

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT

BETWEEN THE

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

AND THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

I. GENERAL

This Memorandum of Agreement (hereinafter, "Agreement") establishes policies, responsibilities and procedures pursuant to 40 CFR 124 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) Permit Program will be administered by the Illinois Environmental Protection Agency (hereinafter, the "State") and reviewed by the United States Environmental Protection Agency (hereinafter, "USEPA").

This Agreement defines the intended working relationships, roles and responsibilities of the respective agencies in the administration of the NPDES program in Illinois and does not constitute a binding, enforceable contractual agreement between the parties.

As used in this Agreement, the term "Act" shall mean the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500). The term "enforcement actions" shall be specifically defined in the annual State program plan submitted under Section 106 of the Act but shall include, as a minimum, warning letters, notices of violations, notice of compliance conference, notice of enforcement and enforcement cases filed before the Illinois Pollution Control Board or in State or Federal court.

This Agreement, and any subsequent written modification hereto, shall take effect after it is signed by the State and the Regional Administrator, and on the date it is approved by the Administrator of USEPA. Either the State, Regional Administrator, or Administrator of USEPA may initiate action to modify the Agreement. Any modification must be in writing, signed by the State and the Regional Administrator, and approved by the Administrator of USEPA.

The Agreement shall be reviewed jointly at least annually by the State and Regional Administrator during the preparation of the annual State Water Pollution Control Program Plan (hereinafter, "State Program Plan"), as required by Section 106 of the Act.

The State will administer the NPDES Permit Program consistent with the currently effective provisions of: the Act, applicable adopted Federal regulations, priorities contained in the annually approved State Program Plan, and this Agreement. It is the duty of USEPA to oversee the State's administration of the NPDES Permit Program on a continuing basis to assure that such administration is consistent with this Agreement, the State Program Plan, and all applicable requirements embodied in current regulations, policies and Federal law.

USEPA will, upon request, assign one staff representative to work at the State offices in Springfield for a mutually agreeable period of time in order to expedite the transition of State personnel into efficient and demonstrated administrative procedures. Thereafter USEPA will designate a staff person to work with the State as required to provide timely interpretations of Federal requirements and to provide necessary coordination for proper implementation of the Agreement.

When workload is such that available State resources do not permit timely accomplishment of the work intended under this Agreement, the State may request USEPA assistance and by mutual agreement the work will be shared for a mutually agreeable period of time.

The level of program financial support to the State from Section 106 grants is expected to remain relatively unchanged from fiscal year 1976 into the future. Any year to year decrease in funding level to the State will lead to automatic renegotiation of this Agreement by USEPA and the State. If a new Agreement cannot be reached within 90 days of USEPA notification to the State of a revised State Section 106 allotment, this Agreement shall be void 180 days thereafter.

II. POLICIES

The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in the State, except for those permits applicable to Federal facilities. USEPA will retain responsibility for the issuance, modification, reissuance, compliance monitoring and enforcement of NPDES permits to federal facilities; however, none will be issued which purport to violate substantive state environmental standards except in instances of national security. The strategies and priorities for issuance, compliance monitoring and enforcement of permits as established in this Agreement shall be further delineated in the annual State Program Plan prepared pursuant to Section 106 of the Act. If requested

by either party, meetings will be scheduled at reasonable intervals between the State and USEPA to review specific operating procedures, resolve problems or discuss mutual concerns involving the administration of the NPDES Permit Program.

Recognizing the impact of major dischargers on the waters of the State, both the State and USEPA agree that major dischargers as a group shall receive priority in all NPDES activities. Major dischargers are those mutually defined by the State and the Regional Administrator as those dischargers which have a high potential for violation of water quality standards or which are required to install substantial pollution abatement equipment.

In accordance with priorities established in this Agreement and the annual State Program Plan, the State will:

1. Expediently process and issue all required NPDES permits and provide ongoing, timely and adequate review of permits;
2. Comprehensively evaluate and assess compliance with compliance schedules, effluent limitations and other permit conditions in accordance with mutually understood and agreed upon priorities and procedures; and,
3. Maintain a vigorous enforcement program and take timely and appropriate enforcement action in every case where in the State's opinion such action is warranted.

Discharges endangering public health will receive immediate and paramount attention.

The State Director and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination between State and USEPA staffs in a partnership to assure successful and effective administration of the NPDES Permit Program. In this partnership, USEPA will provide to the State on a continuing basis technical and policy assistance on permit matters.

III. PERMIT REVIEW AND ISSUANCE

The State is responsible for drafting, public noticing, issuing, modifying, reissuing, and terminating NPDES permits and shall do so in accordance with 40 CFR 124.31 and 124.32.

Upon receipt of proposed permits and other information specified in Chapter VI A (1) of this Agreement, USEPA shall promptly review and submit to the State its approval, comments, objections or recommendations on the proposed permit. It is Regional policy to attempt to process each request for approval within 30 days. If no comment is received by the State within 90 days, the State may assume that USEPA has no objection to the issuance of the NPDES Permit.

If a proposed NPDES Permit is modified as a result of the public notice or public hearing, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: NPDES Permit Branch, together with a copy of all significant statements received from the public notice, and where a public hearing is held, a summary of all objections, together with a request for approval to issue the NPDES permit. In lieu of a summary, the State may provide a verbatim transcript of the entire public hearing.

Except for those permits for which the Regional Administrator has waived rights of review, no NPDES permit will be issued by the State until it receives a letter from the Regional Administrator approving such issuance or no comment is received by the State from USEPA within 90 days of receipt of the proposed permit by USEPA.

The Regional Administrator waives the right to object to the issuance of any NPDES permit except for the following classes of discharges:

- (1) major dischargers;
- (2) publicly-owned treatment works servicing primarily domestic wastes, which serve more than 10,000 population;
- (3) other discharges with a daily average discharge of more than 0.1 MGD;
- (4) discharges of uncontaminated cooling water with a daily average discharge of more than 1.0 MGD;
- (5) discharges which directly affect the waters of any other state; and,
- (6) discharges which contain toxic pollutants in toxic amounts.

After six months of delegation of permit authority to the State, the Regional Administrator will formally evaluate the effectiveness of state operation of the program. If he concludes that the state is not operating the program acceptably, he will outline, in writing, specific deficiencies in the program and a suggested schedule consistent with available resources for correcting the deficiencies. If after six months the Regional Administrator concludes that the State is operating the program in an acceptable manner, the above waiver shall be modified, at a minimum, to the following:

The Regional Administrator waives the right to object to the issuance of any NPDES permit except for the following classes of discharges:

- (1) major dischargers;
- (2) publicly-owned treatment works or privately-owned treatment works servicing primarily domestic wastes, which serve more than 10,000 population;
- (3) publicly - or privately-owned water purification plants serving more than 10,000 population;
- (4) other discharges with a daily average discharge of more than 1.0 MGD;
- (5) discharges of uncontaminated cooling water with a daily average discharge of more than 1.0 MGD;
- (6) discharges which directly affect the waters of any other state; and,
- (7) discharges which contain toxic pollutants in toxic amounts.

The Regional Administrator will not object to the issuance of any NPDES permit on the basis of his construction of State law or regulations different from that adopted by the State in any of the following ways:

- (1) Formal order by the Illinois Pollution Control Board pursuant to a regulatory, enforcement, variance or permit appeal proceeding;
- (2) Formal order by any State court.
- (3) Administrative determinations by the Agency made under authority contained in the Illinois Environmental Protection Act or Illinois Pollution Control Board Regulations.

The State agrees, consistent with the requirements of the Act, that permits as issued shall contain the more stringent of the State of Federal requirements.

However nothing herein shall preclude the Regional Administrator from formally objecting to any proposed permit issuance, modification, termination or revocation whether such permit action is performed by a State regulatory, administrative or judicial tribunal or agency,

which is in conflict with any applicable federal law or regulation ^{or any provisions} of a federally approved 208 plan or federally approved or promulgated water quality standard. *MA 24*

The State shall supply the information itemized below at the time administratively complete applications with draft permits and public notice are forwarded to the Regional Office of Region V or when requested by the Regional Administrator:

a. A statement that the daily average discharge for categories (4) and (5) above, or population for categories (2) and (3) above, are known and do not exceed the amounts and conditions authorized by the above waiver; and

b. Each specific point of discharge is identified as to the geographic location together with the name of the receiving water.

Each public notice issued by the State for permits covered by the waiver shall include the following statement:

"Pursuant to the waiver provisions authorized by 40 CFR 124.46, this proposed permit is within the class, type and size for which the Regional Administration, Region V, has waived his right to review, object or comment on this proposed permit action."

The foregoing does not include waiver of receipt of complete copies of NPDES applications, draft permits, public notices of permit applications (and any required fact sheets), notices of public hearings, and copies of all final NPDES permits issued. In addition, the foregoing does not include a waiver of the obligation to transmit complete

copies of NPDES applications and of NPDES reporting forms to the national data bank, (or equivalent information available to the national data bank in machine readable form) nor the right to receive copies of notices to the State from any publicly-owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal laws, rules, or regulations, nor to relinquish the right of the Regional Administrator to petition the State for review of any action or inaction because of violation of Federal laws, rules, or regulations.

The Regional Administrator will continue to receive copies of all issued NPDES permits on which he has waived his authority to review. These will be transmitted to the Regional Administrator by the State similarly to all other issued permits specified in the Agreement.

There is included as a part of the annual State Program Plan a major dischargers list which includes those dischargers, mutually defined by the State and USEPA, as a group of dischargers plus any additional dischargers that have a high potential for violations of water quality standards or which are required to install substantial pollution abatement equipment. The major dischargers list shall be used for the purpose of defining that group of dischargers which shall receive priority in all NPDES activities. The major dischargers list may be modified at any time upon mutual agreement.

IV. COMPLIANCE MONITORING

The State will operate a timely and effective compliance monitoring system (ADP and/or manual) to track compliance with permit conditions. For purposes of this Agreement, the term compliance monitoring shall refer to all efforts associated with assuring full compliance with NPDES permit conditions. Compliance monitoring shall focus first on major dischargers in accordance with the priorities and time frames for compliance tracking as established in this Agreement and as further delineated in the annual State Program Plan.

A. Schedule Dates.

The State will track the submittal of information for all date-related permit conditions. When required performance is not achieved, appropriate enforcement actions will be initiated by the State. The State will conduct a timely and substantive review of all date-related permit conditions and reports received and evaluate the permittee's compliance status.

This review will be conducted so as to assure that any violation by a major discharger is acted upon by the State's initiation of an appropriate enforcement action, if warranted, within thirty (30) days of the date a date-related report is due to the State. Priorities will also be specified in the annual State Program Plan.

B. Review of Self-Monitoring Reports

The State will operate a tracking system to determine if: (1) the required self-monitoring reports are submitted; (2) the submitted

reports are complete; and (3) the permit conditions are met. When required reports are not submitted, appropriate enforcement actions will be initiated by the State to prevent a recurrent problem, and, if possible, to obtain past data. The State will conduct a timely and substantive review of all self-monitoring reports received, and evaluate the permittee's compliance status. This evaluation will be uniform and consistent and will take into account frequency, severity, and analytical error in determining where limitations have been exceeded. This review will be conducted so as to assure that any violation by a major discharger is acted upon by the State's initiation of an appropriate enforcement action, if warranted, within thirty (30) days of the date a report is due to the State. Priorities for reviewing self-monitoring reports and for initiating enforcement action will also be specified in the annual State Program Plan.

C. Facility Inspections.

1. Sampling Surveys

A sampling survey is performed to assess permittee compliance with all NPDES permit conditions and is defined to include, but not necessarily to be limited to, effluent sampling and an assessment of a facility's monitoring and analysis program. Surveys at Federal facilities will be conducted by USEPA and the State will be invited to participate in those surveys. The State and Regional Office will develop a mutually agreeable annual list of permittees to be sampled as a part of the annual State Program Plan. Modifications may be incorporated into the list with concurrence of both parties. Except

at Federal facilities, the State will be given the first opportunity to perform all sampling surveys. The USEPA will be given adequate notice and opportunity to participate in surveys performed by the State.

USEPA or the State may determine that additional sampling surveys are necessary to monitor compliance with issued NPDES permits. If USEPA makes a determination that additional sampling surveys are necessary or appropriate, it shall notify the State of such determination and request the State to conduct those sampling surveys. In cases where the State chooses not to conduct the sampling survey in accordance with USEPA requests, USEPA may then conduct the survey itself, keeping the State fully informed of plans and results.

2. Compliance Evaluation Inspection

Compliance Evaluation Inspections are designed to verify that the Permittee is meeting permit requirements for records maintenance, operation and maintenance, compliance schedule, self monitoring, reporting, and other items as appropriate, that are defined in the "NPDES Compliance Evaluation Inspection Manual." Limited effluent sampling may be incorporated into any compliance evaluation inspection based on the judgment of the inspector. Compliance evaluation inspections at Federal facilities will be conducted by USEPA and the State will be invited to participate in those surveys. The State and USEPA will develop by mutual agreement an annual list of permittees

to be the subject of compliance evaluation inspections as a part of the annual State Program Plan. Modifications may be incorporated into the list with concurrence of both parties. The State will be given the first opportunity to perform all compliance evaluation inspections except at Federal facilities. The USEPA will be given adequate notice and opportunity to participate in compliance evaluation inspections performed by the State.

USEPA or the State may determine that additional compliance evaluation inspections are necessary to monitor compliance with issued NPDES permits. If USEPA makes a determination that additional compliance evaluation inspections are necessary or appropriate, it shall notify the State of such determination and may request the State to conduct those compliance evaluation inspections. In cases where the State chooses not to conduct the compliance inspection in accordance with USEPA requests, USEPA may then conduct the survey itself, keeping the State fully informed of plans and results.

D. Other

1. Survey Reports

All compliance evaluation inspections and sampling survey reports on major dischargers shall be available for review within forty-five (45) days of the date of the inspection or survey. Each report will be thoroughly reviewed by the State to determine what, if any, enforcement action shall be initiated. Any necessary enforcement actions

will be initiated within seventy-five (75) days of the date of the inspection or survey. Priorities for the review of these inspections and surveys and for initiating enforcement action will also be specified in the annual State Program Plan.

2. Information Requests

Whenever either party requests information concerning a specific discharger for a specific reason and the requested information is available from the files, that information will be provided within a reasonable time. If the requested information is not so available, the party to whom the request was directed shall promptly notify the requester.

V. ENFORCEMENT

The State is responsible for taking timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations and all other permit conditions for all NPDES permits except for Federal facilities. This includes violations detected by State or Federal surveys. In instances where the USEPA determines that the State has not initiated timely and appropriate enforcement action against a NPDES Permit violation, USEPA shall proceed with any or all of the enforcement options available under Section 309 of the Act, 33 U.S.C. 1319.

Prior to proceeding with federal enforcement action against a NPDES violator, and for the purpose of providing notice only, USEPA shall inform the State that federal enforcement action is to be initiated forthwith. This notification shall be in the form of a telephone or written communication, by USEPA to the Director of the Illinois Environmental Protection Agency or his designee, and, except in the exercise by USEPA of its emergency power under Section 504 of the Act, 33 U.S.C. 1364, such notification shall be provided in all of federal enforcement action regardless of the existence or extent of previous communication between USEPA and the State on the matter. In the usual case, it is expected that preliminary staff discussions will take place between USEPA and State representatives before initiation of federal enforcement action.

Nothing in this Agreement shall preclude the USEPA from appropriate exercise of its powers under Section 504 of the Act, 33 U.S.C. 1364.

Failure by the State to initiate appropriate enforcement action against a major discharger within thirty (30) days of the date a date-related report is due to the State or within thirty (30) days of the date a report on effluent limitations is due to the State may be the basis for USEPA's determination that the State has failed to take timely enforcement action.

VI. REPORTING AND TRANSMITTAL OF INFORMATION

A. The State shall submit the following information to the USEPA as frequently as noted below:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
1. A copy of all proposed NPDES permits and modifications thereto placed on public notice, including fact sheets and permit applications if not previously submitted	As Public Noticed
2. Copy of all issued NPDES permits	As Issued
3. A list of NPDES permits processed during the previous month, including the name, location, permit number, and date for every permit public noticed, issued, reissued, modified, denied or terminated	Monthly-by the 5th working day of each month
4. A list of facilities scheduled for sampling surveys and/or compliance evaluation inspections	Annually in State Program Plan
5. Proposed revisions to the schedule of sampling surveys and compliance evaluation inspections	As needed
6. A list of sampling surveys and compliance evaluation inspections performed during the previous quarter for major dischargers	Quarterly
7. Copies of all sampling survey and compliance evaluation inspection reports and data and transmittal letters to permittees for all major dischargers	Within 75 days of survey (45 days to prepare report, plus 30 days to act on report.)
8. Copies of all sampling survey and compliance evaluation inspection reports and data and transmittal letters to permittees for minor dischargers	As requested
9. Copies of the Compliance Evaluation Inspection Report Form generated during the compliance evaluation and maintenance inspections of major municipal plants	Within 75 days of survey (45 days to prepare report, plus 30 days to act on report).
10. For all dischargers, a listing of significant permit non-compliances arising from scheduled dates and/or effluent reports showing facility name, location, permit number, description of violation, and State actions (proposed or actual), and mitigating circumstances	Quarterly
11. Copies of all enforcement actions	As issued

12. Copies of all formal enforcement actions against minor NPDES permittees As issued

B. USEPA shall transmit the following information to the State:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
1. A list of sampling surveys and compliance evaluation inspections at which USEPA intends to conduct a joint survey or inspection with the State	Annually in State Program Plan
2. Proposed revisions to the schedule of sampling surveys and compliance evaluation inspections	As needed
3. Copies of all USEPA sampling surveys and compliance evaluation inspection reports and data	Within 45 days of survey
4. Notification of the commencement of Federal enforcement and the actions being taken	As initiated
5. A review of the State administration of the NPDES Permit Program based on State reports, meetings with State officials and file audits	As needed

VII. PROGRAM REVIEW

The Regional Administrator will assess the State's administration of the NPDES Program on a continuing basis to determine compliance with the Act, adopted Federal regulations and the State Program Plan by examination of the following:

1. Proposed and issued permits;
2. Reports submitted to the Regional Administrator by the State, as required by 40 CFR 124 and this Agreement;
3. State enforcement actions; and

4. Comments concerning the State's administration of the program which may be received by the Regional Administrator from the public, other states, other federal agencies, and local agencies. Copies of all such comments will be provided to the Director, unless previously communicated by the commenting party to the State.

Submission of information from the State to the Regional Administrator shall be accomplished in a manner consistent with this Agreement, the State Program Plan, applicable portions of 40 CFR 124 and other agreed upon procedures.

Additionally, the Regional Administrator may request, and the State will submit, specific information necessary for a comprehensive evaluation of the State's administration of the NPDES Permit Program.

USEPA is responsible for assuring that the NPDES Permit Program administered by the State is consistent with all requirements of this Agreement, the State Program Plan, and applicable Federal policies and regulations, including 40 CFR 124. To fulfill this responsibility USEPA shall:

1. Review the information transmitted from the State to assure that all the requirements of Chapter VI of this agreement are met.
2. Meet with State officials from time to time to observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes.
3. Examine in detail the files and documentation at the State Agency of selected facilities to determine: (a) that permits are processed and issued consistent with Federal requirements; (b) the ability of the State to discover permit violations when they occur;

(c) the timeliness of State reviews; (d) the adequacy of State selection of appropriate enforcement actions; (e) the timeliness and effectiveness of the State action. These detailed file audits shall be conducted by USEPA in the State offices as needed. The State shall be notified in advance of the audit so that appropriate State officials may be available to discuss individual circumstances and problems with USEPA. The facilities to be audited need not be revealed to the State in advance. A copy of the audit report shall be transmitted to the State when available, and marked "Attention: Director of the Illinois Environmental Protection Agency."

4. Determine the need for and hold public hearings on the State's operation of the NPDES permit and enforcement program.

5. Review the State's public participation policies, practices and procedures as they relate to administration of the NPDES Permit Program.

The State is responsible for evaluating USEPA's discharge of its responsibilities under the Act, federal regulations, this Agreement, and the approved State Program Plan on at least an annual basis. The results of this evaluation will be made available to the Regional Administrator who will cause a response to be prepared indicating actions USEPA intends to take to remedy any problems.

In the event USEPA determines that elements of the State's administration of the NPDES Permit Program are in any way deficient or inconsistent with this Agreement, the State Program Plan, applicable regulations, statutes, and policies, the USEPA shall notify the State in writing of those inconsistencies or other deficiencies. The State shall respond in writing within thirty (30) days. The USEPA

shall inform the State in writing of its determination that noted inconsistencies or deficiencies have been rectified.

VIII. INDEPENDENT POWERS

Nothing in this Agreement shall be construed to limit the authority of the USEPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the Act.

Nothing in this Agreement shall be construed to limit the authority of the State to take action pursuant to applicable sections of the Act, including Sections 505 and 510.

IX. EXPIRATIONS

To reflect the true partnership between the State and USEPA, this Agreement shall continue in effect until terminated by the State or USEPA, which termination shall be effective sixty (60) days following written notification of either party to the other.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

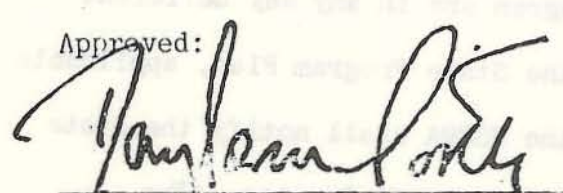
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V

By 

By 

Date: 5/9/77

Date: _____

Approved: 

Administrator
United States Environmental
Protection Agency

My approval herein is based upon the understanding that this Agreement is subject to amendment, to reflect any comments received during the public hearing and comment period.

Date: MAY 12 1977

MODIFICATION TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

The Memorandum of Agreement approved May 12, 1977, by the Administrator of the United States Environmental Protection Agency between the Illinois Environmental Protection Agency (hereinafter, the "State") and the United States Environmental Protection Agency (hereinafter, "USEPA"), Region V is hereby modified as follows:

The State will administer the NPDES permit program with respect to Federal facilities and has shown that it has the authority to enter and inspect Federal facilities. The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in Illinois, including permits applicable to Federal facilities.

All references in the Memorandum of Agreement which have the effect of retaining responsibility to USEPA Region V over Federal facilities have no force or effect after the effective date of this Modification. Nothing in this Modification shall be construed to limit the authority of USEPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the Act. This Modification will become effective upon approval of the Administrator.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By

Date:

Approved:

JODE BERNSTEIN
Assistant Administrator for Enforcement
United States Environmental
Protection Agency

Date:

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION V

By

Date:

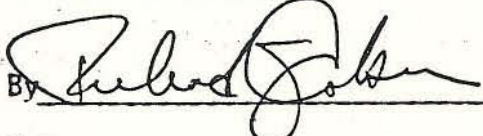
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REGISTRATION

MODIFICATION TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

The Memorandum of Agreement approved May 12, 1977, by the Administrator of the United States Environmental Protection Agency between the Illinois Environmental Protection Agency (hereinafter, the "State") and the United States Environmental Protection Agency (Hereinafter, "USEPA"), Region V is hereby modified as follows:

The State having shown that it has the authority to issue NPDES general permits to cover categories of discharges shall issue these permits in accordance with 40 CFR 122.59, 123.74 and 123.75 (May 19, 1980, Rules and Regulations). Nothing in this Modification shall be construed to limit the authority of USEPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the Act. This Modification will become effective upon approval of the Administrator.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By 

Date: May 28, 1982

Approved:

Assistant Administrator for Enforcement
United States Environmental Protection Agency

Date: _____

RM:bjm/4331C/24

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION V

By _____

Date: _____



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

THOMAS V. SKINNER, DIRECTOR

(217) 782-5544

May 24, 2000

Ms. Jo Lynn Traub, Director
Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Ms. Traub:

Enclosed you will find the addendum to the National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (MOA) between the State of Illinois and the USEPA. On May 23, 2000, Director Thomas V. Skinner signed the document for the Illinois EPA.

The Illinois Attorney General's Office will send a certification to the USEPA under separate cover.

The Illinois EPA appreciates the opportunity to work with the USEPA in resolving the issues identified in the November 12, 1999 letter and the return of the MOA after signature by Francis X. Lyons. If you have any questions regarding the MOA or this letter, please contact Connie Tonsor or Toby Frevert. Mr. Frevert may be reached at 217/ 782- 1654.

Sincerely,

A handwritten signature in cursive script that reads "Connie L. Tonsor".

Connie L. Tonsor
Associate Counsel

cc: Christine Bucko
David Pfeifer

**Addendum
to the
National Pollutant Discharge Elimination System
Memorandum of Agreement
Between the
State of Illinois
and the
United States Environmental Protection Agency
Region 5
Concerning Illinois' Great Lakes Water Quality Standards
and Implementation Procedures**

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 and tribes were required to adopt provisions consistent with (as protective as) the guidance for their waters within the Great Lakes system. The Illinois Pollution Control Board adopted Great Lakes system water quality standards and implementation procedures on December 18, 1997 and August 19, 1999, and these rules became effective on December 24, 1997 and August 26, 1999. The Illinois Environmental Protection Agency (Illinois EPA) adopted implementation procedures on February 20, 1998, and these rules became effective on February 20, 1998.

The United States Environmental Protection Agency Region 5 (USEPA) and the Illinois EPA enter into this Addendum to their National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement to ensure that Illinois' rules concerning water quality standards and implementation procedures are implemented in a manner consistent with the guidance.

This Addendum only applies to those portions of Illinois' NPDES program applicable to the Great Lakes System within Illinois. A portion of Lake Michigan is the only water of the system within Illinois.

1. Chemical-specific reasonable potential

Illinois' rules at 35 Ill. Adm. Code 309.141(h)(4)(A) contain a procedure to be used to determine "preliminary effluent quality" (PEQ) for purposes of determining whether there is a reasonable potential for the discharge of a specific chemical to cause or contribute to causing exceedances of water quality standards. Illinois' rules at 35 Ill. Adm. Code 309.141(h)(4)(B) set forth an alternative procedure for determining PEQ. Illinois EPA has discretion to not impose WQBELs in permits where one would otherwise be required under the procedures for deriving PEQs specified in 35 Ill. Adm. Code 309.141(h)(4)(A) in certain circumstances where there are ten or less results of facility-specific effluent data. Illinois EPA will always impose a WQBEL where one would be required using the procedures specified at 35 Ill. Adm. Code 309.141(h)(4)(A) where there are ten or fewer pieces of facility-specific effluent data or will ensure that there are always at least ten data points available prior to permit reissuance for the reasonable potential analysis.

2. Whole effluent toxicity reasonable potential

Illinois' rules at 35 Ill. Adm. Code 352.530 contain a procedure to be used to determine PEQ for purposes of determining whether there is a reasonable potential for a discharge to cause or contribute to causing exceedances of water quality standards pertaining to whole effluent toxicity (WET). Illinois' rules at 35 Ill. Adm. Code 352.550(c) set forth an alternative procedure for determining PEQ when determining WET reasonable potential. Illinois EPA has discretion to not impose WQBELs in permits where one would otherwise be required under the procedures for deriving PEQs in determining WET reasonable potential specified in 35 Ill. Adm. Code 352.530 in certain circumstances where there are ten or less results of facility-specific WET data. Illinois EPA will always impose a WQBEL in NPDES permits where one would be required using the procedures specified at 35 Ill. Adm. Code 352.530 where there are ten or less pieces of facility-specific WET data or will ensure that there are always at least ten data points available prior to permit issuance or reissuance for the reasonable potential analysis.

3. Mixing Zone Demonstrations

Illinois' rules at 35 Ill. Adm. Code 309.141(h)(5)(A) & (C) provide that no mixing zones shall be allowed for discharges into tributaries of the Lake Michigan Basin, and default mixing zones shall be applied for discharges into the Open Waters of Lake Michigan, unless a discharger submits a mixing or dispersion study to justify its request for an alternative mixing zone. Illinois EPA will allow use of mixing zones for discharges into tributaries of the Lake Michigan Basin only under 35 Ill. Adm. Code 309.141(h)(5)(A), and shall allow use of alternative mixing zones in lieu of the default mixing zones set forth in 35 Ill. Adm. Code 309.141(h)(5)(C), only where the requirements set forth in Paragraph F of Procedure 3 in Appendix F to 40 CFR Part 132 pertaining to use of alternative mixing zones have been met.

4. Noncontact Cooling Water Exemption

A. 35 Ill. Adm. Code 352.440(a) states that Illinois EPA may require a water quality-based

effluent limitation based on an acute aquatic criterion for a substance or acute whole effluent toxicity when information is available to indicate that such a limit is necessary to protect aquatic life, unless the substance or whole effluent toxicity is due solely to its presence in the intake water. Illinois EPA will always require a water quality-based effluent limitation based on an acute aquatic criterion for a substance or acute whole effluent toxicity when information is available indicating that such a limit is necessary to protect aquatic life unless the substance or whole effluent toxicity is due solely to its presence in the intake water.

B. 35 Ill. Adm. Code 352.440(b) states that if a substance is present at elevated levels in the noncontact cooling water wastestream due to improper operation and maintenance of the cooling system, the wastestream must be evaluated under the reasonable potential procedures in 35 Ill. Adm. Code 352 Subpart D. Illinois EPA considers pollutants added to a wastestream through corrosion and erosion to be elevated levels of pollutants due to improper operation and maintenance within the meaning of 353.440(b). Consequently, Illinois EPA will always evaluate reasonable potential for the wastestream under the procedures for evaluating reasonable potential under 35 Ill. Adm. Code 352 Subpart D if a pollutant is present at elevated levels due to corrosion and erosion.

C. Illinois EPA interprets 35 Ill. Adm. Code 352.440(b) through 35 Ill. Adm. Code 352.440(d) as authorizing it to undertake a reasonable potential analysis and issue water quality-based effluent limitations based on wildlife or human health criteria or values or chronic aquatic life criteria or values when considering discharges consisting of once through noncontact cooling water. Illinois EPA will utilize its reasonable potential procedures in determining whether there is a need for a WQBEL based on wildlife or human health criteria or values or chronic aquatic life criteria or values, and will impose WQBELs based on those criteria or values whenever those reasonable potential procedures indicate that a WQBEL is needed.

5. Reasonable Potential based on fish tissue data

35 Ill. Adm. Code 352.430(e) provides Illinois EPA with authority to require water quality based effluent limits in NPDES permits whenever "historical information or knowledge of Agency field inspectors indicate that a potential for discharge of a substance exists and there is evidence that the substance would be discharged in quantities sufficient to merit inclusion of permit limits." Illinois EPA will establish WQBELs in NPDES permits for each facility that discharges detectable levels of any pollutant into a waterbody where the geometric mean of the pollutant in representative fish tissue samples collected from the waterbody exceeds the tissue basis of a Tier I criterion or Tier II value, after consideration of the variability of the pollutant's bioconcentration and bioaccumulation in fish.

6. Estimating missing endpoints using default ACR for WET data

Illinois rules at 35 Ill. Adm. Code 352.530 contain procedures for determining WET reasonable potential. Illinois' rules do not contain provisions for estimating a chronic endpoint using an acute-to-chronic ratio (ACR) when chronic WET data are lacking. Illinois EPA will use all available WET data to assess reasonable potential under 35 Ill. Adm. Code 352.530 for both

acute and chronic endpoints. Illinois EPA also will assess both acute and chronic WET endpoints in all cases. Where data are lacking for a particular endpoint, Illinois EPA will use a default acute to chronic ratio of ten to one to estimate the missing endpoint unless it is possible to calculate a better case-specific acute to chronic ratio from the available data.

7. Requiring Use of Methods Specified in or Approved Under 40 CFR Part 136

Illinois's rules at 35 Ill. Adm. Code 352.104 and 352.700 require that NPDES permits specify that permittees use the most sensitive analytical method specified in or approved under 40 CFR 136 for purposes of monitoring pollutant levels in the permittee's discharge. Illinois EPA will specify in NPDES permits that permittees use the most sensitive analytical method specified in or approved under 40 CFR 136 at the time of permit issuance for purposes of monitoring pollutant levels in the permittee's discharge.

8. Alternatives to pollutant minimization plans

Illinois' rules at 35 Ill. Adm. Code 352.700(b) provide that, where there is a WQBEL below the level of quantification, "[t]he permit shall include a condition requiring the permittee to develop and conduct a pollutant minimization plan [PMP] . . . unless the permittee can demonstrate that an alternative technique is adequate to assess compliance with the WQBEL." An alternative technique is not "adequate to assess compliance with the WQBEL" unless the technique can actually demonstrate that a discharge is in compliance with the WQBEL. Moreover, if Illinois EPA relies upon the existence of an alternative technique as a basis for not requiring a permittee to develop and conduct a PMP, Illinois EPA will require in the permit that the permittee use the alternative technique to monitor for the presence and amount in the permittee's effluent of the pollutant for which the WQBEL has been imposed.

9. Monitoring and reporting frequency required under PMPs

Illinois's rules at 35 Ill. Adm. Code 352.700(b) set forth certain monitoring and reporting requirements that Illinois EPA will include in NPDES permits that contain WQBELs below the level of quantification and requirements to develop and conduct a PMP. Illinois EPA always will require quarterly monitoring for the pollutant for which the WQBEL has been imposed, and an annual review and semi-annual monitoring of potential sources of the pollutant unless information generated by a pollutant minimization plan supports a determination that some other monitoring frequency is more appropriate.

10. Compliance schedules

Illinois' rules at 35 Ill. Adm. Code 309.148(a) provide that compliance schedules in NPDES permits must require the permittee to "take specific steps to achieve compliance . . . in the shortest reasonable period of time consistent with the guidelines and requirements of [the Clean Water Act] and the [Illinois Environmental Protection] Act." Illinois EPA will not grant compliance schedules in NPDES permits where a compliance schedule is not needed. Illinois EPA also will not grant compliance schedules that are inconsistent with the guidelines and

requirements of the Clean Water Act.

11. Interim limits for compliance schedules.

Illinois' rules at 35 Ill. Adm. Code 352.800(c) provide that, if a compliance schedule extends beyond one year, the schedule shall provide for interim requirements as "appropriate." Illinois EPA agrees that the phrase "as appropriate" in 35 Ill. Adm. Code 352.800(c) means that interim numeric effluent limits will be included in the permit.

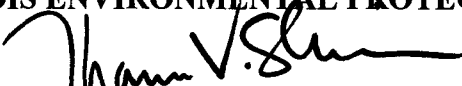
12. Use of QSAR Information to Estimate Ambient Screening Values

Illinois' rules at 35 Ill. Adm. Code 352.430(f)(1) provide that, where there are inadequate data to calculate a Tier II value, Illinois EPA "shall use all available, relevant toxicity information to estimate ambient screening values for the pollutant that will protect humans from noncancer health effects and aquatic life from acute and chronic effects." Illinois EPA shall use available and relevant Quantitative Structure Activity Relationship Information, along with all other available, relevant toxicity information, to estimate ambient screening values for the pollutant that will protect humans from noncancer health effects and aquatic life from acute and chronic effects under 35 Ill. Adm. Code 352.430(f)(1).

13. Monitoring Requirements for BCCs

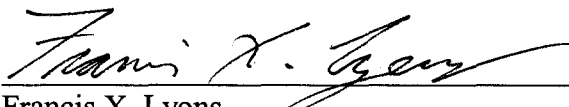
Illinois' rules at 35 Ill. Adm. Code 309.146 allow Illinois EPA to include monitoring requirements in NPDES permits. Where bioaccumulative chemicals of concern (BCCs) are known or believed to be present in a discharge, Illinois EPA shall include requirements to monitor for those BCCs in the NPDES permit for that discharge.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: 
Thomas V. Skinner
Director

Date: 5.23.00

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION V

By: 
Francis X. Lyons
Regional Administrator

Date: 7/28/00