

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT
BETWEEN THE
WASHINGTON DEPARTMENT OF ECOLOGY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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Section I. General Policies

This Memorandum of Agreement (hereafter "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 State of Washington, Department of Ecology (hereinafter Ecology) and reviewed by Region 10 of the United States Environmental Protection Agency (hereinafter "EPA"). This MOA replaces the Memorandum of Agreement between EPA and Ecology approved November 9, 1973, and includes the pretreatment MOA of September 30, 1986, as an appendix.

The Director of Ecology and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful and effective administration of NPDES. If requested by either party, meetings between the State and EPA will be scheduled at reasonable intervals to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the State's permit program.

In this partnership, EPA will provide to Ecology on a continuing basis, technical and other assistance on permit matters as requested. Ecology has primary responsibility for implementing the NPDES program for the State of Washington. Ecology will administer the NPDES program in accordance with section 402 of the Federal Clean Water Act (CWA), 33 U.S.C. §1251 et. seq. (hereinafter CWA), applicable State legal authority, the requirements of 40 CFR Parts 122-125 and any other applicable Federal regulations, and the annual State 106 program plan. Ecology has the primary responsibility to establish State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in the annual State 106 program plan and the State/EPA Compliance Assurance Agreement signed by the Director of Ecology and the Regional Administrator of EPA Region 10. The State 106 program plan, the State/EPA Compliance Assurance Agreement and any other State/EPA agreement(s) regarding the NPDES program will be consistent with this MOA as required by 40 CFR §123.24(c).

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If Ecology finds that they cannot comply with EPA program policy, then either Ecology or EPA may initiate negotiations to resolve differences with such policies.

Section II. Program Responsibilities

A. Ecology Responsibilities

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

1. Develop and maintain, to the maximum extent possible, the legal authority (including State regulations) and the resources required to carry out all aspects of the NPDES program.

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

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

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

5. Maintain an adequate public file at the appropriate regional or central office (which must be easily accessible to EPA for audit purposes) for each permittee. Such files must, at a minimum include copies of:

- Permit Application;
- Draft or Proposed Permits Until Final Permit Issuance;
- Issued Permit;
- Public Notice and Fact Sheet (when prepared);
- Discharge Monitoring Reports;
- All Reports and Notifications Required by the Permit or Enforcement Action
- All Inspection Reports;
- All Enforcement Actions; and
- Other pertinent information and correspondence.

6. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section V of this Agreement;

7. Cooperate with EPA in the administration of the NPDES program in accordance with mutually agreed upon program policies and guidance.

8. Submit to the EPA the information described in section VI of this Agreement, the annual State program plan and applicable portions of 40 CFR Part 123. Additionally, upon request by EPA, Ecology will submit specific information and/or allow access to files necessary for evaluating Ecology's administration of the NPDES program.

B. EPA Responsibilities

1. EPA commits to funding Ecology to the maximum extent possible to support its NPDES activities.

2. EPA will provide technical support and assistance to Ecology in the following areas:

- Interpretations of Effluent Limitation Guidelines (ELG) regulations.
- Development of technology-based effluent requirements and related "best management practices," which include the use of "best professional judgment."
- General technical assistance in processing permit applications.

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

- EPA contractor reports; draft and final EPA development documents; and draft, proposed and final Effluent Limitation Guidelines (ELG) regulations for various industry categories. These will be coordinated, as appropriate, with Ecology's Water Quality Program.
- Draft and final 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, policy and procedures which pertain to implementation of the NPDES program and water quality planning program.

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

5. As outlined in section VII of this Agreement, EPA will oversee the administration of NPDES on a continuous basis for consistency with the CWA, this Agreement, the annual program plan, and all applicable federal regulations and policies. EPA will, as a part of its assessment, consider among other things, review of permits, reports, and enforcement actions submitted by Ecology and may also consider comments from permittees, the public, and federal and local agencies concerning Ecology's administration of NPDES. Any such comments considered by EPA will be brought to the attention of Ecology by written correspondence if the commenting party has not previously communicated this comment to Ecology. Any information obtained or used by Ecology under the NPDES program will be available to EPA upon request without restriction except for information pertaining to ongoing criminal investigation. If the information has been submitted to Ecology under a claim of confidentiality, Ecology will inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B; and 40 CFR 122.7 and applicable state laws. Both agencies will respect the confidentiality of materials designated CONFIDENTIAL in accordance with applicable Federal and state laws.

Section III. Permit Review and Issuance

Ecology's NPDES program is carried out under WAC 173-220, and Ecology is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating permits in accordance with section VI below, 40 CFR Parts 122-125 and any other applicable regulations.

A. Receipt of New Permit Applications by Ecology

Within thirty (30) working days of the receipt of a complete permit application, Ecology will enter all required information into EPA's National Permit Compliance System (PCS) via the Wastewater Discharge Information System (WDIS).

B. Permit Reissuance

All expiring NPDES permits will be reissued on or before their date of expiration. If such timely reissuance is not possible, Ecology will, through the SEA notify the Regional Administrator of the reasons for delay and agree on priorities for reissuance.

C. EPA Review of Draft Major and Negotiated Significant Minor Permits and Permit Modifications

1. Except as waived under Paragraph E of this section, Ecology will consult with the Regional Administrator before issuing public notice of a draft permit to ensure that the permit will comply with federal statutes and regulations. Ecology will transmit to the Regional Administrator appropriate portions of working documents in connection with the consultation.

2. Unless otherwise waived, EPA will review all draft major permits. At the time of issuance of public notice, Ecology will send the EPA one copy of the public notice, the draft permit, and the fact sheet (when prepared) for each facility. If the permit is for a possible new source under CWA section 306, the submittal must be accompanied by a new source/new discharger determination. The EPA will have 30 days to comment upon, object to, or make recommendations with respect to the draft permit. The time for EPA review will be extended to 90 days from date of draft upon request of EPA. The EPA will send to Ecology 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. A copy of all comments will also be sent to the permit applicant upon request. In the event EPA files a "general objection" to a draft permit, it will have 90 days from receipt of the draft permit to supply the specific grounds for objection, and the terms and conditions which should be included in the permit. If the initial permit information supplied by Ecology is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, EPA may file an "interim objection" under 40 CFR 123.44(d) and request Ecology to transmit the complete record (or portion thereof) of Ecology's permit proceedings. The full period for EPA review will recommence upon receipt of the requested information.

3. If (a) the proposed final permit does not substantially differ from the draft permit defined in the public notice, (b) EPA has not objected to the draft permit, and (c) adequate consideration of public comments has been given by Ecology, Ecology may issue the permit without further review by EPA. In all other cases, Ecology will send one copy of the proposed final permit, recommendations of any other affected State, and copies of written comments and hearing records, including the response to comments prepared under 40 CFR 124.17 to EPA for review. Whenever Ecology prepares a written explanation to an affected State explaining the reasons for rejecting any of its written recommendations, Ecology will transmit a copy to the Regional Administrator. The EPA will, within 30 working days after receipt of the proposed final permit, notify Ecology and the permit applicant of any formal objections authorized under 402(d) of the Act. This notification will set forth in writing the general nature of the objection within ninety (90) days following receipt of the proposed final permit to which EPA has objected.

4. In the event the Regional Administrator objects to a permit under either paragraph C.2. or 3., above, the Regional Administrator will so notify Ecology in writing as to the reasons for the objection and the actions necessary to eliminate the objection. The EPA's objections must be based on one or more of the criteria identified in 40 CFR 123.44. Ecology has the right to a public hearing on the objection. If EPA's concerns are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following a public hearing on the objection), exclusive authority to issue the NPDES permit vests in EPA. Nothing herein affects the authority for Ecology to require and issue state waste discharge permits under RCW 90.48.160 and 162. All state waste discharge permits issued to carry out federal programs within the scope of this agreement will comply with applicable federal requirements.

D. New Source Permits

In the case of development of draft major and minor permits for new sources, Ecology will inform and meet with EPA, as needed, throughout the permitting process. New sources are defined as new facilities which will discharge wastewater into surface waters or an existing facility discharging a new pollutant. EPA will review minor new source permit information to determine which minor permits it wishes to review and will notify Ecology of those permits.

E. Waiver of Permit Review by EPA

1. Upon request to Ecology, EPA may review any other non-waived minor permit, per Section E, subject to the same resource and time constraints as major permits. At this time, EPA waives the right to comment on, or object to, the sufficiency of permit applications, draft permits, proposed final permits, and final (issued) permits for all discharges or proposed discharges with the exceptions of the categories described below:

- a. Discharges which may affect the waters of another State;
- b. Discharges proposed to be regulated by general permits (i.e., review general permits only, not each individual permit);
- c. Discharges from publicly owned treatment works with a daily average discharge exceeding one million gallons per day;
- d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;
- e. Discharges from any major discharger (as defined in SEA);
- f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122;
- g. Discharges from any other source with a daily average discharge exceeding 0.5 million gallons per day, except, discharges of non-process waste water;
- h. Discharges into the territorial sea or contiguous zone (as defined under General Definitions of the Clean Water Act as amended); and
- i. POTW's required to have a pretreatment program (40 CFR Part 403).

The foregoing does not include 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 paragraph E.1 above) or qualifies as a minor modification as defined in 40 CFR 122.63.

3. Ecology recognizes the right of EPA, in accordance with 40 CFR 123.24(e)(1)(2), to terminate the waivers in paragraphs 1 and 2 above (in whole or in part) at any time. Any such termination will be made in writing to Ecology.

4. The foregoing waiver will not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal, State or local laws, rules, regulations, or effluent guidelines, nor to relinquish the right of EPA to petition Ecology for review of any action or inaction because of violation of Federal, State or local laws, rules, regulations, or effluent guidelines.

F. Public Participation

1. Permit applications, draft permits, public notices, and fact sheets or statement of basis (when prepared) will be made available to any party upon request upon payment of applicable State duplicating fees.

2. Ecology will prepare and distribute copies of all public notices and fact sheets, to all potentially affected parties, in accordance with 40 CFR 124.8 and 124.10 and WAC 173-220-050,060, 070 unless otherwise waived by the specific organization.

3. All draft general permits, major NPDES permits, and pretreatment program approvals will be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR 124.10(c)(2)(i) and WAC 173-220-050.

G. 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 will be given to EPA and to the applicant in accordance with NPDES regulations.

H. Termination, Modification, Revocation and Reissuance of Permits

Except as waived in paragraph E.2 above, Ecology will notify EPA whenever it terminates an issued NPDES permit. In addition, Ecology will transmit to EPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in paragraphs C.2 and 3 above will be followed with respect to modifications by Ecology of any issued permit and, for purposes of this agreement, each permit proposed to be modified will be deemed to be a newly proposed draft permit, except as limited in 40 CFR 122.63.

I. Administrative or Court Action

If the terms of any permit, including any NPDES permit for which review has been waived pursuant to Paragraph E above, are affected in any manner by legislative, administrative or court action, Ecology will immediately transmit a copy of the permit, with changes identified, to the Regional Administrator and will allow 30 days for EPA to make written objections to the changed permit pursuant to section 402(d)(2) of the CWA.

If Ecology proposes to issue any permit, that does not meet all applicable federal requirements, it will notify EPA and allow opportunity for review and objection according to Paragraph C.

J. Major Discharger List

There will be included as a part of the annual program plan a "major dischargers" list, which will include those dischargers mutually defined by Ecology and EPA as major dischargers.

K. Variances

Consistent with time limitations contained in the 1987 Clean Water Act (CWA), Ecology will conduct an initial review of all requests for fundamentally different factors (FDF) variances, for variances under §301(c), (g), (i), (k), and 316(a) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

1. With regard to §301(i) and (k) and 316(a) variances, Ecology may deny or approve the request. A copy of the determination will be sent to the requester and EPA.

2. With regard to FDF and 301(c) and (g) variances, and §302 modifications, Ecology may determine to deny the request, and such determination will be forwarded to the requester and EPA. If Ecology determines that factors do exist that may warrant such a variance, the request and recommendation for approval will be sent to EPA. If EPA denies a variance request, Ecology will so notify the requester. If EPA approves a variance request, Ecology may then prepare a draft permit factoring in the variance.

L. Evidentiary Hearings (Appeals to Pollution Control Hearings Board)

Ecology will provide EPA with a copy of all precedent setting settlements and administrative decisions which impact Ecology's ability to implement the NPDES program in accordance with the federal requirements.

Section IV. Enforcement

Ecology agrees to maintain a vigorous enforcement program, as defined in the Compliance Assurance Agreement (CAA) signed in June 1986, including any subsequent amendments.

A. Compliance Monitoring

Ecology will operate a timely and effective compliance monitoring program including PCS or an interface to PCS.

1. Compliance Review - Ecology will conduct timely and substantive reviews and keep complete records of all written material relating to the compliance status 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, approved pretreatment program (when applicable), or enforcement action.

Ecology will operate a system to determine if:

- The self-monitoring reports required by permit or pretreatment regulations are submitted;
- The submitted reports are complete and accurate; and
- The permit conditions and pretreatment requirements (when applicable) are met.

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

Ecology will initiate appropriate enforcement actions consistent with the Compliance Assurance Agreement whenever required performance is not achieved or when reports are not received. In the case of violation by a major discharger Ecology will initiate an appropriate action within 45 days of the date Discharge Monitoring Reports were or should have been received by the State. Priorities for initiating enforcement actions are specified in the Department's Enforcement Guidelines.

2. Compliance Inspection - Ecology will conduct field activities to determine the status of compliance with permit requirements including sampling and nonsampling inspections. Inspection procedures will be in accordance with EPA's NPDES Compliance Evaluation Inspection Manual, 1976, updated 1980 or any supplemental revisions or Ecology's inspection guidance. For purposes of this MOA, the term "compliance inspections" includes evaluation inspections/performance audits (Class I inspections), and sampling inspections/biomonitoring inspections (Class II inspections).

Ecology will conduct compliance inspections of all of the major permittees on at least an annual basis. The list of inspections to be conducted each year may be modified with the concurrence of both parties. Ecology will also furnish an estimate of the number of other compliance inspections to be performed during the year. When requested by EPA, Ecology will give EPA the opportunity to participate in its inspection activities.

The EPA or Ecology may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it will notify Ecology and may request Ecology to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will notify Ecology to give it an opportunity to participate and will otherwise keep Ecology informed of its plans and the results of such EPA inspections.

Ecology will also be responsible for transmitting all inspection data to PCS and preparing a list of all noncomplying major permittees in accordance with the regulations in 40 CFR 123.45.

Compliance inspection reports for major permittees will be provided by Ecology to EPA for review, as appropriate, within 30 days of the date of the inspection unless a longer time period is necessary due to lab analysis. Ecology will thoroughly review each report to determine what, if any, enforcement action will be initiated. Where the results of the inspection(s) indicate that the discharger has a violation which meets Ecology's Enforcement criteria, Ecology will initiate timely and appropriate enforcement action consistent with the Enforcement Guidelines or make a decision in writing to exercise enforcement discretion not to take any action. All significant violations shall be noted in the report.

EPA will provide Ecology with compliance inspection reports on state regulated facilities, for review, 15 days prior to submitting report to the permittee.

3. Information Request - Whenever either party requests information concerning a specific discharger and the requested information is available from the files, that information will be available to the other agency for review and copying and/or will be provided within a reasonable time, consistent with State Public Disclosure Act, Chapter 47.17 RCW.

B. Action Against Violators

Ecology 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.

Ecology will immediately notify EPA, 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.

Ecology will maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations. If EPA determines that Ecology has not initiated timely and appropriate enforcement action against a violator, EPA may proceed with any or all of the enforcement options available under section 309 of the CWA after notice to and consultation with Ecology. Prior to proceeding with an enforcement action, EPA will give Ecology 30 days to initiate such enforcement action. This notification may be made by telephone and with follow-up by written communication. Such notifications will not be required when EPA is exercising its emergency power under section 504 of the CWA.

Ecology agrees to follow the policies, principles, procedures, etc. in Ecology's Enforcement Manual: Guidelines and Procedures.

Section V. Pretreatment

A. General

This section is intended to define Ecology and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program as stated in the addendum to the NPDES MOU between Ecology and EPA of September 30, 1986, and pursuant to section 307, and 402(b) of the Clean Water Act (hereinafter the Act) as follows.

Ecology has, either directly or through local program oversight, primary responsibility for:

- 1) enforcing against discharges prohibited by 40 CFR 403.5;
- 2) applying and enforcing National Categorical Pretreatment Standards established by the EPA in accordance with section 307 (b) and (c) of the Act, local Publicly Owned Treatment Works (POTW) standards, and State standards, whichever apply or are more stringent;
- 3) reviewing and approving POTW pretreatment programs in accordance with the procedures discussed in 40 CFR 403.8 and Chapter 173-216 WAC;

- 4) requiring a pretreatment program in NPDES permits issued to POTWs as required in 40 CFR 403.8 and 403.9, and as provided in section 402(b)(8) of the Act;
- 5) including conditions of a POTW pretreatment program in the POTW's NPDES permit or director's findings and orders;
- 6) overseeing and enforcing POTW pretreatment programs to ensure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES permit;
- 7) regulating in accordance with 40 CFR Part 403.10(e) and Chapter 173-216 WAC industrial dischargers to POTWs without pretreatment programs;
- 8) requiring industrial reports as outlined in 40 CFR 403.12;
- 9) requiring POTWs as outlined in 40 CFR Part 403.5(b)(2) to develop and enforce local limitations where recurring pass-through or interference exist.

EPA will overview the Ecology pretreatment program operations consistent with 40 CFR Part 403 regulations and this MOA.

Ecology shall perform inspection, surveillance and monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit; and carry out inspection, surveillance and monitoring activities which will determine, independent of information supplied by the industrial user, whether the industrial user is in compliance with pretreatment standards.

The Water Division Director will be provided 30 days to review and comment upon, object to, or make recommendations with respect to proposed major POTW NPDES permits or modifications containing pretreatment conditions for local programs. However, if the EPA Water Division Director so requests in writing, an additional 60 days shall be given for such review. The Water Division Director shall notify Ecology in writing, within the allowed period, that the EPA concurs or objects to the state's determination. If EPA objects to certain conditions, it shall set forth the reasons for the objections and the actions that must be taken by Ecology to remove the objection.

B. Section 403.6 National Pretreatment Standards: Categorical Determinations

Ecology shall review requests from industrial users or POTWs for certification under 40 CFR Part 403.6(a) as to whether the industrial user does or does not fall within a particular industrial category. Ecology will make a written determination for each request stating the reasons for the determination. Ecology shall then forward its findings together with a copy of the request and necessary supporting information, to the Water Division Director for concurrence. If EPA does not modify the Ecology decision within 60 days after receipt thereof, the Ecology finding is final. Where the request is submitted to EPA, such request will be forwarded to Ecology for determination and then sent back to the Water Division Director for concurrence. Where EPA elects to modify Ecology's decision, the Water Division Director determination and explanation will be forwarded to Ecology for review. Ecology will have 30 days from the receipt of the determination to comment. At the end of that period the Water Division Director shall consider any comments received and shall make a final determination. A copy of the final determination shall be sent to the requester and to Ecology.

C. Section 403.9 POTW Pretreatment Program Approvals

Ecology shall review and approve applications for POTW pretreatment program authority in accordance with 40 CFR Part 403.11(a)(b)(c) and (e). Ecology shall submit its findings together with the application and supporting information to the Water Division Director for review. No POTW pretreatment program shall be approved by Ecology if EPA objects in writing to the approval of such submission in accordance with 40 CFR Part 403.11(d).

D. Section 403.13 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors

Ecology shall make an initial finding on all requests from industrial users for variances from categorical pretreatment standards, where the request is based on the allegation of the existence of fundamentally different factors. Where Ecology's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the Water Division Director for a final determination. Ecology may deny, but not approve a fundamentally different factors variance request until written approval has been received from EPA.

E. Miscellaneous

Ecology will submit to the Water Division Director a list of POTWs which are required to develop their own pretreatment program or are under investigation by Ecology for the possible need of a local pretreatment program. Ecology may modify this list without requiring modification of this MOA. POTWs with approved pretreatment programs may not be deleted without approval of the EPA Water Division Director.

Ecology and EPA will communicate, through the State-EPA Agreement (SEA) planning process, commitments and priorities for program implementation.

F. Other Provisions

Nothing in this agreement is intended to affect any pretreatment requirement, including any standards or prohibitions established by state or local law, as long as the state or 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 regulation.

Section VI. Reporting and Transmittal of Information

A. Ecology will maintain PCS database consistent with Amended National PCS Policy, dated March 23, 1988 (see Section 1) and 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.	When draft permit completed
2.	Copies of all draft NPDES permits and permit modifications including fact sheets except those for which EPA has waived review.	When draft permit completed
3.	Copies of all public notices, except those for which EPA has waived review.	When draft permit completed
4.	A copy of all issued, reissued and modified NPDES permits.	As issued
5.	Copies of any permit applications and public notices for which EPA has waived review.	Upon written request
6.	A copy of settlements and decisions in permit appeals.	As issued
7.	A list of major facilities scheduled for compliance inspections.	With submission of the annual program plan
8.	Proposed revisions to the scheduled compliance inspections.	As needed
9.	A list of compliance inspections performed during the previous quarter.	As part of PCS

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| 10. | Copies of any compliance inspection reports, report forms, data, and transmittal letters to major permittees. | Within 30 days after inspection unless a longer time period is necessary due to lab analysis |
| 11. | Copies of all compliance inspection reports and data transmittal letters to all other permittees. | Upon written request |
| 12. | For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA Guidance (see Section 1) | Quarterly, as specified in 40 CFR 123.45(c) and in the Compliance Assurance Agreement |
| 13. | For minor dischargers, an annual non-compliance report as specified in 40 CFR 123.45(b) | Within 60 days of the end of the calendar year as specified in 40 CFR 123.45(c) |
| 14. | Copies of all enforcement actions against NPDES violators (including notices of violation, administrative orders, and penalties) | As issued |
| 15. | Copy of pretreatment inspection reports on POTWs. | As performed |
| 16. | Number of industrial user inspection reports completed | As requested |
| 17. | Copies of Discharge Monitoring Report (DMR's) and noncompliance notification from major permittees | Within 30 days of receipt, until such time as the PCS interface is, in EPA's opinion, providing necessary and accurate information to PCS. |

B. The EPA shall transmit the following information to the State:

<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.	All EPA compliance inspection reports and data;	Within 30 days of inspection

4. Copies of all EPA enforcement actions against NPDES violators (including notice of violation, administrative orders and penalties). As issued
5. A review of and report on the State's administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits. As performed
6. Up-to-date Federal Facility permit applications and permit. As issued
7. Permit information listed in A above for Federal Facilities which Ecology will use for Section 401 of Clean Water Act (State Certification). As performed

C. The State shall transmit a copy of every issued NPDES permit to each affected State no later than 30 days after its issuance.

Section VII. Program Review

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

1. Review the information submitted by Ecology;
2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and PCS data input processes;
3. Examine the files and documents at Ecology regarding selected facilities to determine: a) whether permits are processed and issued consistent with federal requirements; b) whether Ecology is able to discover permit violations when they occur; c) whether Ecology reviews are timely; and d) whether Ecology selection of enforcement actions is appropriate and effective. EPA shall notify Ecology in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems. EPA need not reveal to Ecology in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;
4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;
5. When appropriate, hold public hearings on Ecology's NPDES program; and
6. Review Ecology's public participation policies, practices and procedures.

B. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulations, directive, or form which has been approved by EPA; and prior to the adoption of any new statute, regulation, directive or form, Ecology shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see, 40 CFR 123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).

C. If an amendment, rescission, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the Washington legislature or a court, Ecology 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 alternate test method to those specified in 40 CFR Part 136 as required for NPDES permitting, Ecology will obtain the approval of the Regional Administrator.

E. Ecology will seek such legislation, adopt such regulations, provide Attorney General opinions, and take such further actions which may be necessary to preserve and maintain any compliance with NPDES Program requirements.

Section VIII. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Sections 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, 504, or other sections of the Act (33 U.S.C. §1251 et. seq.).

Section IX. Independent State Powers

Nothing in this MOA will be construed to limit the authority of Ecology or the State of Washington to adopt or enforce any requirement that is more stringent than those required under federal law, or to operate a program that is more extensive in coverage or in scope than required by federal law.

Section X. Computations of Time

A. In computing any period of time prescribed by this MOA the day from which the designated period of time begins to run will not be included. The last day of the period will 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 will be excluded in the computation.

B. For the purpose of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review will not commence until received by EPA. EPA will notify Ecology in writing of the date of receipt.

Section XI. Modification

This MOA will take effect immediately upon approval by the Regional Administrator. Either Ecology or EPA may initiate action to modify this MOA at any time. If EPA or the Administrator of EPA determines that any modification to the MOA initiated by Ecology does not conform to the requirements of §402(b) of the CWA, or to the requirements of 40 CFR Parts 122-125 or any other applicable Federal regulation, as amended, the Regional Administrator or Administrator of EPA will notify Ecology in writing of any proposed revision, or modifications which must be in this agreement. Any proposed amendments or revisions must be put in writing and signed by Ecology and the Regional Administrator, with the prior concurrence of the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water.

Section XII. Other Optional Provisions

1. Special toxics programs

Ecology agrees to integrate toxic controls, in accordance with the 1987 Clean Water Act Amendments, into its NPDES permits. Specific goals for toxic reduction will be negotiated each year in the SEA.

Section XIII. Federal Facilities

Federal Facility authority has not been and is not, at this time, being delegated to the Washington Department of Ecology. Ecology recognizes that EPA considers this to be a program deficiency. The Department of Ecology, therefore, agrees to study the feasibility of seeking delegation of Federal Facilities in FY 90.

Section XIV. Indian Issues

The EPA has determined that Federal Law and policy preclude the agency from delegating its implementation and enforcement authority over Indian lands to a state except where Congress has expressly authorized such delegation. There is no such express authorization relevant to this agreement. In contrast to the position taken by EPA, the State of Washington has determined that EPA delegated responsibility for NPDES on Indian reservations in the original NPDES delegation MOA in 1973. Further, the state has determined that its own statutes and regulations provide jurisdiction which is parallel to, but independent of Federal authority.

Notwithstanding the different positions outlined above, the two agencies agree herein that EPA will retain its regulatory and program jurisdiction over Indian lands.

This agreement does not preclude Ecology from entering into cooperative arrangements, or MOAs, with Indian Tribes allowing the state to carry out various Federal water quality regulatory functions on reservations.

EPA and Ecology agree to attempt to avoid duplicative regulatory activities and to seek efficient means for achieving their related objectives.

The Department of Ecology agrees to give EPA the opportunity to copy the files for all dischargers on Indian lands.

EPA agrees to have Ecology review and comment on draft NPDES permits issued for facilities on Indian lands.

In witness whereof, the parties execute this agreement.

FOR WASHINGTON. DEPARTMENT OF ECOLOGY:

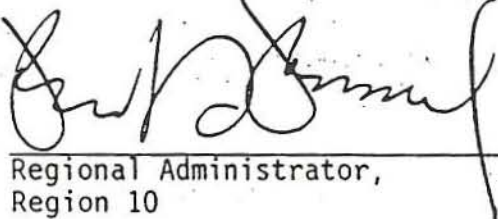


Director
Washington Department of Ecology



(Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Regional Administrator,
Region 10

JAN 09 1990

(Date)