

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF NORTH DAKOTA

STATE DEPARTMENT OF HEALTH

AND

THE UNITED STATES ENVIRONMENTAL

PROTECTION AGENCY

REGION VIII

INTRODUCTION

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

POLICIES

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

4. Based on the approval of State authority pursuant to Section 402, the Director, or his designee, with the assistance of the Permits Branch, Enforcement Division of the Environmental Protection Agency, under existing State statutes and regulations, shall process and issue National Pollutant Discharge Elimination System waste discharge permits which are consistent and compatible with the Act and with regulations and guidelines promulgated thereunder. The Regional Administrator, through the Permits Branch, shall provide written agreement with, objection to, or recommendation on, each NPDES permit to be issued. The Director, or his designee, shall not issue any NPDES permit to which the Regional Administrator has objected.
5. Region VIII of the Environmental Protection Agency, with technical assistance from the Department, shall have the responsibility for issuance of NPDES permits for point source discharges from Federal facilities, to include point sources located within the boundaries of Indian reservations.
6. It shall be the goal of the Department, with assistance from Region VIII of the Environmental Protection Agency, to issue NPDES permits to all significant dischargers in the State of North Dakota by June 30, 1975. The Department and the Permits Branch shall strive to meet the goals set out in this document and progress in achieving these goals will be reviewed by the Director and Region VIII of the Environmental Protection Agency on a monthly basis commencing the end of the first full month after the State assumes the permit program.

AGREEMENTS

1. TRANSMITTAL OF DATA FROM THE ENVIRONMENTAL PROTECTION AGENCY TO THE DEPARTMENT.

- a. Within 30 days from the date of approval of the State of North Dakota's NPDES permit program, the Regional Administrator, through the Permits Branch, shall transmit to the Department all NPDES and Refuse Act applications and/or other relevant data which the Regional Administrator has in his possession and which he has not already transmitted to the Department.

In effecting this transfer, the Regional Administrator will see that copies of all forms and data transmitted are retained by the Environmental Protection Agency.

- b. The Regional Administrator will, at the time of transmittal, identify any application, pursuant to (a) above, which he considers to be incomplete and will request the Department to secure the missing information. Copies of all information thus secured will be provided to the Regional Administrator, Attention: Permits Branch, upon receipt by the Department.
- c. Within 30 days from the date of approval of the State of North Dakota's NPDES Permit Program the Regional Administrator will provide the Department with a list of those applicants in the State of North Dakota which have been determined by the Environmental Protection Agency to not require NPDES permits. The Regional Administrator will send any applications or information that he has in his possession relative to the facilities on this list to the Department. The Department will inform the Regional Administrator of any facilities on this list to which the State issues a NPDES permit.
- d. The Regional Administrator will also transmit copies of any fact sheets, public notices, proposed permit conditions and summary of rationale sheets drafted by the Environmental Protection Agency for facilities applying for NPDES permits in the State of North Dakota.

2. TRANSMITTAL OF DATA FROM THE DEPARTMENT TO THE REGIONAL ADMINISTRATOR.

- a. The Department shall review all NPDES and Refuse Act applications and data transmitted by the Regional Administrator for completeness and sufficiency, and shall provide the Regional Administrator with a listing of those applications which are considered to be incomplete or otherwise deficient for preparation of a permit. The Regional Administrator will provide the necessary information to complete the application, or will inform the Department that the information must be requested from the applicant.
- b. After final approval of the North Dakota NPDES permit program, the Department will assume initial responsibility for determining that applications submitted to the Department after that date are complete. When the Department determines that the NPDES forms received from the applicant are complete, two copies of the forms, with a cover letter indicating that the forms are complete, will be promptly transmitted to the Regional Administrator, Attention: Permits Branch. If the Regional Administrator concurs with the Department, one copy will be used for processing into the National Data Bank and the other copy will be placed in the Region VIII NPDES Permit files. If the Regional Administrator does not concur that the application is complete, he shall, within 20 days, notify the Department by letter and indicate in which respects the application is deficient. The Director, or his designee, will send the Regional Administrator any necessary information to complete the application and, if the Regional Administrator so requests, shall not issue the NPDES permit until notice is received from the Regional Administrator that the information is sufficient.
- c. It shall be the responsibility of the Regional Administrator to provide a copy of all NPDES forms and data, whether received by the Environmental Protection Agency before final approval of the North Dakota NPDES Permit Program or provided by the Department pursuant to paragraph (b) of this section, to the National Data Bank.

- d. The Permits Branch, Enforcement Division, Region VIII, Environmental Protection Agency, will review all NPDES applications to identify any discharges less than 50,000 gallons per day which are not minor discharges.
- e. The Regional Administrator does not waive his rights to receive copies of all NPDES forms received by the Department. However, the Regional Administrator may, at his option, expressly waive any and all of his rights to receive NPDES portions of State permit forms with respect to any particular discharge or any size or type of discharge or with respect to discharges to particular navigable waters or parts thereof at any time in the future.
- f. The Department shall transmit, upon request by the Regional Administrator, copies of any notices submitted by publicly owned treatment works to the Department prepared in accordance with 40 CFR 124.45(d) and (e) of the State Guidelines or equivalent State requirements.
- g. Upon acquisition by the Department of the capability to prepare data in a format suitable for direct entry into the Environmental Protection Agency water information system, all information and data transmitted under this section will be prepared for such direct entry prior to submittal to the Environmental Protection Agency.

3. PREPARATION OF PROPOSED PERMITS.

- a. Region VIII of the Environmental Protection Agency, through the Permits Branch, Enforcement Division, shall provide technical assistance to the Department in the interpretation of effluent guidelines and other Federal regulations; preparation and issuance of public notice, fact sheets and permits; and review of all proposed NPDES permits for compliance with Federal regulations.
- b. The Department will provide the Permits Branch's State Assignee with an internal draft and summary of rationale for proposed NPDES permits, fact sheets, and public notices. The State Assignee will promptly review these internal drafts and comment, if necessary, within 10 days. The Director, or his designee, will consider these comments as the proposed permits, fact sheets, and final notices are finalized.

- c. For each permit prepared subject to this agreement, the Department will specify maximum and average quantitative limitations for the level of pollutants in the authorized discharge in terms of weight, where applicable.
 - d. For each permit prepared subject to this agreement, the Department will require that the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.
 - e. If the Director, or his designee, makes a tentative determination to deny a permit, he shall notify the applicant of such intent and provide a copy of the determination to the Regional Administrator.
4. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMITS.
- a. The Regional Administrator will have 30 days from the time he receives the proposed NPDES permit from the Director, or his designee, within which to object to, as provided for in Section 402(d)(2) of the Act, comment upon or make a recommendation with respect to the proposed NPDES permit. Upon request of the Regional Administrator, the Director, or his designee, will provide the Regional Administrator with additional time for review, provided that the total review period shall not exceed 90 days. The Regional Administrator shall notify the Department in writing within the time periods set forth above if the Environmental Protection Agency objects to or concurs with the issuance by the Department of the NPDES permit as proposed, failure to so notify the Director, or his designee, within the specified time period shall be considered as concurrence by the Regional Administrator.
 - b. If a public notice, required by 40 CFR 124.32, is issued, the Department will transmit one copy of the NPDES public notice, fact sheet (if one is required) and proposed NPDES permit to the Regional Administrator, Attention: Permits Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed permit.
 - c. The Department will transmit to the Regional Administrator, Attention: Permits Branch, copies of all written comments received on any public notices for a proposed NPDES permit from any source.

- d. If a proposed NPDES permit issued with a public notice is modified as a result of comments received by the Department during the 30-day comment period or as a result of significant adverse comment at a public hearing, the Department will transmit a revised copy of the proposed NPDES permit to the Regional Administrator, Attention: Permits Branch, and shall specify the reasons for the modification.

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

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

The Department will transmit to the Regional Administrator, Attention: Permits Branch, a copy of every issued NPDES permit together with any and all terms, conditions, and requirements of the NPDES permit.

6. MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF NPDES PERMITS.

When the Director, or his designee, finds it necessary or advisable to modify, suspend, or revoke a NPDES permit in whole or in part for cause or for any other reason, the Regional Administrator will have up to 30 days to review and comment on the proposed change.

No modification, suspension, or revocation of a NPDES permit to which the Regional Administrator objects will be made.

7. MONITORING, RECORDING, AND REPORTING.

- a. The Department shall carry out monitoring activities to determine compliance with permits, to validate self-monitoring reports, and as necessary to provide support for enforcement actions against NPDES permit violators. Procedures for carrying out such activities shall be as mutually agreed upon by the Director, or his designee, and the Regional Administrator and in accordance with regulations as promulgated in 40 CFR 124 and 40 CFR 35. As a minimum, the Department will monitor each major discharge on a yearly basis and each minor discharge on a random basis.
- b. The Department will inspect the facilities of dischargers, including, where appropriate, effluent sampling and examination of monitoring records, reports, equipment, and methods. The compliance monitoring program shall be conducted in accordance with 40 CFR 35, Appendix A.
- c. All compliance monitoring samples shall be collected, preserved, analyzed, and validated by a quality control program in accordance with requirements of 40 CFR 35, Appendix A, and 40 CFR 136.
- d. Any discharge authorized by a NPDES permit which (1) is not a minor discharge; (2) the Regional Administrator requests, in writing, to be monitored; or (3) contains toxic pollutants for which an effluent standard has been established pursuant to Section 307(a) of the Act, will require monitoring by the permittee for at least the following:
 - (1) Flow (in gallons per day); and

- (2) All of the following pollutants:
- (a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
 - (b) Pollutants which the Department finds, on the basis of information available to it, could have significant impact on the quality of State waters;
 - (c) Pollutants specified by the Administrator of EPA, in regulations issued pursuant to the Act, as subject to monitoring; and
 - (d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.
- e. The Regional Administrator may make the request specified in (d)(2) above at any time before an NPDES permit is issued.
- f. The Director will insure that the Regional Administrator, Attention: Permits Branch, receives two (2) copies of all NPDES reporting forms submitted to the Department. If the Regional Administrator, acting through the Permits Branch, determines that the NPDES reporting forms are complete, he shall keep one copy on file in the Permits Branch and will use the second copy for processing into the National Data Bank. If the Regional Administrator determines that the NPDES reporting forms submitted to the Department are not complete or are otherwise deficient, he shall specify to the Director, or his designee, in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Director, or his designee, shall require the permittee to supply such additional information as the Regional Administrator specifies. Upon acquisition by the Department of the capability, all data submitted under this section will be submitted in a form suitable for direct entry to the Environmental Protection Agency water information system.
- g. The Director, or his designee, shall evaluate data submitted by NPDES reporting forms and other forms supplying monitoring data for possible enforcement of remedial action.

- h. The Director, or his designee, will promptly notify the Regional Administrator of any actual or threatened endangerment to the health or welfare of persons resulting from the discharge of pollutants.

8. PUBLIC ACCESS TO INFORMATION.

Any individual or organization that applies for an NPDES permit from the Department shall be notified in writing, at the time the application forms are provided, of the following:

- a. A copy of each NPDES form submitted by the applicant will be provided to the Regional Administrator, without exception;
- b. The Regional Administrator will be free to make his own determination as to the confidentiality of the information contained in the NPDES forms thus submitted;
- c. Information contained in State forms or State annexes to NPDES forms will not be sent to the Regional Administrator and any confidential information therein will be handled in accordance with Section 69-28-04 of the North Dakota Century Code and Regulation R-61-28-111(c).

9. ENFORCEMENT.

- a. The Department shall be responsible for taking appropriate enforcement actions against persons in violation of NPDES permit conditions and will receive the assistance of the Enforcement Division, Region VIII, Environmental Protection Agency, upon request.
- b. Whenever the Regional Administrator makes a finding of violation of a waste discharge permit, he shall notify the Director, or his designee, and the person in alleged violation pursuant to the provisions of Section 309(a)(1). The Director, or his designee, shall advise the Regional Administrator of the action proposed with respect to such violation as provided in the aforesaid statute. As a general rule, Federal enforcement action will be initiated only when the Department fails to institute appropriate enforcement action against the violator. If the Director, or his designee, proposes to initiate enforcement action, he shall advise the Regional Administrator of the nature of such proposed action.

- c. The Department will advise the Regional Administrator of all progress in enforcement proceedings and related matters. The Regional Administrator may proceed with any remedy available under Section 309 in any case in which the State has proposed enforcement action and progress on such case has become unduly delayed or prolonged. The Regional Administrator will receive a copy of any pleadings, administrative, or judicial orders, or directives related to enforcement proceedings, and will be advised of any violations of orders or directives and of proposed enforcement actions to be undertaken. Upon the request of the Director, or his designee, the Regional Administrator, or his designee, will appear at administrative enforcement hearings and provide assistance in any public hearing related to enforcement.

10. TRANSFER OF INFORMATION CONCERNING WELL DISPOSAL.

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

11. PERFORMANCE AND GOALS.

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

To this end, the Department will issue at least 10 permits per month for the first 6 months of calendar year 1975, or until all permits are issued, but will have prepared draft permits for all point source discharges covered by the Act by June 30, 1975.

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

- a. Prior to taking any action to propose any substantial amendment, rescission or repeal of any statute, rule,

directive, or form which has been submitted to the Regional Administrator in connection with approval of the State's NPDES program, and prior to the adoption of any new form not so submitted, the Director, or his designee, shall notify the Regional Administrator and shall upon request, transmit the text of any such change or such new form to the Regional Administrator. The Regional Administrator shall have 20 days to assess such proposed change or such proposed new form as to its effect upon the State's qualification to conduct the NPDES program and to notify the State whether or not the proposed change or use of the proposed new form would disqualify the State from participation in the NPDES.

- b. If an amendment, rescission, or repeal of any statute, rule, directive or form described in paragraph (a) above shall occur for any reason, including action by the North Dakota legislature or a court, the Director, or his designee, shall, within 20 days of such event, notify the Regional Administrator and shall upon request transmit a copy of the text of such revision to the Regional Administrator.
- c. Prior to his approval of any test method other than those specified by a standard permit or form, the Director, or his designee, shall obtain the approval of the Regional Administrator.
- d. In order to facilitate the provisions of paragraph (a) and (b) of this section, the Director, or his designee, shall identify each form used in the North Dakota NPDES Permit Program by a series number and the date of the latest version or revision of such form.

13. FURTHER ASSURANCES.

The Director, or his designee, shall develop and promote legislation, and rules and take all further actions which may be needed in order to preserve and maintain any authorities, programs, or commitments described in this Agreement, or contained elsewhere in the State's description of its NPDES program submitted to the Administrator.

14. EFFECT, RESCISSION AND MODIFICATION.

This Agreement shall take effect upon program approval by the Administrator pursuant to Section 402(b) of the Federal Act and shall remain in effect for the duration of

such approved program or until this Agreement is rescinded by mutual agreement of the parties. This Agreement may be modified from time to time as the parties may agree in order to simplify the procedures and refine the methods of administration and enforcement of the NPDES permit program.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Approved John A. Green 5/5/75
Date
John A. Green
Regional Administrator
Region VIII
U.S. Environmental Protection Agency

Approved W. Van Heuvelen 3/14/75
Date
Willis Van Heuvelen
Executive Officer
North Dakota State
Department of Health

Approved John DeCarles June 13, 1975
Date
for Russell E. Train
Administrator
U.S. Environmental Protection Agency

AMENDMENT TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
NORTH DAKOTA STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The Memorandum of Agreement between the United States Environmental Protection Agency, Region VIII (hereafter EPA) and the North Dakota State Department of Health is hereby amended to include North Dakota State Department of Health and Consolidated Laboratories (hereafter Department) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) permits for federal (excluding Indian) facilities.

The Department has the authority to administer the NPDES Program for federal facilities, with the exception of Indian facilities. EPA shall retain all authority for Indian facilities.

The administration of the NPDES Program for federal (excluding Indian) facilities by the Department shall be in the same manner for all other facilities. All specific state commitments regarding the issuance and enforcement of federal 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 Department's federal permit program application by the administrator of EPA Region VIII.



Gene A. Christianson, Chief
Environmental Health Section
North Dakota State Department of Health
and Consolidated Laboratories

9-19-89

Date



James J. Scherer, Regional Administrator
U. S. EPA, Region VIII
United States Environmental Protection Agency

1-18-90

Date

AMENDMENT TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
NORTH DAKOTA STATE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

The Memorandum of Agreement between the United States Environmental Protection Agency, Region VIII (hereafter EPA) and the North Dakota State Department of Health is hereby amended to include North Dakota State Department of Health and Consolidated Laboratories (hereafter Department) and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereafter NPDES) general permits as follows:

The Department has the responsibility for developing and issuing NPDES general permits. After identifying dischargers appropriately regulated by a general permit, the Department 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 Management Division Director
U.S. EPA, Region VIII
Denver Place, Suite 500
999 18th Street
Denver, CO 80202-2405

Director, Office Water Enforcement and Permits*
U.S. EPA (EN-335)
401 M Street SW
Washington, DC 80460

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations and objections to the Department. 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 to resolve the issues. If EPA's concerns are not satisfied and the state has not sought a hearing within ninety (90) days of the objection, exclusive authority to issue the general permit passes to EPA. See 40 CFR Subsection 123.44.

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


If EPA raises no objections to a general permit, it will be publicly noticed in accordance with Chapter 61-28, North Dakota Century Code (hereafter NDCC), Rule 33-16-01, North Dakota Administrative Code (hereafter NDAC), and Code of Federal Regulations (hereafter CFR), 40 subsection 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. The Department will issue general permits in accordance with Chapter 61-28, NDCC, Rule 33-16-01, NDAC, and 40 CFR subsection 122.28.

The Department 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 or within 180 days of when the discharge is to occur. The applicability of a general permit will automatically terminate upon the effective date of the individual 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 Department 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.

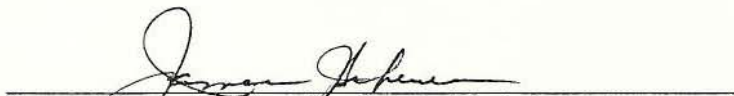
This Amendment to the Memorandum of Agreement will be effective upon approval of the Department's general permit program application by the administrator of EPA Region VIII.



Gene A. Christianson, Chief
Environmental Health Section
North Dakota State Department of Health
and Consolidated Laboratories

9-19-89

Date



James J. Scherer, Regional Administrator
U. S. EPA, Region VIII
United States Environmental Protection Agency

1-18-90

Date

Authorizations
9-16-05

NATIONAL PRETREATMENT PROGRAM

ADDENDUM TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE
NORTH DAKOTA DEPARTMENT OF HEALTH
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Section I. General

The Memorandum of Agreement (MOA) between the North Dakota Department of Health (Department) - Division of Water Quality and the Regional Administrator of the United States Environmental Protection Agency (EPA), approved on or around June 13, 1975 and modified on or about January 18, 1990, is hereby modified to define Department and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to §§ 307 and 402(b) of the Clean Water Act (Act) as follows.

Section II. Policies

The Department has the primary responsibility for the implementation of the National Pretreatment Program in North Dakota and will administer the National Pretreatment Program in accordance with § 402 of the Act, U.S.C. § 1251 *et. seq.*, applicable state legal authority, applicable federal regulations, the State/EPA Performance Partnership Agreement (PPA), the North Dakota Pretreatment Program Description, this MOA, and any other State/EPA agreements regarding the Industrial Pretreatment Program. All agreements shall be consistent, however, with the basic requirements of this MOA which shall take precedent over any other agreements per the requirements of 40 CFR § 123.24.

Section III. Program Implementation Responsibilities

The Department has primary responsibility for ensuring:

- a. Application and enforcement of any Pretreatment Standard or Requirement established by the Administrator in accordance with §§ 307(b) and (c) of the Act and State standards;
- b. Application and enforcement of prohibited discharges and categorical standards and requirements (40 CFR §§ 403.5 and 403.6);
- c. Incorporation of National Pretreatment Standards and Requirements, as appropriate, into the North Dakota Pollutant Discharge Elimination System (NDPDES) rules, N.D.A.C. Ch. 33-16-01;

- d. Incorporation of Publicly Owned Treatment Works (POTW) pretreatment program conditions in NDPDES permits issued to POTWs as required in 40 CFR § 403.8 and as provided at § 402(b)(8) of the Act;
- e. Identification of POTWs requiring local pretreatment programs;
- f. Incorporation of requirements for development and implementation of local limitations in NDPDES permits issued to POTWs with approved local programs as set forth at 40 CFR § 403.5 and as provided at § 402(b)(8) of the Act consistent with the latest Revision of the Region 8 Strategy for Local Limits Development;
- g. Review and approval or denial of POTW pretreatment program submittals in accordance with the procedures set forth at 40 CFR §§ 403.8, 403.9, 403.11 and 403.18, except that no POTW pretreatment program shall be approved if EPA objects to program approval per the provisions of 40 CFR § 403.11;
- h. Process and publish, where appropriate, all pretreatment program approvals and program modifications in accordance with the requirements of 40 CFR § 403.11 and 40 CFR § 403.18;
- i. Incorporation of applicable Pretreatment Standards, including prohibited discharges and categorical standards and requirements, local limitations, State standards, and industrial monitoring and reporting requirements set forth at 40 CFR § 403.12, into permits issued to Significant Industrial Users not regulated by approved POTW pretreatment programs;
- j. Inspection, surveillance, and monitoring procedures consistent with the annual workplan, which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW NDPDES permit; oversight of POTW pretreatment programs to verify that Pretreatment Standards and Requirements are enforced in accordance with 40 CFR §§ 403.8, 403.11, and 403.12; and audits of approved pretreatment programs conducted at least once per five years;
- k. Inspection, surveillance, and monitoring procedures which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with applicable Pretreatment Standards, monitoring, and reporting requirements;
- l. The Department shall utilize EPA Region VIII's standard operating procedures for Pretreatment Program audits and Pretreatment Compliance Inspections until such time as the Department develops specific procedures that are approved by EPA;
- m. Initiating an enforcement action, in a timely and effective manner, against persons in violation of Pretreatment Requirements and Standards. This includes, but is not limited to, violations identified through inspection activities, monitoring, or surveillance activities.

The Department shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public and EPA about violations. If EPA determines that the Department has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under § 309 of the Act after notice to and consultation with the Department. Prior to proceeding with a formal enforcement action, EPA shall notify the Department as specified in procedures already established for the NPDES Program.

The Department agrees to employ a state penalty policy corresponding to the spirit of the EPA Civil Penalty Policy as established in the Memoranda of the Assistant Administrator for Enforcement (February 11, 1986) or any revisions thereto, and Guidance on Penalty Calculations for POTW Failure to Implement an Approved Pretreatment Program as established in the Memoranda of the Director of Water Enforcement and Permits (December 22, 1988) or any revisions thereto. EPA will supply the Department with a copy of these memoranda and any subsequent additions or revisions thereto;

- n. Review and certification of requests from industries or POTWs for industrial subcategory determinations in accordance with those procedures established at 40 CFR § 403.6(a). The Department shall forward a copy of its decision to EPA. EPA may modify the Department's category determination within 60 days of EPA's receipt thereof. All final determinations shall be provided to the POTW and industrial user, and the Department or EPA, as appropriate;
- o. Review POTW removal credit submittals for revised discharge limits for industries who are or may be subject in the future to categorical pretreatment standards. Procedures for review of removal credit submittals shall comply with all applicable requirements and procedures identified at 40 CFR §§ 403.7 and 403.11. Where the state intends to approve a removal credit application, the state shall provide the removal credit application, the state's analysis, and any supporting material to EPA for review as allowed for under 40 CFR § 403.7(e)(6);
- p. The Department shall review requests for Fundamentally Different Factor (FDF) variances in accordance with those procedures established at 40 CFR § 403.13. The Department may make an initial finding on any FDF variance requests, and in cases where the Department supports the variance, submit its findings together with the request and supporting information to EPA for final review. The Department shall not approve or in any way implement an FDF variance without the written approval of EPA. The Department may deny requests for FDF variances without EPA review;
- q. The Department shall utilize EPA Region VIII's standard operating procedures for industrial waste surveys, local limits development, and POTW annual reports, until such time as the Department develops specific procedures that are approved by EPA;

- r. The Department shall make every effort to ensure that the pretreatment coordinator or designee attend and represent the Department at the EPA Region VIII annual pretreatment conference.

EPA is responsible for assuring that the Pretreatment Program is consistent with all requirements of this MOA, the PPA, and applicable sections of 40 CFR § 403. EPA responsibilities shall include the following:

- s. Provision of technical assistance to the Department concerning program implementation issues such as local limits development, categorical standards implementation, trucked and hauled waste, Fundamentally Different Factor (FDF) variances, Category Determinations, Removal Credits, and other technical and procedural guidance and strategies;
- t. EPA may perform annual state Pretreatment Program audits to identify major program deficiencies and appropriate remedial actions. Pretreatment Program audits incorporate comprehensive review of all phases of the Pretreatment Program including, but not limited to, statutory authority, regulatory requirements, procedures, activities, and program resources. Pretreatment Program audits will take place at the offices of the Department at such times as are mutually agreed by EPA and the Department. EPA will prepare and transmit to the Department a report summarizing the results of the Pretreatment Program audit which identifies any deficiencies noted as a result of the audit and any associated remedies;
- u. PA may perform quarterly review of annual commitments in the PPA to evaluate progress and to resolve program implementation issues. Quarterly reviews will incorporate:
 - (i) Review of any information transmitted from the Department to assure that all the requirements of this MOA are met;
 - (ii) Review of data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing; and
 - (iii) Examination of selected Department files to determine consistency of Pretreatment Program implementation with federal requirements. File reviews are intended to address propriety, timeliness, and efficacy of enforcement actions.
- v. EPA may conduct oversight inspections to evaluate the Department compliance inspection program as mutually agreed in the PPA. Additionally, EPA may determine that pretreatment inspections or monitoring beyond those performed by the Department are necessary or appropriate. The EPA shall notify the Department of such

determination. EPA may request the state to conduct such inspections or monitoring or, should the state decline, EPA may perform the inspection or monitoring alone without state participation. Should the state choose not to conduct additional inspections or monitoring, EPA will fully inform the state of such inspections or monitoring. EPA shall provide notice to the state fourteen (14) days prior to an inspection or monitoring of a POTW. Exceptional circumstances, such as incipient endangerment of public health, environmental damage, or potential criminal wrongdoing, may preclude such notice. When inspection or monitoring is conducted solely by the EPA, a copy of any inspection reports or sampling results will be forwarded to the Department within 45 days of completing the inspection;

- w. EPA will perform ongoing review of state pretreatment compliance and enforcement actions. Such review may result in direct EPA enforcement actions, upon closure of the state action, where indicated. Any such action will conform with the procedures specified at Section III (m) of this agreement as set forth previously;
- x. EPA may at any time review the Pretreatment Program's public participation policies, practices, and procedures.

Section IV. Reporting and Transmittal of Information

The Department shall provide the following information to EPA:

- a. A copy of all inspection reports prepared by the Department as part of the Pretreatment Program to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. All Department inspections will be entered into the Pretreatment Permit and Enforcement Tracking System (PPETS) database of the Permit Compliance System (PCS);
- b. A copy of each annual report submitted by approved pretreatment programs to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8. This requirement is not applicable where EPA and the state require the POTWs to submit copies to both agencies as a part of the annual report reporting requirement;
- c. The Department will enter all appropriate PPETS data into the PCS system (for audits, Pretreatment Compliance Inspection, annual reports, and any other required report or action as defined by EPA);
- d. When a public notice, as required in the Pretreatment Regulations, is issued, the Department will transmit a copy of the public notice to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA, Region 8. The state need not provide a copy of the submittal being approved except in the case of local limits. In this case, the state shall provide a copy of the submittal to EPA;

- e. Where the Department approves a non-substantial pretreatment modification, the Department shall send a copy of the approval letter to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8;
- f. Upon request, copies of all notices received from POTWs relating to a changed introduction of pollutants to the POTW;
- g. A copy of any enforcement action against a POTW with an approved pretreatment program or against an industrial user located in an approved pretreatment program's jurisdiction to the Permits Team (8P-W-P), ATTN: Pretreatment Coordinator at EPA Region 8.

EPA will provide the following information to the Department:

- h. Upon approval of the State of North Dakota's Pretreatment Program, the EPA shall transmit to the Department all data relevant to North Dakota concerning the Pretreatment Program which has not already been transmitted to the Department;
- i. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those industries which are located in North Dakota and have been directly regulated by EPA as the Control Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these industries. Prior to transmittal of Control Authority status for these industries to the state, EPA will complete any enforcement activities against these industries open at the time of program approval;
- j. Upon approval of the State of North Dakota's Pretreatment Program, the EPA will provide the Department with a listing of those POTWs which are located in North Dakota and have been directly regulated by EPA as the Approval Authority. In addition, the EPA will provide the Department with a summary of the compliance status of these POTWs. Prior to transmittal of Approval Authority status for these POTWs to the state, EPA will complete any enforcement activities against these POTWs open at the time of program approval.

Section V. Program Revision

Either party to this MOA may initiate program revisions when necessitated by changes to federal or state statute. Procedures for program revision shall comply with the provisions set forth at 40 CFR § 123.63.

Section VI. Miscellaneous

The Department and EPA will communicate, through the PPA, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The annual workplan will contain, at a minimum, the following:

- a. A list of permits to be issued by the Department to POTWs and industrial users subject to Pretreatment Standards and requirements; and
- b. A list of POTWs and industrial users to be audited or inspected with projected time frames.

Section VII. Other Provisions

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

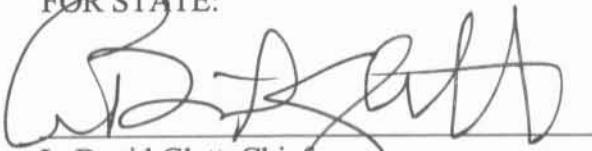
Nothing in this Amendment shall be construed to limit the authority of the EPA to take action pursuant to §§ 204, 208, 301, 307, 308, 309, 311, 402, 404, 405, 501, or other sections of the Act (33 U.S.C. § 1251 et. seq.).

Section VIII. Approval and Effective Date of Agreement

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

In witness thereof, the parties execute this agreement.

FOR STATE:

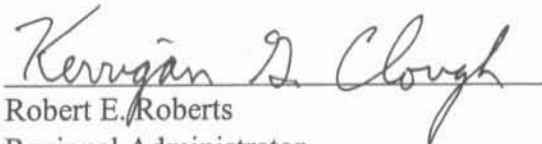


L. David Glatt, Chief
Environmental Health Section
North Dakota Department of Health

9/5/05

(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Robert E. Roberts
Regional Administrator
Region VIII

9/8/05

(Date)