

National Pollutant Discharge Elimination System

**Memorandum of Agreement
Between the
Commonwealth of Pennsylvania
and The
United States Environmental Protection Agency
Region III**

Section I. General Policies

This Memorandum of Agreement (hereinafter Agreement or MOA) establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123, and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the Commonwealth of Pennsylvania Department of Environmental Resources (Hereinafter, DER) and reviewed by Region III of the United States Environmental Protection Agency (hereinafter, EPA). This MOA replaces the Memorandum of Agreement between EPA and the DER approved June 30, 1978.

As used in this agreement "Regional Administrator" means the Regional Administrator of Region III of EPA, and "DER Secretary" means Secretary of DER.

The DER Secretary and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination between DER and EPA staffs in a partnership to assure successful and effective administration and enforcement of NPDES. In this partnership, EPA will provide to the DER, on a continuing basis, technical, expert, legal and other assistance on permit matters as requested.

DER has primary responsibility for implementing the NPDES program for Pennsylvania. The DER will administer the NPDES program in accordance with Section 402 of the Federal Clean Water Act, 33 U.S.C. §1251 et seq. (hereinafter CWA), applicable State legal authority, the requirements of 40 CFR Parts 122-125 and other applicable Federal regulations, and the annual State 106 program plan. DER has the primary responsibility to establish State NPDES program priorities which are consistent with national goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, will be set forth in more detail in the annual State 106 program plan and the State/EPA Enforcement Agreement signed by the DER Secretary and the Regional Administrator. This MOA, the State 106 program plan, the State/EPA Enforcement Agreement and any other State/EPA agreements regarding the NPDES program shall be consistent. The State/EPA Enforcement Agreement may not override the MOA, as required by 40 CFR §123.24(c).

Section II. DER/EPA Responsibilities

A. DER Responsibilities

1. Create and maintain the legal capability (including State regulations) and the resources required to carry out all aspects of the NPDES program. DER and EPA will

identify resource commitments in the annual State 106 program plan and State/EPA Enforcement Agreement.

2. Process in a timely manner and propose to issue, reissue, or modify all NPDES permits including general permits. Permit applications by major dischargers shall receive first priority depending on water quality and public health considerations.

3. Comprehensively evaluate and assess compliance with compliance schedules, effluent limitations and other conditions in these permits as outlined in Section IV of this Agreement.

4. Maintain a program of taking timely and appropriate enforcement action in accordance with the CWA and as outlined in Section IV of this Agreement.

5. Enter and maintain required information on Pennsylvania permits into EPA's National Permits Compliance System (PCS) in accordance with the prevailing mutually agreed to PCS implementation work plan. DER will attempt to maintain the required Water Enforcement National Data Base (WENDB) data elements in PCS.

6. Cooperate with EPA in the administration of the NPDES in accordance with program regulations.

7. Maintain an adequate file at the appropriate Regional or Central Office (which must be easily accessible to EPA for audit purposes) for each permittee. These records are to be maintained in accordance with an acceptable retention schedule. Such files must include, at a minimum, copies of:

- Permit Application
- Issued permit
- Public Notice and Fact Sheet or Statement of Basis
- Discharge Monitoring Reports
- All inspection reports
- All enforcement actions
- Other pertinent information and correspondence

8. Submit to the Regional Administrator the information described in Section VI of this Agreement, the State Program Plan and applicable portions of 40 CFR Part 123. Additionally, upon request by the Regional Administrator, the DER shall submit specific information to the Regional Administrator and allow access to files necessary for evaluating DER's administration of the NPDES program.

B. EPA Responsibilities

1. EPA commits to funding DER to the maximum extent possible to support NPDES related activities.

2. EPA will provide technical support and assistance to the DER concerning:

- interpretation of Effluent Limitations Guidelines (EGL) regulations;
- development of technology-based effluent requirements and related "best management practices" which include the use of "best professional judgment;"

- processing permit applications and preparing draft permits.

3. EPA will ensure that the DER is kept fully informed and up to date concerning:

- EPA contractor reports; draft and final EPA development documents; and proposed and final ELG regulations for various industry categories;
- settlement agreements between EPA and litigants which concern the interpretation or modification of ELG regulations for various industry categories;
- draft, proposed and final versions of EPA regulations, technical guidances, policies and procedures which pertain to implementation of the NPDES and water quality programs.

4. EPA will provide the DER with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the DER informed of development of NPDES program policy statements, strategies and related guidance, and provide for DER input where and when appropriate.

5. As outlined in Section VI of this Agreement, EPA will oversee the DER administration of the NPDES program on a continuing basis for consistency with the CWA, this Agreement, the State 106 program plan and all applicable Federal regulations.

EPA will consider as a part of its assessment, among other things, reviews of permits, reports and enforcement actions submitted by the DER in accordance with this Agreement and the State 106 program plan and may consider comments from permittees, the public and Federal and local agencies concerning the DER's administration of the NPDES program. Any such comments considered by EPA will be brought to the attention of the DER by written correspondence if the commenting party has not previously communicated this comment to the DER.

C. Confidentiality

1. Any information obtained or used in the administration of the Commonwealth program shall be available to EPA upon request. If the information has been submitted to the Commonwealth under a claim of confidentiality, the Commonwealth must submit that claim to EPA when providing information. Any information obtained from the Commonwealth and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

Any information which the Commonwealth would not disclose to a party because it constitutes the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of the Commonwealth, concerning litigation to which the Commonwealth is a party, which would be protected by a court under Fed. R. Civ. P. 26(b)(3), need not be photocopied and sent to EPA, if so determined in writing by the Chief Counsel. Such information will be made available to EPA on request, for inspection, without a right to copy or transcribe such information in a manner that would render it discoverable by other parties, at DER's Philadelphia or appropriate regional office or by telephone, as specified by EPA. Nothing in this paragraph shall be construed to require a DER attorney to disclose information in contravention of Rule 1.6 of the Rules of Professional Conduct of the Supreme Court of Pennsylvania.

2. EPA agrees to furnish the Commonwealth information in its files which is not submitted under a claim of confidentiality and which the Commonwealth needs to

implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the Commonwealth information submitted to EPA under a claim of confidentiality which the Commonwealth needs to implement its program. All information EPA agrees to transfer to the Commonwealth will be transferred in accordance with the requirements of 40 CFR Part 2.

Section III. Permit Review and Issuance

The DER is responsible for drafting, providing public notice of, issuing, modifying, reissuing, and terminating permits in accordance with Section II and Section V, of the Agreement and 40 CFR Parts 122-125 and other applicable regulations to the extent applicable to DER.

A. EPA Review of Draft Permits

1. DER shall consult with the Regional Administrator from time to time before issuing public notice of a draft permit to insure that the permit will comply with federal guidelines and requirements. The DER shall transmit to the Regional Administrator appropriate portions of working documents in connection with the consultation.

2. Unless otherwise waived, DER will send a copy of all draft permits to EPA for review. DER may send draft permits to EPA's Water Permits Branch at least 30 days prior to public notice. On a case-by-case basis, DER may forward to EPA's Water Permits Branch a copy of the draft permit at the time of issuance of the public notice. Submission of the draft permit to EPA, either prior to or at the time of public notice, must be accompanied by a copy of the fact sheet or statement of basis (when prepared) for each facility. A copy of the public notice shall be submitted to EPA when published. Each submittal must be accompanied by a new source/new discharger determination (if applicable).

EPA shall have 30 days to comment upon, object to or make recommendations with respect to the draft permits. EPA shall review the draft permits in accordance with 40 CFR §123.44. The time for EPA review shall be extended to 90 days upon request of EPA. EPA will send to DER written agreement, comments or objections to each draft permit, including a statement of the reasons for the comments or objections and the sections of the CWA or regulations which support them. Whenever EPA files an objection to a draft permit within 30 days from receipt of the draft permit or requests that the time for review be extended to 90 days, EPA shall have 90 days from receipt of the draft permit to supply the specific grounds for the objection, and the terms and conditions which should be included in the permit.

If the information supplied by DER is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may request the DER to transmit the complete record (or portion thereof) of the DER's permit proceedings. In accordance with 40 CFR §123.44(d), if such a request is made within 30 days of receipt of the draft permit, such a request shall constitute an interim objection to the issuance of the permit and the full period (90 days) for EPA review shall recommence upon receipt of the requested information.

DER will attempt to resolve and incorporate all of EPA's comments and concerns regarding the draft permit prior to issuance of the public notice and the draft permit for public consideration.

All EPA comments must be considered and objections shall be resolved by the DER, along with any other public comments received in the preparation of the proposed final permit.

3. In the case of general permits, DER shall transmit a copy of each draft permit and any conditions, requirements, or documents, including a separate fact sheet, which are related to the draft permit to the EPA Director, Office of Water Enforcement and Permits (OWEP) and the EPA Regional Director of the Water Management Division and shall allow EPA 90 days from the date of receipt of the draft general permit to comment upon, object to, or make recommendations with respect to the draft general permit. OWEP may comment upon, object to, or make recommendations with respect to the draft general permits on EPA's behalf within the same time periods as stated above.

4. If (a) the proposed final permit is the same as or more stringent than the draft permit defined in the public notice, (b) EPA has not objected to such draft permit, and (c) valid significant public comments have not been made, the DER may issue the permit without further review by EPA. In all other cases, the DER will send one copy of the proposed final permit and other information to EPA's Water Permits Branch, in accordance with §123.44. The EPA/Regional Water Management Division Director will, within (15) working days after receipt of the proposed final permit, notify the DER and the permit applicant of any formal objections authorized under 40 CFR §123.44(c). EPA reserves the right to take 90 days to supply specific grounds for objections when a general objection is filed within the 15 day review period in accordance with 40 CFR §123.44(b)(2).

5. In the event the Regional Administrator objects to a permit under either paragraphs A.2. or A.4. of this section, the Regional Administrator shall notify the DER in writing with a detailed statement of the reasons for the objections and the actions that must be taken to eliminate the objections. EPA objections must be based upon one or more of the criteria identified in 40 CFR §123.44. DER requests for a hearing on the objection(s) and the procedure for resolving the objection shall be governed by 40 CFR §123.44. If EPA's objection(s) is not satisfied within 90 days of the notice of the objection(s) (or 30 days following a public hearing on the objection(s) if one is held), EPA may issue the permit as authorized under Section 402(d) of the CWA and 40 CFR §123.44.

B. Waiver-of-Permit Review by EPA

1. Except as hereafter expressly provided, EPA waives the right to comment on or object to the sufficiency of permit applications, draft permits, proposed final permits, and finally adopted permits for all discharges or proposed discharges with the exception of the categories described by 40 CFR §123.24(d) and Publicly Owned Treatment Works (POTWs) required to have a pretreatment program (40 CFR Part 403).

The foregoing does not include a waiver of receipt of copies of all final permits issued, or any notices required under Section V of this Agreement.

2. With respect to modifications or revocations and reissuances of permits, EPA waives the right to review any permit for which the right to review the original permit was waived (unless the modification would put the permit into one of the categories in Section III.B.1) and EPA waives the right to review any minor modifications as defined in 40 CFR §122.63.

3. EPA reserves the right to terminate the waivers in paragraphs 1 and 2 above (in whole or in part) with respect to any specific or group of dischargers at any time. Any such determination shall be made by the EPA Regional Water Management Division Director in writing, and a copy of such written termination shall be delivered to the DER.

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, or effluent guidelines, nor to relinquish the right of EPA to petition the DER for review of any action or inaction because of violation of Federal or State laws, rules, regulations, or effluent guidelines.

C. Public Participation

1. Permit applications, draft permits, public notices, fact sheets and statements of basis (when prepared) and all effluent data will be made available to any party upon request upon payment of applicable state duplicating fees.

2. DER will provide copies of all public notices and fact sheets prepared and distributed in accordance with 40 CFR §§124.8 and 124.10.

3. All draft general permits and major NPDES permits shall be publically noticed in a daily or weekly newspaper within the area affected by the activity in accordance with 40 CFR §124.10(c)(2)(i).

D. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in Section V of this Agreement.

2. If the final determination is to deny the permit, notice of intent to deny shall be given to EPA and to the applicant in accordance with applicable NPDES regulations.

E. Termination, Modification, Revocation and Reissuance of Permits

The DER shall notify EPA whenever the DER intends to terminate an issued NPDES permit and shall transmit a copy of any permit which is proposed to be modified or revoked and reissued to EPA with any proposed changes clearly identified except as waived in Paragraph B.2 of this section. The procedures set forth in paragraphs A.2 through 5 of this section shall be followed with respect to modifications by the DER of any issued permit and, for purposes of this agreement, each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR §122.63.

F. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to Section III.B.1, are affected in any manner by administrative or court action, the DER shall immediately notify the Regional Administrator of the revision and shall immediately transmit a copy of the permit, with changes identified, to the Regional Administrator. Where the DER is required to modify the permit, the procedures set forth in paragraphs A.2 and 3 of this section shall be followed with respect to

modifications by the DER of any issued permit in response to administrative or court action, each permit proposed to be so modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR §122.63.

G. Major Discharger List

There shall be included as a part of the annual DER Program Plan a "major dischargers" list, which shall include those dischargers mutually defined by the DER and EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that in the opinion of the DER or EPA have a high potential for violation of water quality standards. The major discharger list for Federal facilities shall be jointly determined by EPA and the DER.

H. Variances

1. The DER shall conduct an initial review of all requests for fundamentally different factors variances (FDFs) and for variances under Sections 301(c), (g), and 316(a) of the CWA in accordance with EPA's regulations.

2. With regard to FDFs and Sections 301(c) and (g) variances, the DER may deny or forward the request to the Regional Administrator with a written concurrence or submit to EPA without recommendation a completed variance request. Any denials of requests by DER shall be forwarded to the requestor and EPA. If the DER determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to EPA. If EPA denies a variance request, EPA shall so notify DER and the requestor. If EPA approves a variance request, the DER may prepare a draft permit to address the variance. Appeals of variance request decisions will be handled in accordance with 40 CFR §124.64.

Section IV. Enforcement

The DER agrees to maintain an enforcement program, including a program to assess compliance by dischargers and to take timely and appropriate enforcement action. Discharges endangering public health shall receive immediate and paramount attention.

A. Compliance Monitoring

The DER shall operate a timely and effective compliance monitoring program including an automatic data processing (ADP) and/or manual tracking system for the purpose of determining compliance with permit conditions. For purposes of this MOA the term "compliance monitoring" is a generic term meant to cover all activities taken by the DER to ascertain a permittee's compliance status. Using this definition the DER's monitoring program shall consist of two main activities:

1. Compliance Review - The DER shall conduct timely reviews and keep complete records of all written material relating to the status of compliance of NPDES permittees, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that permittees may be required to submit under the terms and conditions of a NPDES permit, or court order.

DER shall determine whether:

- (a) The self-monitoring reports required by permit are submitted;
- (b) the submitted reports are complete and accurate; and
- (c) the permit conditions and enforcement schedules are met.

The DER and EPA shall have periodic enforcement conferences, either in person or by telephone, to decide priorities for initiating enforcement actions.

The DER shall initiate appropriate enforcement actions when required permit performance is not achieved or when reports are not received. In the case of violation by a major discharger the DER shall initiate a timely and appropriate enforcement action. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures developed by the DER.

2. Compliance Inspection - The DER shall conduct field activities to determine the status of compliance with permit and enforcement requirements including sampling and nonsampling inspections.

The DER and Regional Administrator will develop lists of major permittees to be the subject of State compliance inspection consistent with the annual State Section 106 Program Plan. The list may be modified with the concurrence of both parties. The DER shall also furnish an estimate of the number of other compliance inspections to be performed during the year. The DER will give EPA adequate notice and opportunity to participate in inspections performed by the DER.

EPA or the DER may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it shall notify the DER and may request the DER to conduct those compliance inspections, subject to availability of DER resources. EPA retains the right to perform compliance inspections at any time of any permittee in the State, but will notify the DER to give the DER an opportunity to participate and will keep the DER informed of its plans and results.

The DER shall conduct compliance inspections of all the major permittees on an annual basis.

The DER shall prepare a list of all noncomplying major permittees in accordance with the regulations at 40 CFR Section 123.45.

Reports on compliance inspections for major permittees shall be available for review by the DER or the Regional Administrator, as appropriate, within (30) days of the date of the inspection or completion of sample analysis in the case of a Compliance Sampling Inspection. The DER shall thoroughly review each report to determine what, if any, enforcement action shall be initiated. Where the results of the inspection(s) indicate that the discharger is in violation, the DER shall initiate an enforcement action in a timely and appropriate manner. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures developed by the DER.

The DER shall conduct the following types of compliance inspections, the type, schedule and frequency of which will be established in accordance with the State Section 106 Program Plan and DER Compliance Inspection Plan:

a. Compliance Evaluation Inspection (CEI)

A CEI is nonsampling in nature and is designed to verify permittee compliance with applicable NPDES permit requirements and compliance schedules. This inspection is based on record reviews and observations such as walk-through evaluations of waste source and wastewater treatment facilities, and visual observation of effluents, receiving waters, etc. All CEIs shall be performed in accordance with the NPDES Compliance Evaluation Inspection Manual (U.S. EPA Office of Enforcement, 1976, updated 1980 or most recent update).

b. Performance Audit Inspections (PAI)

The PAI focuses on quality assurance of the permittee's self-monitoring program by an evaluation of permittee performance and/or simulation of all the steps in the NPDES self-monitoring process from sample collection and flow measurement through laboratory analyses, data workup, and reporting. The PAI includes the basic objectives and tasks of a CEI and applies to both chemical and biological self-monitoring programs. EPA will assist DER as needed to perform PAI's.

c. Compliance Sampling Inspection (CSI)

During the CSI, a representative sample(s) of a permittee's effluent is collected and chemically analyzed. The results of the analyses are used to verify the accuracy of the permittee's self-monitoring program and reports, gather evidence for enforcement proceedings, and determine the quantity and quality of effluents. In addition, a CSI includes the same objectives and tasks as a CEI. The DER shall perform CSIs in accordance with the NPDES Compliance Sampling Inspection Manual (U.S. EPA Office of Enforcement, 1977 or most recent update).

d. Compliance Biomonitoring Inspections (CBI)

A CBI evaluates the biological effect of a permittee's effluent discharge(s) on test organisms through the utilization of acute toxicity bioassay techniques. This inspection includes the same objectives and tasks as a CEI. The DER shall perform CBIs in accordance with the Interim NPDES Compliance Biomonitoring Inspection Manual (U.S. EPA Office of Water Enforcement, 1979 or most recent update).

B. Action Against Violators

1. The DER is responsible for taking timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations, reporting requirements, other permit conditions, and other NPDES Program requirements. This includes violations detected by State or Federal inspections.

2. Subject to paragraph B.3 below, prior to proceeding with Federal enforcement action against a violator, EPA shall inform the DER that EPA enforcement action is necessary, and will give the DER 30 days to initiate a formal enforcement action. To prevent possible duplication of effort, the DER will notify the EPA within ten (10) working days of receiving EPA's 30-day notice of DER's intent to take timely and appropriate action. The DER may waive the 30-day waiting period at any time. All notification required under this paragraph and paragraph B.3 below shall be made at the periodic enforcement meetings, by telephone or by written communication.

3. Notification shall not be required when EPA is exercising its emergency powers under Section 504 of the Clean Water Act. Should the EPA consider it necessary to take action during the 30-day notice period but prior to DER's waiver of the waiting period, the EPA Water Management Division Director will first notify the DER Deputy Secretary for Environmental Protection.

4. DER agrees to develop, and implement a penalty policy which is consistent with program laws and regulations.

5. The DER shall immediately notify EPA Region III by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the state.

Section V - Reporting and Transmittal of Information

A. The DER will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A copy of all permit applications except those for which EPA has waived review;	Within 5 days of receipt
2.	Copies of all draft NPDES permits and permit modifications including fact sheets or statement of basis, except those for which EPA has waived review;	When placed on public notice
3.	Copies of all public notices, except those for which EPA has waived review;	As issued
4.	Copies of all permit applications and public notices for which EPA has waived review;	Upon request
5.	A copy of all issued NPDES permits and permit modifications;	As issued
6.	A list of major dischargers subject to compliance inspections;	With submission of the State 106 Program Plan
7.	A list of compliance inspections performed during the previous quarter;	Quarterly with 106 status report
8.	Copies of all compliance inspection reports and data and transmittal letters to all major permittees;	Within 30 days of inspection or completion of sample analysis
9.	Copies of all compliance inspection reports and data transmittal letters to all other permittees;	As requested
10.	For major dischargers, a quarterly noncompliance report as specified in 40 CFR §123.45(a) and further qualified in EPA Guidance;	Quarterly, as specified in 40 CFR §123.45(c)

Section V - Reporting and Transmittal of Information

A. The DER will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
11.	For minor dischargers, an annual noncompliance report as specified in 40 CFR §123.45(c)	Within 60 days of the end of the calendar year as specified in 40 CFR 123.45(c)
12.	Copies of all enforcement actions against NPDES violators (including letters, notices of violation, administrative orders, criminal actions civil actions, actions filed before the Environmental Hearing Board, and referrals to the Office of Chief Counsel and/or Attorney General).	As issued

B. EPA shall transmit the following information to DER:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A list of compliance inspections EPA intends to conduct jointly with the State as part of its State Overview Plan:	Annually
2.	Proposed revisions to the schedule of compliance inspections;	As needed
3.	Copies of all EPA compliance inspection reports and data;	Within 30 days of inspection
4.	Copies of all EPA enforcement actions against NPDES violators (including notices of violation, and administrative orders).	As performed
5.	A review of the DER administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits.	As performed

Section VI. Program Review

A. To fulfill its responsibility for assuring the NPDES Program requirements are met, EPA shall:

1. Review the information submitted from the DER;
2. Meet with State officials from time to time to observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes;

3. Examine the files and documents at the DER regarding selected facilities to determine: (a) whether permits are processed and issued consistent with Federal requirements; (b) whether the DER is able to discover permit violations when they occur; (c) whether DER reviews are timely; and (d) whether DER selection of enforcement actions is appropriate and effective. EPA shall notify the DER in advance of any examination under this paragraph so that appropriate DER officials may be available to discuss individual circumstances and problems. A copy of the examination report shall be transmitted to the DER when available.

4. When appropriate, hold public hearings on the DER's operation of the NPDES program; and

5. Review the DER's public participation policies, practices and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, directive, or form which the DER Secretary has submitted to the Regional Administrator or agreed to make use of in connection with approval of the DER's program, and prior to the adoption of any new statute, regulations, directive or form, the DER shall notify the Regional Administrator and shall transmit the text of any such change or such new form to the Regional Administrator. (See, 40 CFR §123.62 which provides that the change may entail a program revision, which will not become effective until approved by the Administrator).

C. If an amendment, recision, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the Commonwealth of Pennsylvania Legislature or a court, the DER shall, within 10 days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

D. Prior to the approval of any test method other than those specified as required for NPDES permitting, the DER shall obtain the approval of the Regional Administrator.

E. The DER shall seek such legislation, adopt such regulations, and take such further actions which may be necessary to preserve and maintain any compliance with NPDES Program Laws and Regulations.

Section VII. Modification

This MOA shall take effect immediately upon execution by the parties hereto. It shall be reviewed jointly from time to time by the DER Secretary and Regional Administrator. Either the DER, Regional Administrator, or Administrator of EPA may initiate action to modify this MOA. If the Regional Administrator, or Administrator of EPA determines that any modification to the MOA initiated by DER does not conform to the requirements of §402(b) of the CWA, or the requirements of 40 CFR Parts 122-125, 403 or and other applicable federal regulations, as amended, the Regional Administrator or Administrator of EPA shall notify the DER Secretary in writing of any proposed revisions or modifications which must be made to such modification. Before the Agreement may be modified, however, any proposed revisions must be put in writing and signed by the DER Secretary and the Regional Administrator.

Section VIII. Independent EPA Powers

Unless otherwise noted, nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the CWA.

Section IX. Computation of Time

In computing any period of time prescribed by this MOA the day from which the designated time period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

For the purpose of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until receipt by EPA.

Section X. Disclaimer

This MOA is not intended to create any rights or benefits, substantive or procedural, enforceable in law or equity by any party against EPA or DER, the officers of either agency or any person.

In witness whereof, the parties have executed this agreement the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA

By: Arthur G. Pini 6/26/91
Secretary
Department of Environmental Resources

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Robert E. ... May 15, 1991
Regional Administrator,
Region III
United States Environmental Protection Agency

APPROVED AS TO LEGALITY AND FORM: *we*

K. Wells

Chief Counsel, DER

John AF Hall
Office of Attorney General

