

MEMORANDUM OF AGREEMENT
BETWEEN THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
AND
REGION V, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit 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 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Chief Administrative Officer of the Ohio Environmental Protection Agency, referred to herein as the Director and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c), 124.44(d), 124.45, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

- A. The two purposes of this part of the Agreement are: (1) to provide for the transfer of data bearing on NPDES permit and Refuse Act applications from the U.S. EPA to the Ohio EPA; and (2) to insure that any deficiencies in the transferred NPDES and Refuse Act applications will be corrected prior to the issuance of an NPDES permit.
- B. Commencing immediately, the Regional Administrator will transmit to the Ohio EPA a list of all NPDES permit and Refuse Act applications received by the U.S. EPA. This list will include the name of each discharger, SIC Code, the application number, and will indicate those NPDES and Refuse Act permit applications which U.S. EPA has determined to be administratively complete.
- C. After receipt of the list, the Ohio EPA will identify the priority order to be used by U.S. EPA to transmit application files to the Ohio EPA. The application file will include the NPDES and Refuse Act permit application and any other pertinent data collected by U.S. EPA. The application files will be transmitted to the NPDES Permit Records Section of the Ohio EPA according to the priority order identified, and U.S. EPA will retain one copy of each file transmitted to the Ohio EPA.
- D. When an NPDES or Refuse Act application transmitted to the Ohio EPA has been identified as administratively incomplete, the Ohio EPA will request the necessary information from the applicant and correct the application. The Director, at his discretion, may also obtain additional information for those applications identified by U.S. EPA as administratively complete to update or evaluate and process the application.
- E. The Ohio EPA NPDES Permit Records Section will transmit two (2) copies of completed NPDES applications (other than those determined by U.S. EPA to be complete under paragraph B. above) to the Regional Administrator, Attention: Permit Branch.
- F. If the Regional Administrator determines that an NPDES or Refuse Act application is not complete, he will specifically identify the deficiencies by letter to the NPDES Permit Records Section, Ohio EPA. If no objection is received from the Regional Administrator within 20 days of the date of the postmark of the transmittal, the application shall be deemed to be complete and the Ohio EPA will act upon the permit application without further action by the Regional Administrator. If deficiencies are identified by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until all deficiencies are corrected in a revised NPDES application, the revised application is transmitted to the Regional Administrator, and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- G. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

- A. The procedure specified in this section (Section II) of this Memorandum of Agreement will apply to NPDES applications, forms and reporting forms received by the Director from dischargers after the receipt of permit authorization under Section 402(b) of the Federal Act.
- B. When the Ohio EPA determines that NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted by the Ohio EPA NPDES Permit Records Section to the Regional Administrator, Attention: Permit Branch. If the U.S. EPA concurs with the Director's findings of completeness, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Ohio EPA may transmit forms directly into the National Data Bank subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the U.S. EPA determines that any NPDES application or reporting form received from the Ohio EPA is not complete, the deficiencies will be identified by letter to the NPDES Permit Records Section, Ohio EPA. The Ohio EPA will request the necessary information from the applicant or reporting entity and correct the application or reporting form. If no objection to an NPDES application is received from the Regional Administrator within 15 days of the date of the postmark of the transmittal of the application or within 40 days of the postmark of the transmittal of the reporting form, the application or reporting form shall be deemed to be complete. If deficiencies are identified in an NPDES application by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until a revised NPDES application is transmitted to the Regional Administrator and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- C. The Regional Administrator may waive his rights to receive copies of NPDES forms with respect to classes, types and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can discontinue sending the EPA copies of NPDES forms. In exercising his discretion in relation to the provisions of this paragraph, the Regional Administrator shall pay heed to Section 101(f) of PL 92-500.
- D. Upon receiving an NPDES form from the Director, if the Regional Administrator identifies 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 will require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.
- E. When requested by the Regional Administrator, the Director will transmit copies of notices received by him from publicly owned treatment works pursuant to 40 CFR 124.45(d) and (e) within 20 days of the postmark of the request.

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F. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of the applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

III. 124.35(b) and (c) PUBLIC ACCESS TO INFORMATION

- A. The Ohio EPA will protect any information (other than effluent data) contained in NPDES application forms or other documents 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 such information appears in NPDES applications or other documents that must be forwarded to the Regional Administrator under the terms of this Memorandum of Agreement, the information for which confidential treatment has been requested will be specifically identified by the Director when the information is transmitted. If the Regional Administrator finds it necessary to consider releasing such information to the public, he will request advice from the Office of General Counsel, requesting a determination of the validity of the claim of confidentiality. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of the date of postmark of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator, the Director, and the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the date of the postmark of such notice, the Regional Administrator will communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator will 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 will be conclusive unless reviewed in an appropriate district court of the United States.
- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Director, upon written request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

IV. 124.44(d) COMPLIANCE SCHEDULE REPORTS

On the last day of the months of February, May, August, and November, the Director will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an initial, interim or final requirement or to notify the Director of compliance or non-compliance with each initial, interim or final requirement (as required pursuant to paragraph, 40 CFR 124.44(b)). The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

- (1) The name and address of each non-complying NPDES permittee;
- (2) A short description of each instance of non-compliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility, failure to notify the Director of compliance with an interim requirement to complete construction by June 30, etc.);
- (3) A short description of any action or proposed action 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 non-compliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

V. SECTION 124.46 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF PROPOSED NPDES PERMITS

- A. At the time the public notice required by 40 CFR 124.32 is issued, the Director will 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: Permit Branch. The information transmitted with the proposed permit will 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.
- B. The Director will provide periods of public notice and, where appropriate, Public Meetings on proposed NPDES permits in accordance with the provisions of the Ohio EPA Rules of Procedure, which satisfy the Public Notice and Public Hearing requirements of the U.S. EPA Guidelines. If the Director has received a specific request that a Public Meeting be held on a proposed NPDES permit, he will notify the Regional Administrator of that fact and his decision whether to hold such a Public Meeting within 45 days of the date of public notice. If the Director decides not to hold such a Public Meeting, he will provide the Regional Administrator and all parties requesting the Public Meeting, within 45 days of the date of public notice, with a written explanation of why the Public Meeting was not held.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or Public Meeting, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: Permit Branch, together with a copy of all statements received from the public notice, and where a Public Meeting is held, a summary of all objections. In lieu of a summary, the Director may provide a verbatim transcript of the entire Public Meeting. If no comment is received by the Director within 35 days of the date of the postmark of the transmittal of the revised permit, he will assume U.S. EPA has no objections to NPDES permit issuance.
- D. If a proposed NPDES permit is not revised after a public notice or, if held, a public hearing, the Director will notify the Regional Administrator, Attention: Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and will include a copy of all written statements received from the public notice. If no comment is received by the Director within 20 days of the date of the postmark of this letter, he will assume U.S. EPA has no objection to NPDES permit issuance. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- E. No NPDES permit will be issued by the Director until he receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402(b) of the Federal Act, or if no comment is received by the Director from U.S. EPA within the time provided in paragraphs C and D above. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- F. If the Regional Administrator objects to a proposed NPDES permit he will notify the Director in writing within the time period or sooner as identified in paragraphs C or D above and specify the nature of the objection

and the terms and conditions required to eliminate his objection to the proposed permit. The response of the Director to these objections will be communicated in writing by the Director to the Regional Administrator, and no permit will be issued before written approval of a revised NPDES discharge permit is received by the Director from the Regional Administrator.

- G. The Regional Administrator may waive his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can issue an NPDES permit without U.S. EPA approval.
- H. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permits Branch, a list of permits to be issued. Before any permit is issued by the Director, he shall confirm that a copy of the permit has been received by the Regional Administrator.

VI. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF ISSUED NPDES PERMITS

- A. The Director will transmit to the Regional Administrator, Attention: Permit Branch, two (2) copies of every issued NPDES permit, 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.
- B. The Director will transmit the above information together with a copy of the Director's letter to the applicant forwarding the NPDES permit, at the same time the NPDES permit is issued.

VII. 124.61(b) MONITORING

- A. Permit conditions issued by the Ohio EPA for any discharge authorized by an NPDES permit which (1) is not a minor discharge as defined by 40 CFR 124, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Federal Act, will 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 Director finds, on the basis of information available to him, 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 Region Administrator requests, in writing, be monitored.
- B. The Regional Administrator may make the request specified in A (2) and A (3) (ii) (d) above at any time before an NPDES permit is issued.
- C. The Director will transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring reporting forms, either by (1) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (2) by direct entry into the General Point Source File data system.
- D. The Director will transmit on the last day of the months of February, May, August, and November, to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances as of 30 days prior to the date of such report, of all violations of effluent limitations indicated by self-monitoring reports. At the time of transfer of permanent authority, the Director shall formulate and continually update a list of all other permittees for which effluent monitoring data will be forwarded monthly. The list, which may be a computer printout, will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:
- (1) The name and address of each non-complying NPDES permittee;
 - (2) The effluent limitations exceeded;
 - (3) Any action or proposed action by the NPDES permittees or the Director to comply or enforce compliance with the effluent limitations; and
 - (4) Any details which tend to explain or mitigate an instance of non-compliance.

VIII. 124.62(c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of monitoring records under 40 CFR 124.62(c).

IX. 124.71(c) RECEIPT AND FOLLOW-UP NOTIFICATIONS AND REQUESTS

If the Director determines that a condition of a permit of a publicly owned treatment works relating to a new introduction of pollutants or changes in the volume or character of pollutants introduced into such treatment works is violated, he will notify the Regional Administrator in writing and take appropriate steps to assure compliance, including where necessary, the restriction or prohibition of introduction of pollutants into treatment works under Section 402(h) of the Federal Act.

X. 124.72(b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If an issued NPDES permit is subsequently revised, suspended, or modified, the Director shall notify the Regional Administrator of such revision or modification and provide the Regional Administrator up to 30 days from the date of the postmark of the notice in which to comment or object and make recommendations to the Director. The Regional Administrator shall respond no later than 30 days from the date of postmark of the notice and may request additional time (not to exceed a total of 40 days from the date of the postmark of the notice).
- B. If the Director upon request of the permittee, decides to make a revision, suspension, or modification of the NPDES permit for good cause, such as strikes, floods and acts of God, he shall notify the Regional Administrator in writing and, if no written objection or request for additional time (not to exceed a total of 40 days from the date of the postmark of the notice) is received from the Regional Administrator within 30 days of the date of the postmark of the notice, he shall deem it approved. Any such revision, suspension or modification of a schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.
- C. The Director will transmit to the Regional Administrator two (2) copies of any document modifying, suspending, or revoking an NPDES permit or schedule of compliance.

XI. 124.73(l) (2) EMERGENCY NOTIFICATION

The Director or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any substantial or immediate endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative will 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.

XII. 124.80(d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator will transmit to the Director any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Federal Act or in directives issued to the U.S. Environmental Protection Agency Regional Offices governing the disposal of pollutants into deep wells.

XIII. OTHER ITEMS

- A. Attached hereto is a list of all dischargers including major dischargers along with a schedule covering a six-month period for the processing of the permits for those dischargers. This schedule is the first part of a schedule aimed at issuing all permits to be issued in the State of Ohio by December 31, 1974. This schedule will be expanded by the Ohio EPA on a quarterly basis thereafter to schedule the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Ohio EPA to the Regional Administrator for his information.
- B. This Memorandum of Agreement may be modified by the Director and the Regional Administrator following the public hearing to evaluate the State's Section 402(b) program submittal on the basis of the issues raised at the hearing. The hearing record will be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of the Agreement following the public hearing will be finalized, reduced to writing, and signed by the Director and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of U.S. EPA for review and approval. The Director and the Regional Administrator will make any such revised Agreement available to the public for inspection and copying.
- C. All Agreements between the State of Ohio and the Regional Administrator are subject to review by the Administrator of U.S. EPA. If the Administrator of U.S. EPA determines that any provisions of such Agreements do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of the Section 304(h) (2) Guidelines, he will notify the Ohio EPA and the Regional Administrator of any deficiencies, and the Agreement will be renegotiated in light of these comments.
- D. This Memorandum of Agreement will take effect upon signature of the Director and Regional Administrator and concurrence by the Administrator, U.S. EPA.
- E. No later than 120 days from the effective date of this Agreement, the Regional Administrator shall consider whether to waive his rights to receive, comment upon, object to any class or category of NPDES permit or reporting form. The Regional Administrator shall promptly notify the Director in writing of his decision.
- F. This Memorandum of Agreement shall remain in effect until modified or suspended.

Ohio Environmental Protection Agency

by

Ira L. Whitman

Ira L. Whitman,
Director

1-17-74

Date

United States
Environmental Protection Agency
Region V

by

Francis T. Mayo

Francis T. Mayo
Regional Administrator

1/24/74

Date

Approved:

United States Environmental Protection Agency

Russell Train

Administrator

3-11-74

Date


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

The Memorandum of Agreement approved March 11, 1974, by the Administrator of the United States Environmental Protection Agency between the Ohio Environmental Protection Agency (hereinafter, the "State") and the United States Environmental Protection Agency (hereinafter "U.S. EPA") Region V is hereby amended as follows:

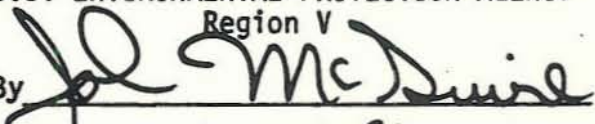
The attached segment of the Section 106 program plan agreement between the State and U.S. EPA Region V is incorporated by reference into the Memorandum of Agreement and made a part thereof, effective this date. Any and all references or portions of the Memorandum of Agreement inconsistent with said Section 106 program plan agreement are hereby superseded.

This Amendment will become effective upon approval of the Administrator.


OHIO ENVIRONMENTAL PROTECTION AGENCY

By 
Dated September 22, 1978

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region V

By 
Dated 11-14-78

Approved:


Administrator
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Dated DEC 13 1978

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


The Memorandum of Agreement approved March 11, 1974, by the Administrator of the United States Environmental Protection Agency between the Ohio Environmental Protection Agency (hereinafter, the "State") and the United States Environmental Protection Agency (hereinafter "USEPA") Region V is hereby modified as follows:

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

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

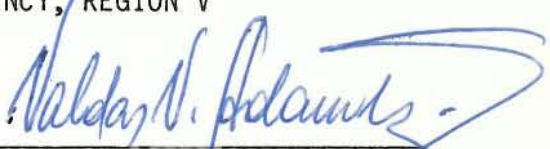
This Modification will become effective upon approval of the Assistant Administrator for Water.

OHIO ENVIRONMENTAL PROTECTION
AGENCY


By 
Wayne S. Nichols, Director

Date: June 8, 1982

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION V

By 
Valdas V. Adamkus
Regional Administrator

Date: MAY 20 1982

Approved: 

Frederic A. Eidsness, Jr.
Assistant Administrator for Water
United States Environmental Protection Agency
Date: FEB 11 1983



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

R-19J

AUG 17 1992

MEMORANDUM

SUBJECT: Approval of Ohio's NPDES State General Permits Program

FROM: *J. Bryson*
Dale S. Bryson
Director, Water Division

TO: Valdas V. Adamkus
Regional Administrator

Background

40 CFR 123.62 sets forth procedures necessary to revise the State's NPDES permits program in order for the State to assume the general permits program.

On March 11, 1974, the Administrator of the United States Environmental Protection Agency (U.S. EPA) approved the State of Ohio's request for authority to administer the NPDES program in Ohio. Authority to administer the program is statutorily vested in the Ohio Environmental Protection Agency (Ohio EPA).

In 1989, the State of Ohio enacted Section 6111.035 of the Ohio Revised Code, which provided the Ohio EPA with the authority to issue, administer, and enforce NPDES general permits for appropriate types of point sources in Ohio.

On May 4, 1992, the Ohio EPA submitted a request for authority to administer the general permits program in Ohio. The public will be notified shortly in the Federal Register of the submittal and approval of the State general permits program. Headquarters provided its concurrence on the approval of this program modification on August 6, 1992, (attached). I have concluded that this program modification is not a substantial revision to the State program. Accordingly, under 40 CFR 123.62, we have not published notice of the proposed approval in the Federal Register.

**AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE OHIO ENVIRONMENTAL PROTECTION AGENCY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5**

The Memorandum of Agreement between the United States Environmental Protection Agency, Region 5 (hereinafter, EPA) and the Ohio Environmental Protection Agency (hereinafter, Ohio EPA) is hereby amended to include Ohio EPA and EPA responsibilities for the development, issuance, and enforcement of National Pollutant Discharge Elimination System (hereinafter, NPDES) general permits as follows.

The Ohio EPA has the responsibility for developing and issuing NPDES general permits. After identifying discharges appropriately regulated by a general permit, Ohio EPA will collect sufficient information to develop permit conditions and requirements and prepare the draft general permit. General permits will require the same effluent limitations, operating conditions, or standards for sewage sludge use and disposal and the same or similar monitoring.

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

Water Division Director (5WQ)
U. S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

EPA will have up to ninety (90) days to review draft general permits and provide comments, recommendations, or objections to the Ohio EPA. In the event EPA does object to a general permit, it will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The state has the right to a public hearing on the objection in accordance with 40 CFR 123.44. Upon receipt of EPA's objection, the state may request a public hearing. If EPA's concerns are not satisfied and the state has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to EPA.

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

All general permits will be public noticed in accordance with Chapter 3745-47 of the Ohio Administrative Code and 40 CFR 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. General permits will also be published in the Ohio EPA Weekly Review. The Ohio EPA will issue and administer NPDES permits in accordance with Chapter 3745-38 of the Ohio Administrative Code and 40 CFR 122.28.

The Ohio EPA 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 Integrated Work Plan (IWP).

This Amendment to the Memorandum of Agreement will be effective upon approval of the general permit program application by the regional administrator of EPA, Region 5.

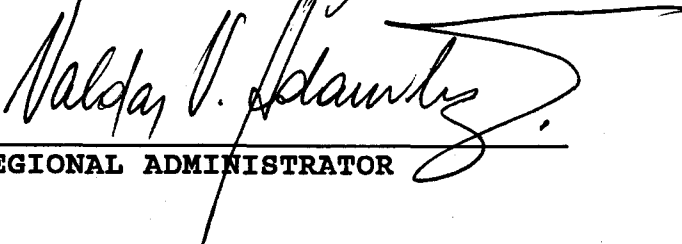
FOR OHIO EPA:



Director

July 2, 1992
Date

FOR EPA:



REGIONAL ADMINISTRATOR

August 17, 1992
Date

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

The federal Water Quality Guidance for the Great Lakes System (federal guidance), 40 CFR Part 132, contains the minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes system to protect human health, aquatic life, and wildlife. The Great Lakes states and tribes were required to adopt provisions consistent with (as protective as) the federal guidance for their waters within the Great Lakes system. The Ohio Environmental Protection Agency (Ohio EPA) adopted Great Lakes system water quality standards and implementation procedures on October 16, 1997, and these rules became effective on October 31, 1997.

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

A. Intake Pollutants - Noncontact Cooling Water

OAC 3745-33-07(A)(9)(a) provides Ohio EPA with discretion to impose a water quality based effluent limitation (WQBEL) for pollutants in discharges that are comprised of once-through noncontact cooling water in certain circumstances unless the permittee can demonstrate that the presence of the pollutant in the discharge is due solely to its presence in the once-through noncontact cooling water. Ohio EPA shall exercise its discretion under OAC 3745-33-07(A)(9)(a) to always require WQBELs based on an acute or chronic aquatic life, wildlife or human health Tier I criterion or Tier II value, or whole effluent toxicity requirements, whenever information is available to indicate that pollutants in a discharge will cause, or have the reasonable potential to cause, an exceedance of a Tier I criterion or Tier II value or whole effluent toxicity requirements unless the pollutants are due solely to their presence in the intake water. Ohio EPA shall make its reasonable potential determinations regarding pollutants added to cooling water based upon the level of the particular pollutant at issue in the entire discharge rather than simply the levels of the pollutants that are added to the cooling water.

B. Applicability of “Outside Mixing Zone Average Water Quality Criteria and Values” in Limited Resource Waters

In making NPDES permitting decisions, Ohio EPA will apply the ‘Outside Mixing Zone Average’ water quality criteria and values for the protection of aquatic life specified in OAC 3745-1-33, or site-specific modifications thereof, and the chronic whole effluent toxicity requirements in OAC 3745-2-09(A)(4), or site-specific modifications thereof, to all water bodies in the Great Lakes Basin including those designated as limited resource waters.

C. Discretionary authority of the Director of Ohio EPA under 3745-1-07(A)(6)(a)

OAC 3745-1-07(A)(6)(a) provides that:

“demonstrated attainment of biological criteria in a water body will take precedence over the application of selected chemical-specific aquatic life or whole-effluent criteria associated with these uses when the director, upon considering appropriately detailed chemical, physical and biological data, finds that one or more chemical specific or whole-effluent criteria are inappropriate.”

In such circumstances, the rule provides two options for the director in establishing permit limits. Either the director or the permittee with the approval of the director may develop a site-specific water quality criterion, or the director may “proceed with establishing effluent limits consistent with attainment of the designated use.”

Where there exists reasonable potential that a discharge will cause or contribute to an exceedance of a tier I criterion, tier II value or whole effluent toxicity criterion, and the conditions described in OAC 3745-1-07(A)(6)(a) apply, Ohio EPA will always include effluent limits in permits that are derived from and comply with the applicable criteria or values or site-specific modifications thereof. This agreement does not preclude Ohio EPA from applying alternative modeling techniques or alternative flows where these are supported by the available site-specific data in determining reasonable potential and deriving appropriate permit limits consistent with OAC 3745-2-05(A). This agreement does not apply to permitting decisions regarding WQBELs for pollutants listed in table 5 to 40 CFR 132.

[NOTES: 3745-2-05(A) STATES: “Alternative modeling methods (including, but not limited to, continuous simulation or probabilistic analyses) may be used at the discretion of the director if they are demonstrated to be appropriate and protective of applicable water quality criteria.” WHERE THIS PROVISION IS INVOKED, OHIO EPA MAY USE THE FINDING OF ATTAINMENT OF BIOLOGICAL CRITERIA AS THE DEMONSTRATION THAT THE DEFAULT MODELING PROCEDURES ARE OVERLY CONSERVATIVE. IN ADDITION, 3745-2-05(A)(1)(g) STATES: “Alternative flows may be used at the director’s discretion if the flow is as protective as those listed in this paragraph.” THIS PROVISION

MAY BE USED AS THE BASIS FOR DEVIATING FROM DEFAULT STREAM FLOWS IF BIOLOGICAL DATA SHOW ATTAINMENT. THESE TWO PROVISIONS, PLUS OHIO'S MIXING ZONE PROVISIONS, MAY BE USED TO ADDRESS SITUATIONS WHERE THERE IS NO BASIS FOR A SITE-SPECIFIC CRITERION, BUT THE CONSERVATIVE MODELING ASSUMPTIONS MAY BE DRIVING A REASONABLE POTENTIAL OR PERMIT LIMIT DECISION.]

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: Christopher Jones

Christopher Jones
Director

Date: 5/2/00

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5

By: Francis X. Lyons

Francis X. Lyons
Regional Administrator

Date: 7/28/00