included in a permit be expressed as both concentration and mass, and that the permit will specify how compliance with these limits will be assessed, consistent with Procedure 5.E.3.a. in Appendix F of the Guidance.

## **VI. Whole Effluent Toxicity (WET)**

TOGS 1.3.2. contains WET procedures.

NYSDEC and EPA Region 2 agree that when determining whether a WQBEL is needed to protect against acute and chronic toxicity, NYSDEC will use Procedure 6.D in Appendix F of the Guidance.

## **VII. Need for WQBELs When WET Reasonable Potential Exists**

TOGS 1.3.2. contains procedures which address situations where WET reasonable potential is found.

NYSDEC and EPA Region 2 agree that a WQBEL for WET will be included in any permit where reasonable potential is found as a result of following the procedure in TOGS 1.3.2 (implemented in accordance with Section VI of this MOA). NYSDEC may also include a compliance schedule for the WET WQBEL of up to 5 years provided that all applicable compliance schedule requirements under TOGS 1.2.1 and 1.3.3, as well as 40 C.F.R. § 122.47 (implemented in accordance with Section XI of this MOA) are met. NYSDEC may decide on a case-by-case basis that a WQBEL for WET is not necessary, and NYSDEC has demonstrated, in accordance with 40 C.F.R. § 122.44(d)(1)(ii), that a chemical-specific limitations for the effluent is sufficient to attain and maintain applicable numeric and narrative water quality standards for toxicity. A WET WQBEL that is subject to a compliance schedule and has not gone into effect may be removed from the permit if, after the completion of a TIE /TRE, toxicity is eliminated and the subsequent reasonable potential analysis using data collected after the completion of the TIE/TRE concludes no reasonable potential to violate toxicity criteria.

## VIII. Loading Limits

TOGS 1.2.1 and TOGS 1.3.3 address loading limits.

NYSDEC and EPA Region 2 agree that:

- In the phrase "unless the variability of the wastewater discharge flow is negligible compared to the flow in the stream" in TOGS 1.2.1, NYSDEC interprets, and will apply, the term "negligible" to mean when the ratio of the 7Q10 stream flow (the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically) for the receiving stream to the daily maximum effluent flow is greater than 10:1.
- In TOGS 1.2.1 for "storm water dominated discharges" that contain process wastewater, NYSDEC will require both mass and concentration limits for pollutants discharged during high flow events.

## IX. WQBELS Below the Level of Quantification (LOQ)

WQBEL as the Enforceable Limit: TOGS 1.2.1 and TOGS 1.3.3 address the development and inclusion of WQBELS in permits when the WQBEL is calculated to be below the LOQ.

NYSDEC and EPA Region 2 agree that:

- NYSDEC will include in the permit the WQBEL, as calculated to meet water quality standards (not the PQL), as the enforceable effluent limit in any permit.
- NYSDEC will include in the permit the statement that, for the purpose of compliance assessment, the analytical method specified in the permit shall be used to monitor the amount of pollutant in an effluent down to the quantification level, provided that the laboratory analyst has complied with the specified quality assurance/quality control procedures in the relevant method.

Minimum Levels (MLs) and Practical Quantification Levels (PQLs): NYSDEC and EPA Region 2 agree that NYSDEC may have 120 days after the promulgation of any future MLs promulgated in 40 CFR Part 136 to compare the new ML to the corresponding PQL in NYSDEC's Detectability Manual. Nevertheless, at no time will NYSDEC issue an NPDES permit that fails to include the ML for the most sensitive analytical method specified in or approved under 40 C.F.R. Part 136, including where the ML for that method is more sensitive than a corresponding PQL in NYSDEC's Detectability Manual.

Reasonable Efforts to Achieve the Minimum Detection Level (MDL) or PQL: In Section I.B.6. and Attachment A (pg 53) of TOGS 1.2.1, the industrial permit language states that the permittee “must make all reasonable efforts” to achieve the MDLs and PQLs cited in the permit.

NYSDEC and EPA Region 2 agree that NYSDEC will require the permittee to monitor down to the ML/PQL, with adjustments to the quantification level based on matrix interference made only by establishing an “alternative” quantification level in the permit as provided in Procedure 8.B.2 in Appendix F of the Guidance.

#### **X. Pollution Minimization Plans (PMPs)**

Monitoring Requirements and Frequencies: TOGS 1.2.1, Attachment A, states that at a minimum, the PMP plan shall include “periodic monitoring designed to quantify and, over time, track the reduction of discharges of the substances noted above.”

NYSDEC and EPA Region 2 agree that NYSDEC will require that a permit that contains a WQBEL below the LOQ to include the following monitoring requirements at a minimum for that pollutant, unless less frequent monitoring is appropriate because information generated as a result of a PMP can be used to support a request for subsequent permit modifications, including revisions to (e.g., more or less frequent monitoring), or removal of the PMP, as provided in Procedure 8.D.6 of Appendix F of the Guidance.

- An annual review and semi-annual monitoring of potential sources of the pollutant for which the PMP is required, which may include fish tissue monitoring and other bio-uptake sampling; and,
- Quarterly monitoring for the pollutant in the influent to the wastewater treatment system.

PMPs for Ubiquitous Pollutants: TOGS 1.2.1 and TOGS 1.3.3 state that the permit writer should not include a PMP requirement to address discharges of substances that are ubiquitous and not subject to effective reduction strategies for which controllable sources are a *de minimis* portion of the WLA.

NYSDEC and EPA Region 2 agree that:

- PMPs, including its monitoring requirements, will be required for all WQBELs below the level of quantification, consistent with the provisions of Procedure 8.D.6. in Appendix F of the Guidance.

- In cases where NYSDEC does not require a discharger to implement control strategies under PMP for "ubiquitous" pollutants, NYSDEC will demonstrate to EPA that the substance is ubiquitous and not subject to effective reduction strategies at that facility.

WET Program as a PMP for Aquatic Life WQBELs below the LOQ: TOGS 1.2.1 and TOGS 1.3.3 both state that, for WQBELs which are below the level of quantification and are based on the protection of aquatic life, the WET program constitutes a PMP for these WQBELs.

NYSDEC and EPA Region 2 agree that, where the WET program is designated as the PMP for a pollutant that is subject to the WQBEL below the LOQ, NYSDEC will also require the discharger to monitor for that pollutant in accordance with Procedure 8.D.1 and 8.D.2 in Appendix F of the Guidance.

## **XI. Compliance Schedules**

TOGS 1.2.1 and TOGS 1.3.3 include provisions for addressing compliance schedules.

NYSDEC and EPA Region 2 agree that:

- For any permit issued to a new Great Lakes discharger (as defined in 40 CFR 132.2), which contains a WQBEL, NYSDEC will require the permittee to comply with such a WQBEL upon commencement of the discharge.
- NYSDEC will provide for the "2 year extension" allowed for additional studies provided for in Procedure 9.C.1. in Appendix F of the Guidance, only in instances where the WQBEL is based on a Tier II value.
- NYSDEC will limit the use of compliance schedules to new or more stringent WQBELs. When a compliance schedule goes beyond the term of the permit, NYSDEC will require that an interim permit limit, which becomes effective upon the expiration date of the permit, will be included in the permit and addressed in the permit's fact sheet in accordance with Procedure 9.B.2 in Appendix F of the Guidance.

## **XII. Variances**

In a previous Amendment to the NPDES MOA, dated March 16, 1998, NYSDEC and EPA Region 2 have agreed to procedures related to variances. These procedures identify a process and time frame for EPA's review and comment on a proposed variance and NYSDEC's response to

comments. NYSDEC and EPA further agree that EPA Region 2 shall make a determination per item III.8. of the March 16, 1998 amendment, within 30 days of NYSDEC's response to comments.

**XIII. Relationship with Other Documents**

The Amendment supplements the "Amendment to NPDES MOA" dated March 16, 1998.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By: *N.G. Kaul*

N.G. Kaul  
Director  
Division of Water

Date: 9/22/2000

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2**

By: *Jeanne M. Fox*

Jeanne M. Fox  
Regional Administrator

Date: SEP 27 2000

cc: Andrews /actini  
Borsellino  
Callahan



GEORGE E. PATAKI  
GOVERNOR

JOHN P. CAHILL  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ALBANY, NEW YORK, 12233-1010

11.3/00  
ph: 1

OCT 27 2000

Jr  
Muszynski  
cc: Callahan  
Pawlou  
Bellow

Ms. Jeanne M. Fox  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

Dear Administrator Fox:

This is in response to your letter of September 29, 2000, regarding the "Approval of Non-Substantial National Pollution Discharge Elimination System Program Revision: Permitting Procedures for Major Electric Generating Facilities".

As requested, enclosed please find a signed copy of the amendment to the 1975 Memorandum of Agreement to remove Article I, Paragraph 4, which excludes major steam electric generating facilities seeking certificates of environmental compatibility and public need.

Sincerely,

*John P. Cahill*  
John P. Cahill

Enclosure

cc: Maureen O. Helmer (w/enclosure)  
Chair, State of New York Department of Public Service  
Board on Electric Generation Siting and the Environment

Peter Lehner, Esq. (w/enclosure)  
Chief, Environmental Protection Bureau  
New York State Department of Law

RECEIVED  
NOV -2 PM 12:38  
US EPA

AMENDMENT TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION II

The Memorandum of Agreement between the United States Environmental Protection Agency, Region II and the New York State Department of Environmental Conservation is hereby amended to remove Article I, Paragraph 4.

This Amendment to the Memorandum of Agreement will be effective upon the later date of signature below.

New York State  
Department of Environmental Conservation

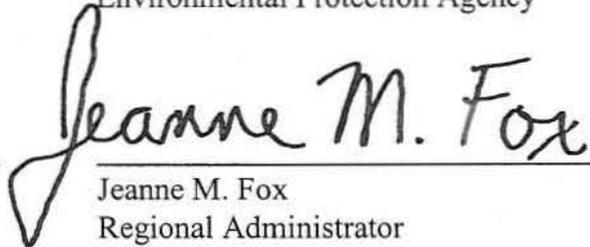


N.G. Kaul  
Director, Division of Water

Dated: Albany, New York

OCT. 6, 2000

United States  
Environmental Protection Agency



Jeanne M. Fox  
Regional Administrator

Dated: New York, New York

SEP 29 2000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUN 09 2005

Ms. Sandra Allen  
Director  
Division of Water, 4<sup>th</sup> Floor  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-3500

Dear Ms. Allen:

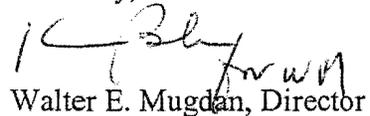
The Environmental Protection Agency (EPA), Region II terminates the waiver of review for all National Pollutant Discharge Elimination System (NPDES) permits that are determined to be significant point source discharges of nutrients to the Chesapeake Bay watershed. EPA requests that New York State Department of Environmental Conservation (NYSDEC) submit to EPA, Region II for review any draft NPDES permit for a significant point source of nutrients to the Bay watershed, in accordance with the procedures established in the Memorandum of Agreement between NYSDEC and EPA.

The focus of EPA's review will be to determine adherence to the point source nutrient wasteload allocations and other Chesapeake Bay nutrient reduction requirements contained in the New York Tributary Strategy. Based upon the recently released '*NPDES Permit Approach for Discharges of Nutrients in the Chesapeake Bay Watershed, December 2004*', EPA and the states have agreed that permits will be reissued with nutrient limits consistent with the applicable tributary strategy after the Maryland Water Quality Standards for the Chesapeake Bay are approved by EPA.

EPA regulations at 40 CFR 122.44(d)(1) require that permits include effluent limitations for any pollutant in a discharge which the permitting authority determines that causes, has the reasonable potential to cause, or contributes to an excursion above applicable water quality criteria. To ensure compliance with these regulations and with the Chesapeake Bay permitting approach, NYSDEC must submit to EPA for review all draft NPDES permit actions (issuance, reissuance, and modifications for major, minor, and general permits) for facilities determined to be significant point source dischargers of total nitrogen or total phosphorus to the Chesapeake Bay watershed. Whether a facility is a significant point source discharger of total nitrogen or phosphorus into the Bay is determined by the state's tributary strategy. Enclosed is a list of all the dischargers, both minor and major, currently identified as significant sources. In addition, if NYSDEC determines that facilities other than those listed in the enclosure are significant dischargers of nutrients to the Chesapeake Bay watershed, NYSDEC must also submit the draft NPDES permit actions (issuance, reissuance, and modifications for major, minor, and general permits) for those facilities to EPA for review.

Termination of EPA's waiver of review of NPDES permits is expressly provided for in 40 CFR 123.24(e)(1) and Article III, Part 5 of the Memorandum of Agreement (MOA). I appreciate your cooperation in this regard. If you have any questions, please contact me at (212) 637-3724 or have your staff call Maureen Krudner of my staff at (212) 637-3874.

Sincerely,



Walter E. Muggan, Director

Division of Environmental Planning and Protection

Enclosure

cc: Steve Eidt, Water Manager, NYSDEC - Region 7 (w/enclosure)  
Richard E. Draper, P.E., Bureau Director, Bureau of Water Permits, NYSDEC  
(w/enclosure)

# NY Significant Point Sources in the Chesapeake Bay Watershed

**Disclaimer: This is preliminary data for internal use by EPA and its Chesapeake Bay Program partner**

Updated:  
6/3/05

PERMIT NO.	STATE	FACILITY	CBP BASIN	DESIGN FLOW	PERMIT TYPE	PERMIT EXPIRES
NY0004189	NY	KRAFT FOODS, INC	SUSQUEHANNA RIVER	0.67	MINOR	9/1/2005
NY0004308	NY	POLLIO DAIRY	SUSQUEHANNA RIVER	0.9	MINOR	7/1/2008
NY0020320	NY	ADDISON (V)	SUSQUEHANNA RIVER	0.42	MINOR	7/1/2006
NY0020672	NY	HAMILTON (V)	SUSQUEHANNA RIVER	0.85	MAJOR	12/18/2000
NY0021407	NY	GREENE (V)	SUSQUEHANNA RIVER	0.45	MINOR	2/1/2007
NY0021423	NY	NORWICH	SUSQUEHANNA RIVER	2.375	MAJOR	8/31/2010
NY0021431	NY	BATH (V)	SUSQUEHANNA RIVER	1	MAJOR	7/1/2007
NY0021466	NY	SHERBURNE (V)	SUSQUEHANNA RIVER	0.427	MINOR	7/31/2010
NY0022357	NY	ALFRED (V)	SUSQUEHANNA RIVER	0.98	MAJOR	11/1/2008
NY0022730	NY	OWEGO (T) #1	SUSQUEHANNA RIVER	0.848	MAJOR	4/1/2009
NY0023248	NY	CANISTEO (V)	SUSQUEHANNA RIVER	0.7	MINOR	10/31/2010
NY0023591	NY	COOPERSTOWN	SUSQUEHANNA RIVER	0.75	MAJOR	2/1/2009
NY0023647	NY	HORNELL (C)	SUSQUEHANNA RIVER	4	MAJOR	6/1/2007
NY0023906	NY	ERWIN (T)	SUSQUEHANNA RIVER	1.75	MAJOR	3/1/2006
NY0024414	NY	BINGHAMTON-JOHNSON CITY JOINT BOROUGH	SUSQUEHANNA RIVER	20	MAJOR	6/1/2007
NY0025712	NY	PAINTED POST (V)	SUSQUEHANNA RIVER	0.5	MAJOR	1/1/2008
NY0025721	NY	CORNING (C)	SUSQUEHANNA RIVER	3.08	MAJOR	8/1/2009
NY0025798	NY	OWEGO #2	SUSQUEHANNA RIVER	2	MAJOR	6/1/2006
NY0027561	NY	CORTLAND (C)	SUSQUEHANNA RIVER	9	MAJOR	5/1/2009
NY0027669	NY	ENDICOTT (V)	SUSQUEHANNA RIVER	10	MAJOR	11/30/2008
NY0029262	NY	OWEGO (V)	SUSQUEHANNA RIVER	1	MAJOR	4/1/2008
NY0029271	NY	SIDNEY (V)	SUSQUEHANNA RIVER	1.7	MAJOR	1/1/2006
NY0031089	NY	WAVERLY (V)	SUSQUEHANNA RIVER	0.85	MINOR	7/1/2006
NY0031151	NY	ONEONTA (C)	SUSQUEHANNA RIVER	4	MAJOR	7/1/2007
NY0031411	NY	RICHFIELD SPRINGS (V)	SUSQUEHANNA RIVER	0.6	MINOR	9/1/2007
NY0035742	NY	ELMIRA / CHEMUNG CO. SD #2	SUSQUEHANNA RIVER	12	MAJOR	3/1/2009
NY0036986	NY	LAKE STREET/CHEMUNG COUNTY SD #1	SUSQUEHANNA RIVER	9.5	MAJOR	3/1/2009
NY0213781	NY	CHENANGO NORTHGATE	SUSQUEHANNA RIVER	0.8	MINOR	7/1/2008