MEMORANDUM OF AGREEMENT BETWEEN THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND THE MINNESOTA POLLUTION CONTROL AGENCY FOR THE
APPROVAL OF THE STATE NPDES PERMIT PROGRAM

I. RECITALS

(1) Parties. The parties to this agreement (hereinafter, the Agreement) are the United States Environmental Protection Agency (hereinafter, the EPA) and the Minnesota Pollution Control Agency (hereinafter, the Agency).

(2) Purpose. It is the purpose of this Agreement to provide the terms and conditions for approval by the EPA of the State of Minnesota's National Pollutant Discharge Elimination System (hereinafter, NPDES) permit program under the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, the Act) and the EPA's guidelines for "State Program Elements Necessary for Participation in National Pollutant Discharge Elimination System" (hereinafter, the Guidelines) promulgated in the Federal Register, Vol. 37. No. 247, Friday, December 22, 1972, 40 C.F.R. Part 124. Various sections of the Guidelines require the Chief Administrative Officer of a state water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the Guidelines are to be implemented. To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Director of the Agency (hereinafter, the Director), the Agency, and the Regional Administrator of the EPA for Region V (hereinafter, the Regional Administrator). The Sections of this Agreement are numbered in accordance with the Sections of the Guidelines.

II. AGREEMENT

General

Section 124.4 (Authority for State program procedures).

(1) The Agency adopted on March 19, 1974, WPC 36, an Agency regulation relating to NPDES permit procedures consistent with the Guidelines.

(2) The Agency shall employ the procedures of WPC 36 pending its becoming properly filed and thus having the force and effect of law. The Agency expects that WPC 36 will have the force and effect of law on or before May 1, 1974.

Acquisition of Data

Section 124.22 (Receipt and Use of Federal Data).

(1) The purposes of this section are: (a) to provide for the transfer of data bearing on NPDES permit determinations from the EPA to the Agency, and (b) to insure that any deficiencies in the transferred NPDES forms shall be corrected prior to issuance of a NPDES permit.

(2) Commencing immediately after the effective date of this Agreement the Regional Administrator shall transmit to the Director a list of all NPDES permit applications received by EPA. This list shall include the name of each discharger, SIC Code, application number, and indicate whether EPA has determined which applications are complete.

(3) After receipt of the list, the Director shall identify

the priority order to be used by the EPA to transmit the application files to him. The application file shall include the NPDES permit application and any other pertinent data collected by EPA. The application files shall be transmitted to the Director according to the priority order identified, and the EPA shall retain one copy of each file transmitted to the Director.

(4) For an application identified as incomplete or otherwise deficient by the EPA, the Director shall obtain from the discharger the information identified by the EPA as being necessary to complete the application. The Director, at his discretion, may also obtain additional information for those applications identified by the EPA as complete or incomplete to update or process the application.

(5) Once the Director determines that an application is complete, he shall transmit two copies of the completed application and a cover letter indicating that the application has been determined to be complete to the Regional Administrator, Attention: Permit Branch. If the EPA concurs that the application is complete, one copy shall be routed to the Regional Data Management Section, Surveillance Division, through the Compliance Section, Enforcement Division, for processing into the National Data Bank and the other copy shall be placed in the NPDES Permit Branch file.

(6) The Director shall be timely advised by letter that the Regional NPDES Permit Branch concurs with his determination and that a copy of the application has been transmitted to the Data Management Section. If the EPA determines that the application is not

complete, the Regional NPDES Permit Branch shall identify the deficiencies by letter to the Director. The Director shall attempt to resolve all deficiencies within 20 days of date of receipt of notification.

(7) The Regional Administrator shall provide written comment on an application for a NPDES permit no later than 20 days from the date of receipt of application from the Agency. The Regional Administrator may within this 20 day period request additional time not to exceed a total of 40 days. The Director may assume, after verification of receipt of the application, that no comment is forthcoming if he has received no response from the Regional Administrator at the end of 20 days.

(8) No NPDES application shall be processed by the Agency until all deficiencies identified by the EPA are corrected and the Director receives a letter from the EPA concurring with the Director that the application is complete.

Section 124.23 (Transmission of Data to Regional Administrator).

(1) The Director shall transmit to the Regional Administrator copies of completed NPDES application forms submitted by the applicant to the State. When the State determines that the NPDES application forms received from the discharger are complete, two copies of the forms with a cover letter indicating that the forms are complete shall be transmitted to the Regional Administrator, Attention: Permit Branch. If EPA concurs with the Director, one

copy shall be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the General Point Source File (hereinafter, GPSF) and the other copy shall be placed in the Regional NPDES Permit Branch file. The Director shall be advised by letter that the EPA concurs with his determination and that a copy of the NPDES application form has been transferred to the EPA Regional Data Management Section. The State may input directly into the GPSF subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the EPA determines that the NPDES application form is not complete, the deficiencies shall be identified by letter to the Director. No NPDES application shall be processed by the Agency until the deficiencies are corrected and it has been advised in writing by the EPA that the NPDES application form is complete.

(2) Upon receiving a NPDES application form from the Director, should the Regional Administrator identify any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge, and notifies the Director, the Director shall require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.

(3) When requested by the Regional Administrator, the Director shall transmit copies of notice received by him from publicly-owned treatment works pursuant to Section 124.45(d) and (e) of the Guidelines within 15 days of receipt of the request.

Section 124.35(b) and (c) (Public Access to Information).

(1) The Director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports or plans as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If, however, the information being considered for confidential treatment is contained in a NPDES form, the Director shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection he shall request advice from the EPA's Office of General Counsel, stating the reasons for his disagreement with the determination of the Director. The Regional Administrator shall simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days

following the mailing of such notice, the Regional Administrator shall communicate to the Agency his decision not to concur in the withholding of such information, and the Agency and the Regional Administrator shall then make available to the public upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA shall be conclusive unless reviewed in an appropriate district court of the United States.

(2) Any information accorded confidential status whether or not contained in a NPDES form, shall be disclosed by the Agency upon written request therefor, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.

Terms and Conditions of NPDES Permits

The Agency has the authority under this Memorandum of Agreement to include special conditions in permits for municipal dischargers that will not be able to achieve the effluent limitations of Section 301(b)(1) of the Act due to the lack of Title II Federal grant money for publicly owned treatment works. If Federal money is essential for capital improvements to meet the requirements of Section 301(b)(1) and is not available, the permit would not require any such improvements. The special permit conditions shall include, but not be limited to, the following: (a) stringent operation and maintenance conditions

and needed minor facilities modifications, to the full extent of State and local capabilities and available funds; (b) interim compliance objectives to be achieved before July 1, 1977; and (c) upon the availability of Federal funding, the permit shall be immediately subject to reconsideration and modification with a schedule for compliance at the earliest possible dates. The Agency shall keep all such permits under close review to insure compliance with the special conditions.

Section 124.44(d) (Schedule of Compliance in Issued NPDES Permits).

On the last day of the months of February, May, August, and November, the Director shall transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a NPDES permittee to comply with an interim or final requirement or to notify the Director of compliance or noncompliance with each interim or final requirement (as required pursuant to Section 124.44(b) of the Guidelines), and any revision or modification of a schedule of compliance. The list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) The name and address of each noncomplying NPDES permittee;

(2) A short description of each instance of noncompliance (e.g. failure to submit preliminary plans, 2 week delay in commencement of construction of treatment facility, failure to notify the Direc-

tor of compliance with an interim requirement to complete construction by June 30th, etc.);

(3) A short description of any action or proposed actions by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections, etc.).

Section 124.46 (Transmission to Regional Administrator of Proposed NPDES Permits).

(1) At the time a public notice required by Section 124.32 of the Guidelines is issued, the Director shall transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit and a list of all persons receiving the public notice, fact sheets and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: NPDES Permit Branch. The information transmitted with the proposed permit shall include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.

(2) After a public notice period has expired, the Agency shall consider all comments received as a result of the public notice and may modify the proposed NPDES permit as it considers appropriate. Public hearings may be held as provided for in Section 124.36 of the Guidelines. If a public hearing is held, the Agency shall consider all comments and may modify the proposed

NPDES permit as it considers appropriate. If a public hearing is requested and should the Agency decide not to hold a public hearing, the Director shall provide the Regional Administrator and all parties requesting the hearing, a written explanation of why the hearing was not held before submitting the proposed NPDES permit to the Regional Administrator for approval.

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

(4) If a proposed NPDES permit is not revised after a public notice or where held, a public hearing, the Director shall notify the Regional Administrator, Attention: NPDES Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and request approval to issue the NPDES permit. The request for approval shall include a copy of all written statements received from the public notice.

(5) The Regional Administrator shall respond within 15 days from the date of receipt of the letter requesting final approval to issue or deny the proposed permit. The Regional Administrator pursuant to any right to object provided in Section 402(d)(2) of the

Act, may comment upon, object to or make recommendations with respect to the proposed NPDES permit. If no written comment is received by the Agency from the Regional Administrator within the 15 days, the Director may assume, after verification of receipt of the proposed permit, that the EPA has no objection to the issuance of the NPDES permit.

(6) The Agency shall not issue a NPDES permit for a discharge to which the Regional Administrator has objected in writing pursuant to any right to object. The resolution by the Director of these objections shall be communicated in writing by the Director within 20 days to the Regional Administrator and no permit shall be issued before written approval of such resolution by the Regional Administrator is received by the Director. If the Regional Administrator does not respond within 20 days after receipt of the Director's resolution, the Director may assume that the EPA has no objection to the issuance of the NPDES permit, and may issue such permit, as resolved.

(7) No later than 120 days from the effective date of this agreement the Regional Administrator shall consider the waiver of his rights to review, object to, or comment upon the proposed NPDES permit for any application which relates to minor discharges, except for any application which involves the discharge of toxic wastes or discharges to the waters that intersect or form a portion of Minnesota's borders. The Regional Administrator shall promptly notify the Agency of his decision. This initial waiver shall not be construed as limiting the right of the Regional Administrator to waive in writing at a later date other categories, classes or

types of permits upon an evaluation of the Agency's performance in implementing the permit program.

Section 124.47 (Transmission to Regional Administrator of Issued NPDES Permits).

(1) The Director shall transmit to the Regional Administrator two copies of every issued NPDES permit, Attention: NPDES Permit Branch, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.

(2) The Director shall transmit the above information at the same time the NPDES permit is issued by the Agency to the applicant, together with a copy of the Director's letter to the applicant forwarding the NPDES permit.

Monitoring, Recording, and Reporting

Section 124.61(b) (Monitoring).

(1) Permit conditions issued by the Agency for any discharge authorized by a NPDES permit which (a) is not a minor discharge, (b) the Regional Administrator requests, in writing, be monitored, or (c) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Act, shall require monitoring by the permittee for at least the following:

(i) Flow (in gallons per day); and

(ii) 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 Agency finds, on the basis of information available to it, could have a significant impact on the quality of navigable waters;

(c) Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and

(d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

(2) At any time before a NPDES permit is issued, the Regional Administrator may make the requests specified in paragraphs 1(b) and (c) herein.

(3) The Director shall transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring report forms, either by (a) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (b) by direct entry into the GPSF data system.

Section 124.62(c) (Recording of Monitoring Activities and Results).

During the period of a NPDES permit and any unresolved litigation, upon the written request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of any records of monitoring activities and results.

Enforcement Provisions

Section 124.71 (Receipt and Follow-up of Notification and Reports).

(1) The Agency shall evaluate data submitted by NPDES permittees in NPDES reporting forms and other forms supplying monitoring data, for possible enforcement or remedial action. The Director shall transmit to the Regional Administrator, Compliance Section, Enforcement Division, copies of the forms together with his evaluation on the last day of the months of February, May, August and November, as of 30 days prior to the date of such report, where the data shows that effluent limits in the NPDES permits are exceeded. Where monitoring data show that effluent limits are exceeded, the Director shall identify the effluent limits exceeded, describe briefly any actions or proposed actions by the NPDES permittee or the Agency to comply or enforce compliance with the limits and describe any details which tend to explain or mitigate an instance of non-compliance.

(2) If the Director determines that any condition of the permit for publicly-owned treatment works is violated, he shall notify the Regional Administrator and the Agency shall consider taking action relating to proceedings to restrict or prohibit the introduction of pollutants into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

Section 124.72 (Modification, Suspension and Revocation of NPDES Permits).

The Director may, upon request of the permittee, revise or modify a schedule of compliance in an issued NPDES permit if he

determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other circumstances over which the permittee has little or no control) exists for such revision and if within 30 days following receipt of notice from the Director, the Regional Administrator does not object in writing to any modifications.

Section 124.73(b)(2) (Emergency Notification).

The Director or his authorized representative shall notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative shall utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the district offices or the regional offices, as the Director determines appropriate.

Section 124.80(d) (Control of Disposal of Pollutants into Wells).

The Regional Administrator shall transmit to the Director any policies, technical information or requirements promulgated by the Administrator in regulations issued pursuant to the Act or in directives issued to EPA Regional Offices concerning the disposal of pollutants into wells.

Miscellaneous

(1) Attached hereto is a list of major dischargers which

shall be given priority in processing and a schedule for such processing. Also attached is a six month schedule covering all permits to be processed in the six month period. This is the first part of the schedule aimed at issuing all principal and the majority of all non-principal NPDES permits in the State of Minnesota by December 31, 1974, and all remaining non-principal NPDES permits by June 30, 1975. The schedule shall be expanded by the Director on a quarterly basis thereafter to identify the remainder of the NPDES permits to be processed until all permits are issued. A copy of each quarterly schedule shall be forwarded by the Director to the Regional Administrator for review.

(2) This Memorandum of Agreement may be modified by the Agency and the Regional Administrator following the public hearings to evaluate the State's Section 402(b) program submittal and the hearing on the proposed NPDES regulation on the basis of issues raised at the hearings. The hearing records shall be left open for a period of 20 days following the hearings to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearings. Any revisions of the Agreement following each of the public hearings or otherwise shall be finalized, reduced to writing, approved by the Agency, and signed by the Director, and Chairman of the Agency, and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of EPA for review and approval. The Director and Regional Administrator shall make any such revised agreements available to the public for inspection and copying.

(3) All agreements between the State of Minnesota and the Regional Administrator are subject to review by the Administrator of EPA. If the Administrator of EPA determines that any provisions of such agreements do not conform to the requirements of Section 402(b) of the Act, or Guidelines, he shall notify the State and the Regional Administrator of any revisions or modifications which must be made in the written agreements.

(4) This Agreement shall be construed pursuant to the law of the United States and the State of Minnesota.

(5) This Agreement shall take effect upon the date of approval of Minnesota's NPDES permit program by the Administrator pursuant to Section 402(b).

(6) This Agreement may be terminated by the Administrator pursuant to Section 402(c) of the Act or, if the present level of EPA program grant funds for the NPDES permit program described in this Agreement is reduced substantially, by the Agency upon 30 days written notice to the Administrator and Regional Administrator. This Agreement may be modified at any time upon written agreement of the parties.

(7) The Regional Administrator may waive in writing his rights to receive, review, object to, or comment upon, forms, applications, notices and proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be issued by the Regional Administrator before the Agency can issue a NPDES permit without EPA approval. In the event of such written waiver by the Regional Administrator, the Agency

shall, until subsequent written notice to the contrary from the Regional Administrator, discontinue transmitting copies of such forms to the Regional Administrator as otherwise provided herein.

DATED: May 7, 1974

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION V

By Francis T. Mayo
FRANCIS T. MAYO
Regional Administrator

DATED: April 16, 1974

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

By Harold D. Field, Jr.
HAROLD D. FIELD, JR.
Chairman

By Grant J. Merritt
GRANT J. MERRITT
Executive Director

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

AUG 31 1976

Mr. Peter Gove, Executive Director
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Dear Mr. Gove:

On June 30, 1974, the State of Minnesota was granted authority to administer the National Pollutant Discharge Elimination System Program in the State of Minnesota after having prepared a comprehensive submission and demonstrated an ability to draft and issue NPDES permits. Because of the established ability to issue NPDES permits in the State of Minnesota and to have issued quality permits which will ameliorate discharges of pollutants to State waters, the Administrator, upon my recommendation, approved on August 11, 1976, the following waiver:

1. Except as hereafter expressly provided, the Regional Administrator waives the right to comment on or object to the sufficiency of permit applications, proposed draft permits and final adopted permits for discharges or proposed discharges proposed by the Minnesota Pollution Control Agency from: (1) publicly-owned treatment works serving less than 10,000 population unless classified as a major discharger; (2) other discharges with a daily average discharge of 0.1 MGD or less; and (3) discharges of uncontaminated cooling water with a daily average discharge of 1.0 MGD or less, provided however, that the above listed waivers shall not apply to any of the following discharges, regardless of size: (1) discharges which affect the waters of any other State; or (2) discharges which contain toxic pollutants in toxic amounts; also provided that:

a. The State affirmatively supply the information itemized below at the time administratively complete applications are forwarded to the Regional Office of Region V or when requested by the Regional Administrator:

(1) A statement that the daily average discharge or population for publicly-owned treatment works are known and do not exceed the amounts and conditions authorized by the above waiver, and

(2) Each specific point of discharge is identified as to the geographic location together with the name of the receiving waterbody.

b. That each public notice issued by the Minnesota Pollution Control Agency for permits covered by the waiver include the following statement:

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

2. 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, including final permit modifications. 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, nor the right to receive copies of notices to the Minnesota Pollution Control Agency from any publicly-owned treatment works, as detailed in 40 CFR 124.45 (d) and (e).

3. The Regional Administrator reserves the right to terminate the foregoing waiver, in whole or in part or with respect to any specific discharger, at any time. Any such termination shall be accomplished by the Regional Administrator, in writing, and a copy of such written termination shall be delivered to the Executive Director, Minnesota Pollution Control Agency.

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

As part of EPA responsibility to evaluate the State operation of the NPDES program, the Regional Office will continue to review and comment on permits not covered by the waiver as well as selected minor permits covered by the waiver and to determine the need for periodic public meetings similar to that held on May 5, 1976.

I believe that the granting of this waiver will bring us closer to the achievement of the goals of the National Permit Program. I also believe that Minnesota has an excellent opportunity to accomplish these goals while also operating an active program of public involvement.

AUG 31 1976

I wish you the best success in this endeavor and look forward to the day when all discharges to Minnesota waters are in compliance with their NPDES permits.

Sincerely yours,

George R. Alexander, Jr.
Regional Administrator

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

9 DEC 1978

OFFICE OF ENFORCEMENT

Honorable Rudy Perpich
Governor of Minnesota
St. Paul, Minnesota 55155

Dear Governor Perpich:

On June 30, 1974, Minnesota 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 as to Federal facilities. Accordingly, I hereby approve the State of Minnesota's request to assume this responsibility. This approval overrides any contrary language in EPA's June 30, 1974, letter approving the State NPDES program.

We are glad to transfer the administration of the NPDES permit program for Federal facilities to the State of Minnesota. Region V will be working with the Minnesota Pollution Control Agency to facilitate the timely transfer of the background information and documents for Federal facilities.

Sincerely yours,

Marvin B. Durning

Marvin B. Durning
Assistant Administrator
for Enforcement

cc: Ms. Sandra S. Gardebring
Executive Director
Minnesota Pollution Control Agency

D Schnoor

Doug Hall

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

JUL 16 1979

THE ADMINISTRATOR

Honorable Albert H. Quie
Governor of Minnesota
St. Paul, Minnesota 55155

Dear Governor:

It is with great pleasure that today I am approving the State of Minnesota's NPDES State Pretreatment Program in accordance with 40 CFR Part 403 of the General Pretreatment Regulations for Existing and New Sources of Pollution.

Section 403.10 of the regulations covers State pretreatment responsibilities under the Clean Water Act of 1977. The Pretreatment Program that Minnesota conducts pursuant to this authority must, at all times, be in accordance with these regulations and the modified Memorandum of Agreement between the Regional Administrator of U. S. Environmental Protection Agency, Region V and the Minnesota Pollution Control Agency which I also have approved (copy enclosed).

Minnesota is the first State to receive approval of a NPDES State Pretreatment Program. I congratulate you and your staff for moving promptly to assume administration of this important environmental program. We are glad you recognize the role of pretreatment in the control of industrial water pollution. We look forward to the administration of the NPDES pretreatment program by the State of Minnesota and to working with you and the Minnesota Pollution Control Agency's staff to continue the progress made towards cleaner waters in the State of Minnesota.

Sincerely yours,

/s/ Douglas M. Costle

Douglas M. Costle

Enclosure

cc: Ms. Terry Hoffman
Executive Director
Minnesota Pollution Control Agency

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

The Memorandum of Agreement approved June 28, 1974, by the Administrator of the United States Environmental Protection Agency between the Minnesota Pollution Control Agency (hereinafter, the "State") and the United States Environmental Protection Agency (hereinafter, "U.S. EPA") Region V is hereby modified to define State and U.S. EPA responsibilities for the establishment and enforcement of National Pretreatment Standards for existing and new sources under Section 307 (b) and (c) of the Clean Water Act (hereinafter the Act) as follows:

The State has primary responsibility for: (a) enforcing against discharges prohibited by 40 C.F.R. Section 403.5; (b) applying and enforcing any National Pretreatment Standards established by the U.S. EPA in accordance with Section 307 (b) and (c) of the Act; (c) reviewing, approving, and overseeing Publicly Owned Treatment Works (POTW) Pretreatment Programs to enforce National Pretreatment Standards in accordance with the procedures discussed in 40 C.F.R. Section 403.11; (d) requiring a POTW Pretreatment Program in National Pollutant Discharge Elimination System (NPDES) Permits issued to POTWs as required in 40 C.F.R. Section 403.8 and as provided in Section 402(b)(8) of the Act; (e) reviewing and approving modification of categorical Pretreatment Standards to reflect removal of pollutants by a POTW and enforcing related conditions in the POTWs NPDES Permit. U.S. EPA will overview and approve State pretreatment program operations consistent with 40 C.F.R. 403 regulations and this Memorandum of Agreement.

The State shall carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit, and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards. The number of inspections to determine compliance shall be agreed upon as part of the annual section 106 program plan process.

The State shall not issue, reissue, or modify any NPDES permit for a major POTW with pretreatment requirements until it receives an approval for such issuance, reissuance, or modification from U.S. EPA. If no comment is received by the State from U.S. EPA within 90 days from the date of receipt of such a request for permit issuance, reissuance, or modification, the State may assume that U.S. EPA has no objection to the issuance of the NPDES permit. It is Regional policy to attempt to process each request for approval within 30 days. To assure that no request for a major POTW is lost or not acted upon, the State shall contact the U.S. EPA Regional Permit Program by telephone within 35 days after it transmits such a request in the event the State has not received a response from the U.S. EPA by that time. The State shall take final action on NPDES Permits for minor POTWs with pretreatment requirements without the need to obtain U.S. EPA approval.

Section 403.6 National Pretreatment Standards: Categorical Standards

The State shall review requests from industrial users for industrial subcategories, make a written determination whether the Industrial User does or does not fall within a particular categorical pretreatment standard and state the reasons for this determination. The State shall forward its findings together with a copy of the request and necessary supporting information to the U.S. EPA Regional Enforcement Division Director for concurrence. If the Enforcement Division Director does not modify the State's decision within 60 days after receipt thereof, the State's finding is final. Where the request is submitted to the Enforcement Division Director or where the Enforcement Division Director elects to modify the State's decision, the Enforcement Division Director's decision will be final. Where the final determination is made by the Enforcement Division Director, the Director shall send a copy of this determination to the State.

Section 403.7 Categorical Pretreatment Standards Credit Removal and Section 403.9 POTW Pretreatment Program Approvals

The State shall review and act on POTW applications to revise discharge limits for industrial users who are or may in the future be subject to categorical pretreatment standards and requests for approval of POTW Pretreatment Programs. The State shall not take a final action on a major POTW's application to revise categorical pretreatment standards until it receives approval for such action from the U.S. EPA. If no comment is received by the State from U.S. EPA during the 45 day (or extended) evalution period provided for in 40 C.F.R. 403.11(b)(1)(ii), the State may assure that U.S. EPA has no objection. To assure that no request is lost or not acted upon, the State shall contact the U.S. EPA Permit Program by telephone within 30 days after it transmits its determination in the event the State has not received a response from the U.S. EPA by that time. No major POTW request for revised discharge limits shall be approved by the State if during the 45 day (or extended) evaluation period, the U.S. EPA objects in writing to the approval of such submission. The State shall take final action on minor POTWs requests to revise categorical pretreatment standards without the need to obtain U.S. EPA approval.

Section 403.13 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors

The State shall conduct an initial review of all cateogrical pretreatment standards fundamentally different factors requests from industrial users. If the State's determination is to deny the request, this determination shall be forwarded to the industrial user with a copy of the determination and request also forwarded to the U.S. EPA Regional Enforcement Division Director. If the State's determination is that fundamentally different factors do exist, the request and recommendation that the request be approved shall be sent to the U.S. EPA Regional Enforcement Division Director for final action. If the Director's determination differs from that of the State, the Director shall notify the State in writing indicating reasons why the determinations differ and allow the State a reasonable amount of time to respond. The State shall be provided a copy of the Director's final determination.

Miscellaneous

The State shall submit a list of POTWs requiring pretreatment, identifying those municipalities with flows greater than 5 MGD and less than 5 MGD separately. This list may be revised from time to time and any addition or deletion will not require modification to the Memorandum of Agreement. The list of POTWs requiring pretreatment may be modified at any time upon the mutual agreement of the State and the U.S. EPA Regional Enforcement Division Director.

For minor POTWs, the U.S. EPA Regional Enforcement Division Director will be afforded the opportunity to review and comment on pretreatment program submissions and the State's preliminary determinations as provided in 40 C.F.R. 403.11.

Nothing in this agreement is intended to affect any Pretreatment requirement including any standards or prohibitions, established by state or local law as long as the state or POTW requirements are not less stringent than any set forth in the National Pretreatment Standards, or other requirements or prohibitions established under the Act or this regulation.

Nothing in this Modification shall be construed to limit the authority of U.S. EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the Clean Water Act of 1977 (33 USC § 1251 et seq).

This Modification will become effective upon approval of the Administrator.

STATE AGENCY

By Terry Hoffman

Date: 5-25-79

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION V

By J. C. McDuffie

Date: 6-7-79

Approved:

Administrator
United States Environmental Protection Agency

Date: JUL 16 1979

P288

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5WQP

DEC 2 4 1987

Gerald Willet, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Dear Mr. Willet:

On December 15, 1987, notice of approval of the State of Minnesota NPDES General Permits Program was published in the Federal Register. Enclosed is the amendment to Memorandum of Agreement signed by both Agencies. Also enclosed is a copy of the letter to the Honorable Ruby Perpich approving the program and the memorandum from U.S. EPA Headquarters concurring with the Region's approval of the State's General Permit Program.

The General Permit Program is an important addition to the NPDES permit program since it provides a less involved procedure for permitting groups of dischargers with essentially the same type of waste.

If you have any questions regarding this matter, please contact me.

Sincerely yours,

for Dale S. Bryson
Acting Director, Water Division

Enclosures

cc: (w/Enclosures)
Russell Felt, MPCA

AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE MINNESOTA POLLUTION CONTROL AGENCY
AND THE
UNITED STATED ENVIRONMENTAL PROTECTION AGENCY, REGION V

The Memorandum of Agreement between the United States Environmental Protection Agency, Region V (hereafter EPA) and the Minnesota Pollution Control Agency (hereafter MPCA) is hereby amended to include MPCA and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) general permits as follows:

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

Each draft general permit will be transmitted to the following EPA offices:

Water Division Director
U.S. Environmental Protection Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604

Director, Office Water Enforcement and Permits*
U.S. Environmental Protection Agency (EN-335)
401 M Street S.W.
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 MPCA. Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development. 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. Upon receipt of EPA's objection, the State may request a public hearing. If EPA's concerns are not satisfied

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

and the State has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

If EPA raises no objections to a general permit, it will be publicly noticed in accordance with Minnesota Rules Chapter 7001 and 40 CFR § 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. The MPCA will issue general permits in accordance with Minnesota Rules Chapter 7001 and 40 CFR § 122.28.

The MPCA may require any person authorized by a general permit to apply for, and obtain an individual NPDES permit. In addition, interested persons, including dischargers otherwise authorized by a general permit, may request that a facility be excluded from general permit coverage. Dischargers wishing exclusion must apply for an individual NPDES permit within ninety (90) days of publication of the general permit. Finally, a discharger with an effective or continued individual NPDES permit may seek general permit coverage by requesting its permit to be revoked.

The MPCA 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 annual 106 workplan/SEA process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the MPCA general permits program application by the Administrator of EPA Region V.

FOR MINNESOTA POLLUTION CONTROL AGENCY:

Thomas Kalitowski
Commissioner

9/17/87
Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Frank M. Covington
Regional Administrator
U.S. EPA, Region V

10/8/87
Date

✓ Org. : WATER

~~R. COOKE TO~~

Minnesota Pollution Control Agency

May 1, 2000

Mr. Francis X. Lyons
Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Re: Addendum to the National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement for GLI

Dear Mr. Lyons:

Enclosed is the Addendum to the NPDES Memorandum of Agreement between the U.S. Environmental Protection Agency (EPA) and the Minnesota Pollution Control Agency (MPCA). The addendum amends the agreement to ensure that the provisions of Minn. R. Ch. 7052 for the Lake Superior Basin are implemented in a manner consistent with the Water Quality Guidance for the Great Lakes System required by section 118 (c) (2) of the Clean Water Act.

Also enclosed is a letter from the office of the Attorney General of Minnesota certifying the legal authority of the MPCA to interpret and implement the provisions described in the addendum.

The process of implementing the Guidance has been a long one, but it is a pleasure to finally complete these protections for what is arguably the finest water body in the world. The real work is still ahead.

Sincerely,

Gordon E Wegwart

Gordon E. Wegwart, P.E.
Assistant Commissioner
Commissioner's Office

GW:jmn
Enclosures

520 Lafayette Rd. N.; St. Paul, MN 55155-4194; (651) 296-6300 (Voice); (651) 292-5332 (TTY)
St. Paul • Brainerd • Detroit Lakes • Duluth • Mankato • Marshall • Rochester • Willmar; www.pca.state.mn.us

ADDENDUM
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE MINNESOTA POLLUTION CONTROL AGENCY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

The federal Water Quality Guidance for the Great Lakes System (hereafter Federal Guidance) required by section 118(c)(2) of the Clean Water Act (33 U.S.C. §§ 1251 *et. seq.*) is set out in 40 C.F.R. Part 132. The Federal Guidance identifies minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System to protect human health, aquatic life, and wildlife. The Federal Guidance requires Great Lakes states and tribes to adopt provisions consistent with the Federal Guidance for their waters within the Great Lakes system. The Minnesota Pollution Control Agency (hereafter MPCA) adopted Lake Superior Basin Water Standards in Minnesota Rules chapter 7052 as Minnesota's response to that requirement. Chapter 7052 became effective on March 9, 1998. EPA has conducted its review of Minnesota's response for compliance with Federal Guidance.

The Memorandum of Agreement between the United States Environmental Protection Agency, Region V (hereafter EPA), and the MPCA for the approval of the state National Pollutant Discharge Elimination System (hereafter NPDES) is hereby amended to ensure that Minnesota's Lake Superior Basin Water Standards and implementation procedures in chapter 7052 are implemented in a manner that is consistent with the Federal Guidance.

The duties assumed by the MPCA in this Addendum apply only to those portions of Minnesota's NPDES program applicable to Lake Superior.

1. 40 C.F.R. § 132.2, Definition of "New Great Lakes Discharger"/Minn. R. 7052.0010, subp. 33

MPCA and EPA agree that if the MPCA receives any application for a NPDES permit for any Great Lakes discharge associated with any building, structure, facility, or installation, the construction of which commenced after March 23, 1997, the MPCA will treat the discharger as if it were a "new discharger."

2. 40 C.F.R. Part 132, Appendix A, Tier II Values for Aquatic Life/Minn. R. 7052.0100

MPCA and EPA agree that, in situations where data have become available that would result in more stringent aquatic life criteria or values than the criteria listed in Minn. R. 7050.0222, the MPCA will utilize its Tier II methodologies in Minn. R. 7052.0110 to develop criteria or values, and those criteria or values shall be used rather than those listed in Minn. R. 7050.0222, for implementing Minnesota's narrative criteria, establishing total maximum daily loads, establishing water quality based effluent limitations, and making reasonable potential determinations.

3. 40 C.F.R. Part 132, Appendix E, Antidegradation/Minn. R. 7052.0300, subp. 3

EPA and MPCA agree that, in making NPDES permitting decisions regarding new or increased discharges into class 7 waters in the Lake Superior basin, MPCA shall always apply and comply with the nondegradation provisions for high quality waters set forth at Minn. R. 7052.0300, subp. 4, and in Minn. R. 7052.0310, subp. 3, for class 7 waters for all pollutants covered by Appendix E to Part 132 because application and compliance with those provisions will always be necessary to ensure compliance with the antidegradation requirements applicable to downstream outstanding international resource waters and outstanding resource value waters.

4. 40 C.F.R. Part 132, Appendix F, Procedure 5, Reasonable Potential To Exceed Water Quality Standards, Paragraph B.2./Minn. R. 7052.0220, subp. 3

EPA and MPCA agree that MPCA will use only alternative statistical procedures for deriving PEQ that meet the criteria in 40 C.F.R. Part 132, Appendix F, Procedure 5, Paragraph B.2. EPA and MPCA further agree that EPA retains the authority to review any specific statistical procedures Minnesota intends to use for deriving PEQs and to object to permits that have been developed using statistical procedures that do not meet the requirements of Paragraph B.2. of Procedure 5.

5. 40 C.F.R. Part 132, Appendix F, Procedure 5, Paragraph D.3.c.i., Information Regarding Intake Credits in NPDES Permit Fact Sheets/Minn. R. 7052.0220, subp. 5, and 7001.0100, subp. 3

EPA and MPCA agree that MPCA will include the information required by Paragraph D.3.c.i of Procedure 5 in Appendix F to 40 C.F.R. Part 132 whenever the MPCA determines there is no reasonable potential for the discharge of an intake pollutant to cause or contribute to an excursion above water quality criteria.

6. 40 C.F.R. Part 132, Appendix F, Procedure 8, Paragraph D, Water Quality-Based Effluent Limitations (WQBELs) Below the Quantification Level: Pollutant Minimization Program/Minn. R. 7052.0250, subp. 4

EPA and MPCA agree that Minnesota will include in NPDES permits for discharges into Lake Superior where there is a WQBEL for a pollutant that is below the level of quantification a requirement for at least semiannual monitoring of potential sources of the pollutant at issue and quarterly influent monitoring, unless less frequent monitoring is justified based upon information generated in conducting a pollutant minimization program.

7. 40 C.F.R. Part 132, Appendix F, Procedure 9 and 40 C.F.R. § 122.47(a)(1), Compliance Schedules for New or More Restrictive WQBELs/Minn. R. 7001.0150, subp 2.A and Minn. R. 7052.0260, subp. 2 and 3

EPA and MPCA agree that Minnesota will not allow compliance schedules for WQBELs in NPDES permits where none is needed or appropriate. For example, Minnesota will not allow compliance schedules where a permittee is able to meet the WQBEL at the time of permit issuance or where the permit contains a new but less restrictive WQBEL.

8. 40 C.F.R. § 122.47, Compliance Schedules for New or Improved Analytical Methods/Minn. R. 7052.0260, subp. 2 and 3

Minnesota rules require compliance schedules when permits that are issued contain new or improved analytical methods. Minn. R. 7052.0260, subp. 2 and 3. The Federal Guidance does not address compliance schedules for using analytical methods. That issue is governed by EPA's NPDES program regulations at 40 C.F.R. § 122.47, which provides that permits may include a schedule of compliance so long as the permit "require[s] compliance as soon as possible." 40 C.F.R. § 122.47(a)(1). This provision authorizes Minnesota to allow compliance schedules for use of a new or improved analytical method if such schedules require use of the new analytical method "as soon as possible." Minn. R. 7001.0150, subp. 2.A., provides that a compliance schedule "must require compliance in the shortest reasonable period of time."

EPA and Minnesota agree that "the shortest reasonable period of time" for use of a new or improved analytical method would generally be the period of time necessary to allow a permittee to develop or obtain the analytical services or undertake any other activities necessary to allow the permittee to actually use the new analytical method. EPA and Minnesota also agree that it would be unreasonable to establish a compliance schedule for using a new or improved analytical method that includes additional time based upon the permittee's ability to comply with its WQBEL.

This Addendum to the Memorandum of Agreement will be effective upon final approval of the United States Environmental Protection Agency.

FOR THE MINNESOTA POLLUTION CONTROL AGENCY:

Gordon E. Wegwart — 5/1/00

Gordon E. Wegwart
Assistant Commissioner

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION V:

Francis X. Lyons — 7/28/00

Francis X. Lyons
Regional Administrator

Date

AG: 377902,v. 01

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

May 1, 2000

Mr. Francis X. Lyons
Regional Administrator
U. S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Re: MPCA's Legal Authority to Interpret and Implement the Specific Provisions of Minnesota Rules Chapter 7052 Addressed in the Addendum to the NPDES Memorandum of Agreement Between MPCA and EPA

Dear Mr. Lyons:

I have reviewed the agreements that the Minnesota Pollution Control Agency (MPCA) has made in the Addendum to the NPDES Memorandum of Agreement between the MPCA and EPA. It is my opinion that the MPCA has the legal authority to interpret and implement the specific rules at issue as it has agreed to in the Addendum.

The authority of the MPCA is found in the statutes and rules of the State cited in the following text. They are in full force and effect on the date of this statement.

1. 40 C.F.R. § 132.2, Definition of "New Great Lakes Discharger"/Minn. R. 7052.0010, subp. 33

40 C.F.R. § 132.2 defines "New Great Lakes discharger" as "any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants' (as defined in 40 C.F.R. 122.2) to the Great Lakes System, the construction of which commenced after March 23, 1997." Minn. R. 7052.0010, subp. 33, in pertinent part, defines a "new discharger" as "any building, structure, facility, or installation from which there is or may be a 'discharge of pollutants,' as defined in Code of Federal Regulations, title 40, section 122.2, to surface waters of the state in the Lake Superior Basin . . . the construction of which commenced after" March 9, 1998. The only problem identified in comparing the two definitions arises from the difference in the effective dates in the two definitions.

MPCA and EPA have agreed in the Addendum to the National Pollutant Discharge Elimination System Memorandum of Agreement between the MPCA and the EPA (Addendum) that if the MPCA receives any application for a NPDES permit for any Great Lakes discharge associated with any building, structure, facility, or installation, the construction of which commenced after March 23, 1997, the MPCA will treat the discharger as if it were a "new discharger."

As of the date of this certification, in late April 2000, Minnesota has not received any application for a NPDES permit for any Great Lakes discharge associated with any building, structure,

facility or installation, the construction of which commenced between March 23, 1997, and March 9, 1998.

Minn. Stat. § 115.03, subd. 1(e), authorizes the MPCA to adopt, issue, modify, deny, revoke, and enforce reasonable permits, under such conditions as the agency may prescribe, for the prevention of water pollution and for the operation of disposal systems and other facilities. Under Minn. Stat. § 115.07, subd. 1, and rules adopted under that statute, it is unlawful for any person to construct, install, or operate a disposal system, or any part thereof, until it has received a permit from the MPCA. *See* Minn. R. 7001.0030 and 7001.1040.

The definitions of "disposal system" and the terms used in that definition, all in Minn. Stat. § 115.01, signify that sections 115.03 and 115.07, and rules adopted under those statutes, impose a comprehensive permitting requirement on all buildings, structures, facilities and installations covered by the state and federal requirements. By operation of those statutory provisions any construction during the subject period without a permit would have been contrary to law and could not serve as the basis for an argument that the "new discharger" deadline had not passed as to that construction or resulting discharge. As a result, the MPCA would have to treat any application received now or later for a NPDES permit for any Lake Superior discharge associated with any building, structure, facility or installation the construction of which commenced after March 23, 1997, as an application from a "new discharger."

2. 40 C.F.R. Part 132, Appendix A, Tier II Values for Aquatic Life/Minn. R. 7052.0100

40 C.F.R. Part 132, Appendix A, contains a methodology for deriving Tier II aquatic life values to be used in lieu of Tier I criteria in situations where there are insufficient data to calculate Tier I criteria. 40 C.F.R. § 132.4 (c) and (d) provide that, if Tier I criteria are not available, Tier II aquatic life values calculated in accordance with the Tier II methodology apply in the Great Lakes System and must be used when implementing narrative water quality criteria.

Under Minn. R. 7052.0100, Tier I aquatic life criteria apply to the Great Lakes System. If Minnesota has not adopted Tier I aquatic life criteria for a particular pollutant, but there are criteria listed in Minn. R. 7050.0222 for that pollutant that Minnesota previously adopted, then Minnesota uses the previously adopted aquatic life criteria. That is, Minnesota does not generate Tier II values utilizing its methodology for developing Tier II values in Minn. R. 7052.0110 if Minnesota has previously adopted criteria listed in Minn. R. 7050.0222. If there are no Tier I aquatic life criteria or previously adopted criteria listed in Minn. R. 7050.0222, Minnesota utilizes its Tier II methodologies to develop Tier II aquatic life values.

However, new data could become available subsequent to the date that Minnesota adopted its criteria at Minn. R. 7050.0222 that would result in more stringent Tier II aquatic values under the Minnesota and Federal Guidance Tier II aquatic life methodologies. Unlike in the Federal Guidance, nothing in Minnesota's rules requires the MPCA to develop new Tier II values based upon those new data in situations where there are criteria in Minn. R. 7050.0222. Thus, the Minn. R. 7050.0222 criteria may not be as stringent as the criteria would be if derived using the more current data, assuming the data were to indicate that more stringent values were appropriate.

To resolve that potential inconsistency, MPCA and EPA have agreed that, in situations where data have become available that would result in more stringent aquatic life criteria or values than the criteria listed in Minn. R. 7050.0222, the MPCA will utilize its Tier II methodologies in Minn. R. 7052.0110 to develop criteria or values to be used for implementing its narrative criteria, establishing total maximum daily loads, establishing water quality based effluent limitations, and making reasonable potential determinations.

The authority for MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including adopting, amending and applying standards and rules, consistent with and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. The MPCA has agreed in the Addendum to apply its standards in a manner consistent with the Clean Water Act and Minnesota's participation in the NPDES, exactly what the Minnesota statute contemplates. *See also* Minn. Stat. § 115.44, subd. 8, as further support for the State's authority to utilize its Tier II methodologies.

Minn. R. 7001.0150, subp. 2 and 3.B., require the MPCA to include in permits conditions necessary for the permittee to achieve compliance with applicable federal law and allow the MPCA to adopt and enforce more stringent standards and apply them to existing permits.

3. 40 C.F.R. Part 132, Appendix E, Antidegradation/Minn. R. 7052.0300, subp. 3

40 C.F.R. Part 132, Appendix E, regarding the Great Lakes Water Quality Initiative Antidegradation Policy, requires that the decision whether a water body is high quality for purposes of antidegradation be made on a parameter by parameter basis. Minnesota's nondegradation standards at Minn. R. 7052.0300, subp. 4, limit high quality waters in the Lake Superior basis to those designated as Outstanding International Resource Waters (OIRWs). Minnesota rules define OIRWs at subpart 3 of part 7052.0300 as, "[a]ll surface waters of the state in the Lake Superior Basin, other than Class 7 waters and designated ORVWs." That definition appears to raise a conflict with the Federal Guidance because Class 7 waters cannot be considered high quality waters by definition, regardless of water quality for individual bioaccumulative chemicals of concern (BCCs) as required by the Federal Guidance. However, Minn. R. 7052.0300, subp. 1.C., requires that the nondegradation procedures at Minn. R. 7052.0310, 7052.0320, and 7052.0330 must be applied to Class 7 waters as necessary to protect downstream waters.

EPA and MPCA have agreed in the Addendum that in making NPDES permitting decisions regarding new or increased discharges into class 7 waters in the Lake Superior basin, MPCA shall always apply and comply with the nondegradation provisions for high quality waters set forth at Minn. R. 7052.0300, subp. 4, and in Minn. R. 7052.0310, subp. 3, for class 7 waters for all pollutants covered by Appendix E to Part 132 because application and compliance with those provisions will always be necessary to ensure compliance with the antidegredation requirements applicable to downstream outstanding international resource waters and outstanding resource value waters.

The authority for MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including applying standards and rules consistent with

and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. Further authority is found in the rule, Minn. R. 7052.0300, subp. 1.C., cited as the resolution to the potential inconsistency, in Minn. R. 7052.0005 B., and in Minn. R. 7001.0150, subp. 2 and 3.B, as described in the preceding section of this letter.

4. 40 C.F.R. Part 132, Appendix F, Procedure 5, Reasonable Potential To Exceed Water Quality Standards, Paragraph B.2./Minn. R. 7052.0220, subp. 3

The Federal Guidance at 40 C.F.R. Part 132, Appendix F, Procedure 5, Paragraph B.2., and Minnesota's program at Minn. R. 7052.0220, subp. 3, both allow for use of alternative statistical procedures for deriving preliminary effluent quality (PEQ). The Minnesota rule provides that any alternate PEQ procedure used must fulfill the requirements of 40 C.F.R. § 122.44, para. (d)(1). While any alternate procedure that meets the requirements of Paragraph B.2. of Procedure 5 would meet the requirements of 40 C.F.R. § 122.33(d)(1), certain procedures that meet the Minnesota requirements, i.e., 40 C.F.R. § 122.33(d)(1), may not satisfy the requirements of Paragraph B.2. of Procedure 5.

EPA and MPCA have agreed that MPCA will use only alternative statistical procedures for deriving PEQ that meet the criteria in 40 C.F.R. Part 132, Appendix F, Procedure 5, Paragraph B.2.

The authority for the MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including applying standards and rules consistent with and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. The MPCA has agreed in the Addendum to apply its standards in a manner consistent with the Clean Water Act and Minnesota's participation in the NPDES. Further the action MPCA has agreed to lies within an administrative agency's generally accepted enforcement discretion. Minn. R. 7001.0150, subp. 2 and 3.B, as described in Section 3, express further authority for the MPCA's agreement.

5. 40 C.F.R. Part 132, Appendix F, Procedure 5, Paragraph D.3.c.i., Information Regarding Intake Credits in NPDES Permit Fact Sheets/Minn. R. 7052.0220, subp. 5, and 7001.0100, subp. 3

Paragraph D.3.b. of Procedure 5 in Appendix F to 40 C.F.R. Part 132, allows permitting authorities to determine that there is no reasonable potential for identified intake pollutants to cause or contribute to an excursion above water quality criteria when a permittee can demonstrate that five specified conditions are met. Paragraph D.3.c.i. requires the NPDES permit fact sheet to state the basis for and document the finding of no reasonable potential for chemical-specific water quality based effluent limitation. While Minnesota's "intake credit" provisions require meeting the same five conditions as in the Federal Guidance, they do not contain anything comparable to the requirement in Paragraph D.3.c.i. to document in the permit fact sheet the basis for a finding of no reasonable potential for chemical-specific water quality based effluent limitation.

However, Minnesota's general permitting rule at Minn. R. 7001.0100, subp. 3, requires the MPCA to include in the fact sheet "the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit, . . . a summary of the

basis for the draft permit conditions, including references to applicable statutory or regulatory provisions, . . . and the preliminary determinations made by the commissioner on the permit application." These general provisions include the information required by Paragraph D.3.c.i. in the Federal Guidance whenever the MPCA determines there is no reasonable potential for the discharge of an intake pollutant to cause or contribute to an excursion above water quality criteria.

EPA and MPCA have agreed that MPCA will include the information required by Paragraph D.3.c.i. of Procedure 5 in Appendix F to 40 C.F.R. Part 132 whenever the MPCA determines there is no reasonable potential for the discharge of an intake pollutant to cause or contribute to an excursion above water quality criteria.

The authority for the MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including applying standards and rules consistent with and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. The MPCA has agreed in the Addendum to apply its standards in a manner consistent with the Clean Water Act and Minnesota's participation in the NPDES. The authority also resides in Minn. R. 7001.0100, subp. 3, which requires inclusion in the fact sheet for each draft MPCA permit facts such as agreed to here.

6. 40 C.F.R. Part 132, Appendix F, Procedure 8, Paragraph D, Water Quality-Based Effluent Limitations (WQBELs) Below the Quantification Level: Pollutant Minimization Program/Minn. R. 7052.0250, subp. 4

Paragraph D of Procedure 8 in Appendix F to 40 C.F.R. Part 132, requires inclusion of pollutant minimization programs (PMPs) in permits where there is a WQBEL for a pollutant that is below the level of quantification. Paragraph D.1. requires semiannual monitoring of potential sources of the pollutant while Paragraph D.2. requires quarterly monitoring for the pollutant in the effluent of the wastewater treatment system. Finally, Paragraph D.6. allows a permitting authority to reduce monitoring frequencies based upon information generated as a result of a PMP.

Minn. R. 7052.0250, subp.4, requires only that PMPs include requirements for "periodic monitoring" of potential pollutant sources and of wastewater treatment system influent.

EPA and MPCA have agreed that Minnesota will require in its NPDES permits for discharges into Lake Superior where there is a WQBEL for a pollutant that is below the level of quantification a requirement for at least semiannual monitoring of potential sources of the pollutant at issue and quarterly influent monitoring, unless less frequent monitoring is justified based upon information generated in conducting a pollutant minimization program.

The authority for the MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including adopting, amending and applying standards and rules, consistent with and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. The MPCA has agreed in the Addendum to apply its standards in a manner consistent with the Clean Water Act and Minnesota's participation in the NPDES. The Minnesota rule requires periodic monitoring. Making that general requirement specific as to the period at which

monitoring shall take place lies within the MPCA's generally accepted enforcement discretion. Further, Minn. Stat. § 115.03, subd. 1(e), authorizes the MPCA to adopt, issue, modify, deny, revoke, and enforce reasonable permits, under such conditions as the agency may prescribe, for the prevention of water pollution and for the operation of disposal systems and other facilities. *See also*, Minn. R. 7001.0150, subp. 2 and 3.B, as described in section 3 of this letter.

7. 40 C.F.R. Part 132, Appendix F, Procedure 9 and 40 C.F.R. § 122.47(a)(1), Compliance Schedules for New or More Restrictive WQBELs/Minn. R. 7001.0150, subp 2.A and Minn. R. 7052.0260, subp. 2 and 3

Federal Guidance mentions compliance schedules only in Procedure 9 of Appendix F. Paragraph A of Procedure 9 requires that any WQBEL included in a permit to a new discharger must be complied with upon the commencement of the discharge. Minn. R. 7052.0260, subp. 2, also requires that any WQBEL included in a permit to a new discharger must be complied with upon commencement of the discharge.

EPA and MPCA agree that Minnesota will not allow compliance schedules for WQBELs in NPDES permits where none is needed or appropriate. For example, Minnesota will not allow compliance schedules where a permittee is able to meet the WQBEL at the time of permit issuance or where the permit contains a new but less restrictive WQBEL.

Neither the Federal Guidance nor Minn. R. ch. 7052 expressly prohibits inclusion of a compliance schedule in an existing permit that is reissued or modified to contain a new or more restrictive WQBEL where a compliance schedule is not needed, i.e., when the permittee can comply with the new or more restrictive WQBEL upon reissuance of the permit. However, separate provisions of federal regulations and Minnesota rules do require compliance upon reissuance when possible. *See* 40 C.F.R. § 122.47(a)(1) ("schedules of compliance . . . shall require compliance as soon as possible") and Minn. R. 7001.0150, subp. 2.A ("schedule of compliance must require compliance in the shortest reasonable period of time"). The latter provision is prefaced with the condition "[i]f applicable to the circumstances." Further, Minn. R. 7001.0100, subp. 2, regarding draft permits, provides, "If the preliminary determination is to issue a permit, the commissioner shall prepare a draft permit, including a proposed schedule of compliance *if a schedule is necessary* to meet all applicable standards and limitations imposed by statute or rule."

The only reasonable reading of the cited provisions of Minnesota law is that the State will not allow compliance schedules for WQBELs in NPDES permits where none is needed or appropriate. Minnesota is fully authorized to agree with the EPA that it will not allow compliance schedules in those circumstances. The implication of the agreement is that Minnesota will not allow compliance schedules where a permittee is able to meet the WQBEL at the time of permit issuance or where the permit contains a new but less restrictive WQBEL.

8. 40 C.F.R. § 122.47, Compliance Schedules for New or Improved Analytical Methods/Minn. R. 7052.0260, subp. 2 and 3

Minnesota rules require compliance schedules when permits that are issued contain new or improved analytical methods. Minn. R. 7052.0260, subp. 2 and 3. Federal Guidance does not address compliance schedules for using analytical methods. That issue is governed by EPA's NPDES program regulations at 40 C.F.R. § 122.47, which provides that permits may allow a schedule of compliance so long as the permit "require[s] compliance as soon as possible." 40 C.F.R. 122.47(a)(1). This provision authorizes Minnesota to allow compliance schedules for use of a new or improved analytical method if such schedules require use of the new analytical method "as soon as possible."

Minn. R. 7001.0150, subp. 2.A., provides that a compliance schedule "must require compliance in the shortest reasonable period of time." EPA and Minnesota agree that "the shortest reasonable period of time" for use of a new or improved analytical method would generally be the period of time necessary to allow a permittee to develop or obtain the analytical services or undertake any other activities necessary to allow the permittee to actually use the new analytical method. EPA and Minnesota also agree that it would be unreasonable to establish a compliance schedule for using a new or improved analytical method that includes additional time based upon the permittee's ability to comply with its WQBEL.

The authority for the MPCA to make that agreement appears in Minn. Stat. § 115.03, subd. 5, which authorizes the MPCA to do all things, including applying standards and rules consistent with and not less stringent than the Clean Water Act applicable to the participation by Minnesota in the NPDES. The MPCA has agreed in the Addendum to interpret its standards in a manner consistent with the Clean Water Act and Minnesota's participation in the NPDES. Further, Minn. Stat. § 115.03, subd. 1(e), authorizes the MPCA to adopt, issue, modify, deny, revoke, and enforce reasonable permits, under such conditions as the agency may prescribe, for the prevention of water pollution and for the operation of disposal systems and other facilities.

The MPCA has the authority to interpret, implement and enforce the proposed agreements it has made in the Addendum to the NPDES Memorandum of Agreement with the EPA.

Very truly yours,

DWIGHT S. WAGENIUS
Assistant Attorney General

(651) 296-7345

AG: 351538,v. 01