

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF COLORADO
DEPARTMENT OF HEALTH

AND

THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION VIII

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INTRODUCTION

The Regional Administrator of Region VIII of the Environmental Protection Agency (hereinafter referred to as the Regional Administrator), and the Executive Director of the State of Colorado Department of Health (hereinafter referred to as the Director), have entered into this Memorandum of Agreement to delineate the responsibilities of Region VIII of the Environmental Protection Agency and the State of Colorado Department of Health, Division of Administration (hereinafter referred to as the Division), for the ongoing operation of the National Pollutant Discharge Elimination System (hereinafter referred to as NPDES), as described in Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to as the Act), and the Federal regulations promulgated thereunder, published at 40 CFR 124. The Agreement establishes policies and procedures for the transfer of the NPDES Permit Program from Region VIII of the Environmental Protection Agency to the Division; the manner in which the 40 CFR 124 guidelines will be implemented and specified areas of cooperation, standards of performance and guidelines for the achievement of the goals set forth in the Act.

POLICIES

1. It shall be the policy of Region VIII of the Environmental Protection Agency and the Division to fully coordinate and cooperate in the issuance of waste discharge permits under the NPDES.
2. As provided in Section 101(f) of the Act it shall be the Policy of Region VIII of the Environmental Protection Agency and the Division to minimize paperwork and interagency decision procedures, and to make the best use of available manpower and funds, so as to prevent duplication of effort and unnecessary delays.
3. It is recognized that the primary responsibility for the issuance of NPDES permits in the State of Colorado is with the State; that the Environmental Protection Agency will provide policy guidance, financial and technical assistance, and aid in the issuance of permits; and that both the State of Colorado and the Environmental Protection Agency share responsibility for enforcement actions necessary for the protection and enhancement of the State's waters.

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4. Based on the approval of State authority pursuant to Section 402, the Director, or his designee, with the assistance of the Permits Branch, Enforcement Division of the Environmental Protection Agency, under existing State statutes and regulations, shall process and issue National Pollutant Discharge Elimination System waste discharge permits which are consistent and compatible with the Act and with regulations and guidelines promulgated thereunder. The Regional Administrator, through the Permit Branch, shall provide written agreement with, objection to, or recommendations on, each NPDES permit to be issued. The Director, or his designee, shall not issue any NPDES permit to which the Regional Administrator has objected. Nor any permit that has not been submitted to the Regional Administrator for review.
5. Region VIII of the Environmental Protection Agency, with technical assistance from the Division, shall have the responsibility for issuance of NPDES permits for point source discharges from Federal facilities.
6. It shall be the goal of the Division, with assistance from Region VIII of the Environmental Protection Agency, to issue NPDES permits to any remaining significant dischargers in the State of Colorado by June 30, 1975. The Division and the Permits Branch shall strive to meet the goals set out in this document and progress in achieving these goals will be reviewed by the Director, or his designee, and Region VIII of the Environmental Protection Agency on a monthly basis commencing the end of the first full month after the State assumes the permit program.

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AGREEMENTS

1. TRANSMITTAL OF DATA FROM THE ENVIRONMENTAL PROTECTION AGENCY TO THE DIVISION.
 - a. Within 60 days from the date of approval of the State of Colorado's NPDES permit program, the Regional Administrator, through the Permit Branch, shall transmit to the Division all NPDES and Refuse Act applications and/or other relevant data which the Regional Administrator has in his possession and which he has not already transmitted to the Division. In effecting this transfer, the Regional Administrator will see that copies of all forms and data transmitted are retained by the Environmental Protection Agency.
 - b. The Regional Administrator will, at the time of transmittal, identify any application, pursuant to (a) above, which he considers to be incomplete and will request the Division to secure the missing information. Copies of all information thus secured will be provided to the Regional Administrator, Attention: Permits Branch, upon receipt by the Division.
 - c. Within 30 days from the date of approval of the State of Colorado's NPDES Permit Program the Regional Administrator will provide the Division with a list of those applicants in the State of Colorado which have been determined by the Environmental Protection Agency to not require NPDES permits. The Regional Administrator will send any applications or information that he has in his possession relative to the facilities on this list to the Division. The Division will inform the Regional Administrator of any facilities on this list to which the State issues a NPDES permit.
 - d. The Regional Administrator will also transmit to the Division copies of any fact sheets, public notices, proposed permit conditions, and summary of rationale sheets, drafted by the Environmental Protection Agency for facilities applying for NPDES permits in the State of Colorado.
2. TRANSMITTAL OF DATA FROM THE DIVISION TO THE REGIONAL ADMINISTRATOR.
 - a. The Division shall review all NPDES and Refuse Act applications and data transmitted by the Regional Administrator for completeness and sufficiency, and shall provide the Regional Administrator with a listing

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of those applications which are considered to be incomplete or otherwise deficient for preparation of a permit. The Regional Administrator will provide the necessary information to complete the application, or will inform the Director, or his designee, that the information must be requested from the applicant.

- b. After final approval of the Colorado NPDES Permit Program, the Division will assume initial responsibility for determining that applications submitted to the Division after that date are complete. When the Division determines that the NPDES forms received from the applicant are complete, two copies of the forms, with a cover letter indicating that the forms are complete, will be promptly transmitted to the Regional Administrator, Attention: Permits Branch. If the Regional Administrator concurs with the Division, one copy will be used for processing into the National Data Bank and the other copy will be placed in the Region VIII NPDES Permit files. If the Regional Administrator does not concur that the application is complete, he shall, within 20 days, notify the Director, or his designee, by letter in which respects the application is deficient. The Director, or his designee, will send the Regional Administrator any necessary information to complete the application and, if the Regional Administrator so requests, shall not issue the NPDES permit until notice is received from the Regional Administrator that the information is sufficient.
- c. It shall be the responsibility of the Regional Administrator to provide a copy of all NPDES forms and data, whether received by the Environmental Protection Agency before final approval of the Colorado NPDES Permit Program or provided by the Division pursuant to paragraph (b) of this section, to the National Data Bank.
- d. The Permits Branch, Enforcement Division, Region VIII, Environmental Protection Agency, will review all NPDES applications to identify any discharges less than 50,000 gallons per day which are not minor discharges.
- e. The Regional Administrator does not waive his rights to receive copies of all NPDES forms received by the Division. However, the Regional Administrator may, at his option, expressly waive any and all of his rights to receive NPDES portions of State permit forms with respect to any particular discharge or any class or type of discharge or with respect to discharges to particular navigable waters or parts thereof at any time in the future.

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- f. The Division shall transmit, upon request by the Regional Administrator, copies of any notices submitted by publicly-owned treatment works to the Division prepared in accordance with 40 CFR 124.45(d) and (e) of the State Guidelines or equivalent State requirements.
- g. Upon acquisition by the Division of the capability to prepare data in a format suitable for direct entry into the Environmental Protection Agency water information system, all information and data transmitted under this section will be prepared for such direct entry prior to submittal to the Environmental Protection Agency.

3. PREPARATION OF PROPOSED PERMITS.

- a. Region VIII of the Environmental Protection Agency, through the Permits Branch, Enforcement Division, shall provide technical assistance to the Division in the interpretation of effluent guidelines and other Federal regulations; preparation and issuance of public notice, fact sheets and permits; and review of all proposed NPDES permits for compliance with Federal regulations.
- b. The Division will provide the Permits Branch, Enforcement Division, with an internal draft of proposed NPDES permits, fact sheets, and public notices. The Permits Branch will promptly review these internal drafts and comment, if necessary, within 10 days. The Director, or his designee, will consider these comments as the proposed permits, fact sheets, and public notices are finalized.
- c. For each permit prepared subject to this Agreement, the Division will specify maximum and average quantitative limitations for the level of pollutants in the authorized discharge in terms of weight, where applicable.
- d. For each permit prepared subject to this Agreement, the Division will require that the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.
- e. If the Director, or his designee, makes a tentative determination to deny a permit, he shall notify the applicant of such intent and provide a copy of the determination to the Regional Administrator.

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4. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS.

- a. The Regional Administrator will have 30 days from the time he receives the proposed NPDES permit from the Division, within which to object to, as provided for in Section 402(d)(2) of the Act, comment upon or make a recommendation with respect to the proposed NPDES permit. Upon request of the Regional Administrator, the Director, or his designee, will provide the Regional Administrator with additional time for review, provided that the total review period shall not exceed 90 days. The Regional Administrator shall notify the Division in writing within the time periods set forth above if the Environmental Protection Agency objects to or concurs with the issuance by the Division of the NPDES permit as proposed, failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator.
- b. If a public notice, required by 40 CFR 124.32, is issued, the Division will transmit one copy of the NPDES public notice, fact sheet (if one is required), and proposed NPDES permit to the Regional Administrator, Attention: Permits Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed permit.
- c. The Division will transmit to the Regional Administrator, Attention: Permits Branch, copies of all written comments received on any public notices for a proposed NPDES permit from any source.
- d. If a proposed NPDES permit issued with a public notice is modified as a result of comments received by the Division during the 30-day comment period or as a result of a public hearing, the Division will transmit a revised copy of the proposed NPDES permit to the Regional Administrator, Attention: Permits Branch, and shall specify the reasons for the modification.

The Regional Administrator shall be provided 30 days from the time he receives the proposed NPDES permit, as revised, within which to object, comment upon or make recommendations with respect to any such revision.

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- e. The Director, or his designee, will consider all written comments by the Regional Administrator prior to final issuance of an NPDES permit. Modifications recommended by the Regional Administrator, including requests for additional monitoring, may be incorporated into final NPDES permits by the Division. No NPDES permits to which the Regional Administrator objects will be issued by the Director, or his designee.
 - f. The Regional Administrator does not waive his right, in any respect, to review all NPDES permits proposed to be issued to any point source dischargers in the State of Colorado. However, the Regional Administrator may, at his option, expressly waive any or all of his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes of dischargers within any category of point sources.
5. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS.

The Division will transmit to the Regional Administrator, Attention: Permits Branch, a copy of every issued NPDES permit together with any and all terms, conditions, and requirements of the NPDES permit.
 6. MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF NPDES PERMITS.

When the Director, or his designee, finds it necessary or advisable to modify, suspend, or revoke a NPDES permit in whole or in part for cause or for any other reason, the Regional Administrator will have up to 30 days to review and comment on the proposed change. No modification, suspension, or revocation of a NPDES permit to which the Regional Administrator objects will be made.
 7. MONITORING, RECORDING, AND REPORTING.
 - a. The Division shall carry out monitoring activities to determine compliance with permits, to validate self-monitoring reports, and as necessary to provide support for enforcement actions against NPDES permit violators. Procedures for carrying out such activities shall be as mutually agreed upon by the Director, or his designee, and the Regional Administrator and in accordance with regulations as promulgated in 40 CFR 124 and 40 CFR 35. As a minimum, the Division will monitor each major discharge on a yearly basis and each minor discharge on a random basis.

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- b. The Division will inspect the facilities of dischargers, including, where appropriate, effluent sampling and examination of monitoring records, reports, equipment, and methods. The compliance monitoring program shall be conducted in accordance with 40 CFR 35, Appendix A.
- c. All compliance monitoring samples shall be collected, preserved, analyzed, and validated by a quality control program in accordance with requirements of 40 CFR 35, Appendix A, and 40 CFR 136.
- d. Any discharge authorized by a NPDES permit which (1) is not a minor discharge; (2) the Regional Administrator requests, in writing, to be monitored; or (3) contains toxic pollutants for which an effluent standard has been established pursuant to Section 307(a) of the Act, will require monitoring by the permittee for at least the following:
 - (1) Flow (in gallons per day); and
 - (2) All of the following pollutants:
 - (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
 - (b) Pollutants which the Division finds, on the basis of information available to it, could have significant impact on the quality of State waters;
 - (c) Pollutants specified by the Administrator of Environmental Protection Agency, in regulations issued pursuant to the Act, as subject to monitoring; and
 - (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.
- e. The Regional Administrator may make the request specified in (d)(2) above at any time before an NPDES permit is issued.
- f. The Director, or his designee, will insure that the Regional Administrator, Attention: Permits Branch, receives two (2) copies of all NPDES reporting forms sub-

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mitted to the Division. If the Regional Administrator, acting through the Permits Branch, determines that the NPDES reporting forms are complete, he shall keep one copy on file in the Permits Branch and will use the second copy for processing into the National Data Bank. If the Regional Administrator determines that the NPDES reporting forms submitted to the Division are not complete or are otherwise deficient, he shall specify to the Director, or his designee, in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director, or his designee, shall require the permittee to supply such additional information as the Regional Administrator specifies. Upon acquisition by the Division of the capability, all data submitted under this section will be submitted in a form suitable for direct entry to the Environmental Protection Agency water information system.

- g. The Director, or his designee, shall evaluate data submitted by NPDES reporting forms and other forms supplying monitoring data for possible enforcement of remedial action.
 - h. The Director, or his designee, will promptly notify the Regional Administrator of any actual or threatened endangerment to the health or welfare of persons resulting from the discharge of pollutants.
8. PUBLIC ACCESS TO INFORMATION.

If a request is made for confidential treatment of any process, method of manufacture or production or sales or marketing data the Director, or his designee, shall, after opportunity for hearing, make a tentative determination to approve or deny the request. If the information being so considered is contained in a NPDES form, the Director, or his designee, shall transmit a copy of such information to the Regional Administrator and request that the Regional Administrator concur in such a determination. Should the Regional Administrator not concur with the Director's determination he shall follow those steps set forth at 40 CFR 124.35(b). In no case shall the Director, or his designee, grant confidential protection to information that has been determined to not constitute trade secrets.

9. ENFORCEMENT.

- a. The Divison shall be responsible for taking appropriate enforcement actions against persons in violation of NPDES

permit conditions and will receive the assistance of the Enforcement Division, Region VIII, Environmental Protection Agency.

- b. The Regional Administrator will be advised of any enforcement action that is proposed to be taken by the Division, whether such enforcement action is administrative, criminal or civil in nature, or the nature thereof.
- c. The Division will advise the Regional Administrator of progress of enforcement proceedings and related matters. The Regional Administrator will receive a copy of any administrative or judicial order or directives related to compliance and will be advised of any violations of orders or directives and of proposed enforcement action to be undertaken. Upon request of the Director, or his designee, the Regional Administrator will participate in administrative enforcement hearings and provide staff assistance in any public hearing related to enforcement.
- d. Whenever the Regional Administrator, under authority in Section 309, finds a violation of a waste discharge permit, the Director, or his designee, and the person in alleged violation will be notified. The Director, or his designee, will promptly respond to such notification by advising the Regional Administrator of the action proposed with respect to such violation. The Regional Administrator generally intends to undertake direct enforcement action, under Section 309, only when the Division does not take appropriate enforcement action.

10. TRANSFER OF INFORMATION CONCERNING WELL DISPOSAL.

The Regional Administrator shall distribute to the Director, or his designee, any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act concerning control of disposal of pollutants into wells.

11. PERFORMANCE AND GOALS.

The Director, or his designee, in the administration of the NPDES permit program on behalf of the State, shall use his best efforts to attain the performance goals which have been set pursuant to Section 106 of the Act, and to conform to the Environmental Protection Agency's permit issuance strategy aimed at the issuance of permits to all substantial dischargers by December 31, 1974.

To this end, the Division will issue at least thirty (30) permits per month for the first six (6) months of calendar year 1975, or until all permits are issued, but will have prepared draft permits for all point source discharges covered by the Act by June 30, 1975.

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12. CHANGES IN STATE STATUTES, REGULATIONS, DIRECTIVES, FORMS OR STANDARD TEST METHODS.

- a. Prior to taking any action to propose any substantial amendment, rescission, or repeal of any statute, regulation, directive, or form which has been submitted to the Regional Administrator in connection with approval of the State's NPDES program, and prior to the adoption of any new form not so submitted the Director, or his designee, shall notify the Regional Administrator and shall upon request, transmit the text of any such change or such new form to the Regional Administrator. The Regional Administrator shall have 20 days in which to assess such proposed change or such proposed new form as to its effect upon the State's qualification to conduct the NPDES program and to notify the State whether or not the proposed change or use of proposed new form would disqualify the State from participation in the NPDES.
- b. If an amendment, rescission, or repeal of any statute, regulation, directive, or form described in paragraph (a) above shall occur for any reason, including action by the Colorado Legislature or a court, the Director, or his designee, shall, within ten (10) days of such event, notify the Regional Administrator and shall upon request transmit a copy of the text of such revision to the Regional Administrator.
- c. Prior to his approval of any test method other than those specified by a standard permit or form, the Director, or his designee, shall obtain the approval of the Regional Administrator.
- d. In order to facilitate the provisions of paragraph (a) and (b) of this section, the Director, or his designee, shall identify each form used in the Colorado NPDES permit program by a series number and the date of the latest version or revision of such form.

13. FURTHER ASSURANCES.

- a. The Director, or his designee, shall develop and promote such legislation and 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 NPDES program submitted to the Administrator.
- b. The Director hereby provides the Regional Administrator with assurance that he has totally delegated to his deputy the authority and responsibility to issue, deny,

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modify, or revoke NPDES permits. That this delegation is without reservation and divests the Director of any authority or responsibility to act with respect to said permits for a period of two (2) years from the date he became Director. That the Deputy Director does not have a conflict of interest as defined at 40 CFR 124.94 and is competent to exercise the responsibility thus delegated. And that should the Director decide, for any reason, to withdraw, modify, or amend his delegation he will provide the Regional Administrator with a minimum of thirty (30) days notice prior to any such withdrawal, modification, or amendment.

14. EFFECT, RESCISSION, AND MODIFICATION.

This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the Federal Act and shall remain in effect for the duration of such approved program or until this Agreement is rescinded by mutual agreement of the parties. This Agreement may be modified from time to time as the parties may agree in order to simply the procedures and refine the methods of administration and enforcement of the NPDES Permit Program.

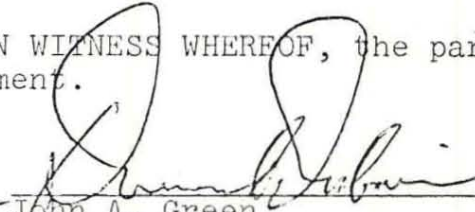
15. STATE CONTROLLER

This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved

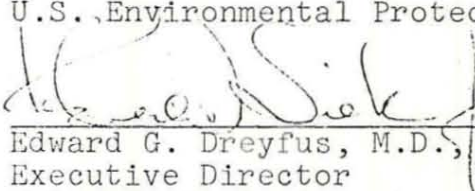
for


John A. Green
Regional Administrator
Region VIII
U.S. Environmental Protection Agency

12/27/74
Date

Approved

for


Edward G. Dreyfus, M.D., M.P.H.
Executive Director
Colorado State Department of Health

12/24/74
Date

Approved STATE OF COLORADO
John D. Vanderhoof _____ Date _____
Governor

by [Signature]
for Executive Director

Approvals _____ Date 12/26/74

Attorney General
State of Colorado
[Signature]
by John Bush
Deputy Attorney General

[Signature]
Asst. Controller _____ Date _____
State of Colorado

Approved _____ Date 3/20/75
by [Signature]
Russell E. Train
Administrator
U.S. Environmental Protection Agency

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