

THE DEPARTMENT OF THE ENVIRONMENT  
STATE OF MARYLAND  
AND THE  
REGIONAL ADMINISTRATOR, REGION III  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SECTION I. GENERAL POLICIES

A. Purpose

This Memorandum of Agreement (hereinafter MOA or Agreement) establishes policies, responsibilities and procedures, and defines the manner in which the National Pollutant Discharge Elimination System (hereinafter NPDES) Permit Program will be operated by the Department of the Environment for the State of Maryland (hereinafter MDE), subject to review by the Regional Administrator, United States Environmental Protection Agency, Region III (hereinafter EPA).

B. Basis of Agreement

This MOA replaces the Memorandum of Agreement between MDE and EPA approved September 5, 1974. All additional agreements between MDE and EPA are subject to review by the Regional Administrator of EPA (hereinafter Regional Administrator), and the Secretary of the Maryland Department of the Environment (hereinafter Secretary). If the Regional Administrator determines that any provision of any such agreement does not conform to the requirements of Section 402(b) of the Federal Clean Water Act, 33 USC §1251 et. seq., as amended (hereinafter CWA), or the requirements of 40 CFR Parts 122-125,403, or other applicable federal regulations, as amended, the Regional Administrator shall notify the Secretary of any revisions or modifications which must be in such agreements. EPA may review the MDE's administration of its permit program to assure that such administration is consistent with this MOA, the State 106 Program Plan, and all applicable laws, regulations and policies.

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 Enforcement Strategy (SES). This MOA, the State 106 Program Plan, SES, and any other State/EPA agreement regarding the NPDES Program shall be consistent. However, the basic requirements of this MOA shall override any other State/EPA agreement as required by 40 CFR §123.24(c).

The applicable regulations of law relating to this MOA are the Code of Maryland Regulations 26.08.01-.04 adopted pursuant to the provisions of Title 9 of the Environment Article Annotated Code of Maryland and 40 CFR Parts 122, 123, 125, 403 and other relevant federal regulations prepared pursuant to the authority contained in Section 301(a) of the CWA. The terms used in this MOA have the same meaning as in 40 CFR §122.2. It is recognized that the Clean Water Act (33 U.S.C. Sec. 1251 et seq.) allows for the establishment of State Discharge Standards more stringent than those set by Federal law.

### C. Cooperation in Implementation

Adequate implementation of both Maryland statutes and regulations, and the CWA and implementing regulations will require a high degree of cooperation between the MDE and EPA. The Secretary and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination in a partnership to assure successful administration of the NPDES Program. In this partnership, EPA will provide MDE on a continuing basis, technical and other assistance on permit matters as requested. As stated in the CWA, the primary responsibility and right to prevent, reduce, and eliminate pollution rests with the State, provided that the State's program also promotes and fulfills Federal objectives and requirements of the CWA, implementing regulations and policies.

## SECTION II. MDE/EPA RESPONSIBILITIES

### A. MDE RESPONSIBILITIES

In accordance with the priorities and procedures established in this Agreement, and in the annual State program plan, the MDE will:

1. Create and maintain the legal capability (including State regulations) and the resources required to carry out all aspects of the NPDES program. MDE and EPA will identify resource commitments in the annual State 106 Program Plan.

2. Administer the NPDES Permit Program to include the issuance, modification, reissuance, compliance monitoring, and enforcement of all permits in the State, including permits covering Federal facilities, general permits (when approved by EPA), aquaculture projects (pursuant to Section 318 of the CWA), and discharges resulting from the disposal of municipal sewage sludge (pursuant to Section 405(a) of the CWA), as well as implementing pretreatment priorities for oversight of POTW's permit issuance and compliance monitoring. Enforcement of permits as established in this MOA shall be further delineated in the annual State Program Plan prepared pursuant to Section 106 of the CWA. If requested by either party, meetings will be scheduled at reasonable intervals between the MDE and EPA to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the MDE NPDES Permit Program.

3. 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.

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

5. Maintain a program of timely and appropriate enforcement action in accordance with the CWA and with the provisions of this Agreement.

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 regulations.

8. 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. These records are to be maintained in accordance with an acceptable retention schedule. Such files must include, at a minimum, copies of:

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

9. 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 MDE shall submit specific information to the Regional Administrator and allow access to files necessary for evaluating MDE's administration of the NPDES Program.

## B. EPA RESPONSIBILITIES

1. EPA commits to funding MDE, to the extent funds are available, to support NPDES related activities, considering MDE's compliance with this Agreement, and other specific agreements between MDE and EPA, as well as MDE's compliance with EPA regulations and policies.

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

- o interpretation of Effluent Limitations Guidelines (ELG) regulations;
- o development of technology-based effluent requirements and related "best management practices" which include the use of "best professional judgment" and
- o processing permit applications and preparing draft permits.

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

- o EPA contractor reports, draft and final EPA development documents, and proposed and final ELG regulations for various industry categories;
- o settlement agreements between EPA and litigants which concern the interpretation or modification of ELG regulations for various industry categories and
- o 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 MDE with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the MDE informed of the development of NPDES program policy statements, strategies and related guidance, and provide for MDE input where and 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 part of its assessment, consider among other things, review of permits, reports, and enforcement actions submitted consistency with the CWA by the MDE. EPA may

also consider, as part of its assessment, comments from permittees, the public, and federal and local agencies concerning the MDE's administration of NPDES. Any such comments considered by EPA will be brought to the attention of the MDE by written correspondence if the commenting party has not previously communicated this comment to the MDE.

### C. CONFIDENTIALITY

Under Section 402 of the CWA, NPDES permits and permit applications must be made available to the public. Section 308 of the CWA provides that effluent data related to NPDES permits also must be made available to the public. Any and all information obtained or used by the MDE under its NPDES Permit Program shall be made available to EPA upon request. If the information has been submitted to the MDE under a claim of confidentiality, the MDE, in providing such confidential information to EPA, will inform EPA of such claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B and 40 CFR §122.7.

### SECTION III. PERMIT REVIEW AND ISSUANCE

The MDE is responsible for expeditiously drafting, circulating, issuing, modifying, reissuing, and terminating NPDES permits, and shall do so in accordance with 40 CFR Sections 122 to 125, and any other applicable regulations.

Expiring NPDES permits shall be reissued on or before their date of expiration; and if such timely reissuance is not possible, MDE will reissue those permits as expeditiously as possible. In no event will permits, administratively continued beyond their expiration date, be modified or revised.

Upon receipt of a completed permit application, the MDE will enter all required information into the State Consolidated Waste Management Information System (CWMIS), which is integrated with PCS. MDE will be responsible for maintaining this system and insuring that this data and the data required in accordance with the Water Enforcement National Data Base (WENDB) is maintained. The MDE will enter this information within the approved times.

A. EPA REVIEW OF DRAFT NPDES PERMITS

1. For draft NPDES permits not waived by EPA, the MDE shall consult with the Regional Administrator prior to issuance of public notice in connection with the development of draft permits in order to ensure that permits will comply with Federal guidelines and requirements. The MDE shall transmit to the Regional Administrator appropriate portions of working documents in connection with such consultation. In the case of development of draft permits for new sources, there shall be continuing coordination between the MDE and EPA throughout the permitting process.

2. Unless otherwise waived, EPA will review all draft permits. The MDE shall transmit to the Regional Administrator (and, in the case of general permits for other than separate storm sewers, to the U.S.EPA, Director, Office of Water Enforcement and Permits) a copy of each draft NPDES permit, accompanying fact sheet or statement of basis. In the case of draft permits for possible new sources under Section 306 of the CWA, the MDE shall submit a copy of its findings as to whether the source is a new or an existing source with the draft permit.

3. Except for general permits, the Regional Administrator shall have 30 days to comment upon, object to, or make recommendations to the draft permit in accordance with 40 CFR §123.44. The time for EPA review shall be extended up to 90 days upon receipt of an EPA general objection or upon request of the Regional Administrator. EPA will send to MDE written agreement, comments or objections to each draft permit, including a statement of the reasons for the comment 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. Whenever EPA files a general objection to a draft permit or the Regional Administrator requests an extension within 30 days, the Regional Administrator shall have up to 90 days from receipt of the draft permit to supply the specific grounds for objections, and the terms and conditions which should be included in the permit.

If the information supplied by the MDE is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, the Regional Administrator may request the MDE to transmit the complete record (or portion thereof) of the MDE'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 for EPA review (90 days) shall recommence upon receipt of the requested information.

4. In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by this MOA for general comments, objections or recommendations. The EPA Director, Office of Water Enforcement and Permits may comment upon, object to, or make recommendations with respect to proposed general permits, except those of separate storm sewers, on EPA's behalf. General permits authority will be assumed by MDE when their program submission is approved by EPA.

5. If (a) the proposed final permit does not differ from the draft permit defined in the public notice, (b) EPA has not objected to such draft permit, and (c) significant public comments have not been made, the MDE may issue the permit without further review by EPA. In all other cases, the MDE will send one copy of the proposed final permit and recommendations of any other affected State agency and copies of written comments and hearing records, including comments under 40 CFR 124.17. The EPA/Regional Water Management Division Director will, within 30 days after receipt of the proposed final permit, notify the MDE 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 30 day review period in accordance with 40 CFR §123.44(b)(2) recommendations.

6. 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 MDE 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. MDE has the right to request a public 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 objections(s) (or 30 days following a public hearing on the objection(s) if one is held), EPA may issue the permit as authorized under 402(d) of the CWA and 40 CFR §123.44.

B. NEW SOURCE PERMITS

In the case of development of draft permits for new sources, there shall be continuing coordination between the MDE and EPA throughout the permitting process. The coordination will include the MDE keeping EPA informed of important issues relating to the development of the permit and EPA assisting the MDE, when requested, in assessing the impact of the new source on the environment.

C. WAIVER-OF-PERMIT REVIEW BY EPA

1. The Regional Administrator waives the right to comment on or object to draft permits and final permits for discharges or proposed discharges except as follows:

- a. Discharges which may affect the waters of another State.
- b. Discharges proposed to be regulated by general permits.
- c. Discharges from publicly-owned treatment works (POTWs) required to develop a pretreatment program or with a daily average discharge exceeding one million gallons.
- d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons.
- e. Discharges from any major discharger.
- 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, except discharges of non-process waste water and
- h. Discharges into the territorial sea or contiguous zone.

The Regional Administrator retains the right, as provided in 40 CFR §123.24(e), to terminate the foregoing waiver, in whole or in part, with respect to any discharger at any time by sending the MDE written notice of termination.



2. The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal or State laws, rules, regulations, policies, or guidelines. This waiver also shall not be construed to relinquish the right of the Regional Administrator to petition the MDE for review of any action or inaction because of violation of Federal or State laws, regulations, rules, policies, or guidelines.

3. The foregoing also does not include waiver of receipt of complete copies of applications, copies of all final permits issued or any notices required under Section VI of this Agreement.

4. The MDE shall immediately transmit a copy of every NPDES permit permit Regional Administrator and each State whose waters may be affected, as issued.

#### D. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE OF PERMITS

Except as waived above in paragraph C.1., MDE shall notify EPA whenever it intends to terminate an issued NPDES permit. In addition, except as waived above, MDE shall transmit a copy of any permit which it proposes to modify, revoke or reissue to EPA with the proposed changes clearly identified. The procedures set forth in paragraphs A.2. through A.6. shall be followed with respect to modifications of NPDES permits by the MDE and each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for a modification to any permit for which the right to review the original permit was waived unless the modification would put the permit in one of the categories in paragraph C.1..

#### E. ADMINISTRATIVE OR COURT ACTION

If the terms of any permit, including any permit for which review has been waived pursuant to paragraph C.1. above, are affected in any manner by administrative or court action, the MDE will notify the Regional Administrator and shall immediately transmit a copy of such permit to the Regional Administrator with the changes clearly marked. The MDE shall allow the Regional Administrator 90 days to make written objection to such changed permit pursuant to Section 402(d)(2) of the CWA.

#### F. VARIANCES

The MDE shall conduct an initial review of all requests for fundamentally different factors variances (FDF's), 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, the MDE may deny or approve the request. Prior to granting or denying a 301(k) variance, the MDE shall consult with the Regional Administrator. A copy of the determination shall be sent to the requestor and EPA.

2. With regard to FDF's, 301(c) and (g) variances, and 302 modifications, the MDE may determine to deny the request, and such determination shall be forwarded to the requestor and to EPA. If the MDE determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to EPA Regional Water Management Division Director. The MDE may transmit to the EPA Regional Water Management Division Director a variance request without recommendation. If EPA denies a variance request, the MDE shall so notify the requestor. If EPA approves a variance request, the MDE will prepare a draft permit addressing the variance.

#### G. 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 duplication fees.

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

3. All draft general permits and major NPDES permits shall be publicly noticed in a daily or weekly newspaper within the area affected by the activity in accordance with 40 CFR §124.10(c)(2)(i). Requests for approval of Pretreatment Programs will be publicly noticed in accordance with 40 CFR §403.11.

#### H. MAJOR DISCHARGERS LIST

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

#### SECTION IV. COMPLIANCE AND ENFORCEMENT

The MDE agrees to maintain a vigorous enforcement program, including a program to assess compliance by dischargers and to take timely and appropriate enforcement action as determined by the State, in every case where such action is warranted. Discharges endangering the public health shall receive immediate and paramount attention.

## A. Compliance Monitoring

The MDE 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 and pretreatment requirements. For purposes of this MOA the term "compliance monitoring" is a generic term meant to cover all activities taken by the MDE to ascertain a permittee's compliance status. Using this definition the MDE's monitoring program should consist of two main activities:

1. Compliance Review. The MDE 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, approved pretreatment program, or court order.

The MDE shall operate a system to determine if:

- a. the self-monitoring reports required by permit are submitted;
- b. the submitted reports are complete and accurate and
- c. the permit conditions and pretreatment requirements are met.

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

The MDE shall initiate appropriate enforcement as required by State law and regulation when performance is not achieved or when reports are not received. In the case of violation by a major discharger the MDE shall initiate an appropriate enforcement action within 30 days from the date such report was or should have been received by the MDE. Priorities for reviewing these reports and for initiating enforcement actions will be specified in procedures outlined in the SEA.

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

The MDE and the Regional Administrator will develop lists of major permittees to be the subject of MDE compliance inspections, pursuant to a neutral inspection scheme consistent with the annual State 106 Program Plan. The list may be modified with the concurrence of both parties. The MDE shall also furnish an estimate of the number of other compliance inspections to be performed during the year. The MDE will notify EPA at least one week in advance, if feasible, in order to give EPA an opportunity to participate in inspections performed by the MDE.

EPA or the MDE 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 MDE and may request the MDE to conduct those compliance inspections. EPA retains the right to perform compliance inspections at any time of any permittee in the State, but will notify the MDE at least one week in advance, if feasible, in order to give the MDE an opportunity to participate and will keep the MDE informed of its plans and results.

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

The MDE shall also be responsible for entering all inspection data into CWMIS which is integrated with the PCS and WENDB (if the MDE has the capability to do so) and preparing a list of all non-complying major permittees in accordance with 40 CFR §123.45.

Reports on compliance inspections for major permittees shall be available for review by the MDE or the Regional Administrator, as appropriate, within 30 days of the date of receipt of the analytical results. The MDE 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 MDE shall initiate timely and appropriate enforcement action within 60 days of receipt of the analytical results, but not more than 90 days from the date of the inspection(s). Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures developed by the MDE.

The MDE shall conduct the following types of compliance inspections, the schedule and frequency of which will be established in accordance with the State 106 Program Plan.

a. Compliance Evaluation Inspection (CEI)

A CEI is non-sampling 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 walkthrough evaluations of waste source and wastewater treatment facilities, and visual observation of effluents, receiving waters, etc. All CEI's shall be performed in accordance with the NPDES Compliance Evaluation Inspection Manual (U. S. EPA Office of Enforcement, 1976, updated 1980).

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.

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 MDE shall perform CSIs in accordance with NPDES Compliance Sampling Inspection Manual (U. S. EPA Office of Enforcement, 1977).

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 and/or chronic toxicity bioassay techniques. This inspection includes the same objectives and tasks as a CEI. The MDE shall perform CBIs in accordance with the appropriate section of Chapter 7 of the NPDES Inspection Manual (U. S. EPA Office of Water Enforcement, January, 1988).

3. Information Requests

Whenever either party requests information concerning a specific discharger and the requested information is available from the files, that information will be provided within a reasonable time.

B. ACTION AGAINST VIOLATORS

1. The MDE is responsible for taking timely and appropriate enforcement action as determined by the State against persons in violation of pretreatment requirements, compliance schedules, effluent limitations, reporting requirements, other permit conditions, and other NPDES program requirements. This includes violations detected by State or Federal Surveys.

2. The MDE shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations. If EPA determines that the MDE 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 the MDE. This notification shall be made either at the periodic enforcement meetings or by written communication. Such notifications shall not be required when EPA is exercising its emergency power under Section 504 of the CWA, or for violators which continue to be in violation for two(2) or more quarters.

3. The MDE understands the spirit of the EPA Penalty Policy as established in the Memorandum of the Assistant Administrator for Enforcement dated August 28, 1987 and an addendum dated August 28, 1987. The MDE will consider penalties in NPDES enforcement actions when appropriate.

4. The MDE shall immediately notify the Regional Administrator by telephone, or otherwise, of any situation determined by the State to pose 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.

#### V. PRETREATMENT

This section defines MDE and EPA responsibilities in carrying out the establishment and enforcement of National Pretreatment Standards (NPS) and local limits for new and existing sources under Section 307 and 402(b) of the CWA.

##### A. Basic Program

1. The MDE has primary responsibility for ensuring, or requiring POTWS to ensure:

- a. Enforcement against discharges prohibited by 40 CFR §403.5.
- b. Application and enforcement of any NPS established by the Administrator in accordance with Section 307(b) and (c) of the CWA.
- c. Review, approval, or denial and oversight of pretreatment programs in accordance with the procedures outlined in 40 CFR Section 403.8, 403.9, and 403.11.
- d. Requirement of a pretreatment program (as provided for in 40 CFR Sections 403.8 and 402(b)(8) of the CWA) as a condition of the NPDES permits issued to POTWS, where appropriate:
- e. Review and approval (subject to EPA's ruling) or denial of modifications of categorical NPS to reflect removal of pollutants by a POTW in accordance with the procedures outlined in 40 CFR Sections 403.7, 403.9 and 402.11 and enforcement of related conditions in the POTW's permit.
- f. That POTW's develop and enforce local limits as set forth in 40 CFR §403.5(c) and
- g. Submittal of industrial user reports as outlined in 40 CFR §403.12 to POTW's and to MDE for IUs in non-pretreatment cities.

The MDE will apply and enforce all other applicable pretreatment regulations as required in 40 CFR Part 403. EPA will overview MDE pretreatment program operations to insure consistency with 40 CFR Part 403 regulations and this agreement.

2. The MDE shall carry out inspection, surveillance, and monitoring procedures which will determine (independent of information supplied by the POTW) compliance or noncompliance by the POTW with pretreatment requirements of 40 CFR Part 403 and conditions incorporated into its permit.

The MDE will also carry out inspection, surveillance, and monitoring procedures which will determine (independent of information supplied by the Industrial User (IU)) whether the IU is in compliance with the pretreatment standards. The number of inspections to determine compliance shall be consistent with MDE resources and shall be agreed upon as part of the annual Section 106 Program Plan process.

3. Upon request, copies of all notices received by the MDE from POTW's that relate to a new introduction of pollutants or changes in the volume or character of pollutants, will be provided to EPA.

B. Section 403.6 NPS Categorical Standards

The MDE shall review requests for determinations of whether the IU does or does not fall within a particular industrial category or subcategory. The MDE will make a written response to each request stating the reasons for the determination. The MDE shall then forward its findings, together with a copy of the request and any necessary supporting information, to the EPA Region III, Permits Enforcement Branch for a final determination. If EPA does not modify the MDE decision within 60 days after receipt thereof, the MDE finding is final. A copy of the final determination shall be sent to the industrial user, POTW, and MDE.

C. Section 403.7 Removal Credits and Section 403.9 POTW Pretreatment Program Approvals

The MDE shall review POTW applications to revise discharge limits from users who are (or may in the future be) subject to categorical NPS, and POTW requests for approval of pretreatment programs. The MDE shall submit its findings together with the application and supporting information to EPA Region III, Water Management Division Director for review. No POTW pretreatment program or request for revised discharge limits shall be approved by the MDE if the EPA Regional Water Management Division Director objects in writing to the approval of such submission in accordance with 40 CFR §403.11(d).

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

The MDE shall review all requests for a fundamentally-different-factors variance from the categorical pretreatment standard applicable to an industrial user. If the MDE determines to deny the request, this determination with reasons for denial shall be forwarded to the industrial user and a copy forwarded to the POTW and EPA. If the MDE determines that fundamentally different factors do exist: the request

and supporting information for the finding, with recommendation for approval shall be sent to the EPA Regional Administrator for final action. The MDE may deny, but not approve and implement the fundamentally-different-factors variance request until written approval is received from the Regional Administrator. If the Regional Administrator finds different factors do exist, a variance reflecting this determination shall be granted. If the EPA Regional Administrator determines that fundamentally different factors do not exist, the request shall be denied and the MDE shall so notify the applicant and provide reasons for the denial in writing.

#### E. Net/Gross Adjustments To Categorical Standards

If the MDE receives a request for a net/gross adjustment of applicable categorical standards in accordance with 40 CFR §403.15, the MDE shall forward the application to the Water Management Division Director for a determination. Once this determination has been made the Water Management Division Director shall notify the MDE, the applicant and the applicant's POTW and provide reasons for the determination and any additional monitoring requirements the Water Management Division Director deems necessary, in writing.

#### F. Miscellaneous

The MDE will submit to the Water Management Division Director a list of POTWs which are required to develop their own pretreatment program or are under investigation by MDE for the possible need of a local pretreatment program. The MDE will document its reasons for all deletions from this list. Before deleting any POTW with a design flow greater than 5 million gallons per day (MGD), the MDE will obtain an industrial survey from the POTW and determine (1) that the POTW is not experiencing pass through or interference problems, (2) there are no industrial users of the POTW that are subject either to categorical standards or specific limits developed pursuant to 40 CFR §403.5(c). The MDE will document all such determinations and provide copies to EPA. For deletions of POTWs with flows less than 5 mgd, the MDE will first determine, with appropriate documentation, that the POTW is not is not experiencing treatment process upsets, violations of POTW effluent limitations, or contamination of municipal sludge due to industrial users. The MDE will also maintain documentation on the total design flow and the nature and amount of industrial wastes received by the POTW.

The MDE and EPA will communicate, through the §106 planning process, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The annual State 106 Program Plan will contain, at a minimum, the following: (1) a list of permits to be issued by the MDE to POTWs and Industrial Users subject to pretreatment requirements; and (2) a list of POTWs and Industrial Users to be audited or inspected.



## G. 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 Federal regulations.

## VI. REPORTING AND TRANSMITTAL OF INFORMATION

### A. The MDE will submit the following to EPA:

<u>Item</u>	<u>Description</u>	<u>Frequency of Submission</u>
1.	A copy of all completed 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.	A copy of all issued, proposed (in accordance with Section III.A.5), and modified NPDES permits.	As issued.
4.	A list of major facilities scheduled for compliance inspections.	With submission of Section 106 (CWA) plan.
5.	Proposed revisions to the scheduled compliance inspections	As needed.
6.	A list of compliance inspections performed during the previous quarter.	Quarterly.
7.	Copies of all compliance inspection reports and data and transmittal letters to all major permittees.	Within 30 days of receipt of the analytical results.
8.	Copies of all compliance inspection reports and transmittal letters to all minor permittees.	As requested.

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|-----|---|---|
| 9.  | For major dischargers and all pre-treatment POTWs, a quarterly noncompliance report as specified in 40 CFR §123.45(a) and further qualified in EPA Guidance; a semi-annual statistical summary report as specified in §123.45(b). | Quarterly, as specified in 40 CFR §123.45(c).   |
| 10. | For minor dischargers, an annual noncompliance 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).<br>As issued. |
| 11. | Copies of all enforcement actions against NPDES and pretreatment violators including notices of violation, administrative orders, initial determinations, and referrals to the Attorney General).                                 |   |
| 12. | Copies of correspondences required to carry out EPA's oversight of MDE's pretreatment program.  | As issued or received.  |
| 13. | Copies of Discharge Monitoring Report (DMR's) and non-compliance notification from major permittees.  | Within 10 days of receipt.  |
| 14. | Other information as part of the State 106 program plan.  | As negotiated.  |

B. EPA shall transmit the following information to the MDE:

<u>Item</u>	<u>Description</u>	<u>Submission</u>
1.	A list of compliance inspections EPA intends to conduct jointly with the MDE 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 receipts of the analytical results.

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|----|---|--------------------------------------|
| 4. | Copies of all EPA enforcement actions against NPDES violators (including notices of violation, administrative orders, and referrals to the U. S. Dept. of Justice). | As performed.                        |
| 5. | A review of the MDE administration of the NPDES Permit Program based on MDE reports, meetings with MDE officials, and file audits.                                  | Within 60 days of conducting review. |
| 6. | Other information as part of the State 106 program plan.  | As negotiated.                       |

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

#### VII. PROGRAM REVIEW

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

1. Review the information submitted from the MDE:
2. Meet with MDE 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 MDE regarding selected facilities to determine: (a) whether permits are processed and issued consistent with Federal requirements; (b) whether the MDE is able to discover permit violations when they occur; (c) whether MDE reviews are timely; and (d) whether MDE selection of enforcement actions is appropriate and effective. EPA shall notify the MDE in advance of any examination under this paragraph so that MDE officials will be available to discuss individual circumstances and problems. EPA need not reveal to the MDE in advance the files and documents to be examined.
4. When appropriate, hold public hearings on the MDE's operation of the NPDES program:
5. Review, periodically, the legal authorities upon which the Maryland program is based, including State statutes and regulations and
6. Review the MDE's public participation policies, practices and procedures.

B. Prior to taking any action to effect any substantial amendment, rescission or repeal of any statute, regulation, directive, or form which the MDE Secretary has submitted to the Regional Administrator or agreed to make use of in connection with approval of the MDE's program, the MDE Secretary shall consult with the Regional Administrator. Before the agreement may be modified, however, any proposed change to, or the adoption of, any new statute, regulation, directive or form, the MDE shall notify the Regional Administrator and shall transmit the text of any such change or such new form to the Regional Administrator. (40 CFR §123.62 provides that the change may entail a program revision, which will not become effective until approved by the Administrator).

C. If an amendment, recession, or repeal of any statute, regulation, directive, or form described in paragraph (B) above shall occur for any reason, including action by the State of Maryland legislature or a court, the MDE 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 MDE shall obtain the approval of the Regional Administrator.

E. The MDE 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 requirements.

#### VIII. MODIFICATION

This MOA shall take effect immediately upon approval by the Regional Administrator. Either the MDE 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 the MDE does not conform to the requirements of Section 402(b) of the CWA, or the requirements of 40 CFR Parts 122-125 or any other applicable federal regulations, as amended, the Regional Administrator or Administrator of EPA shall notify the MDE in writing of any proposed revision or modifications which must be in this Agreement. Any proposed amendments or revisions must be in writing and signed by the MDE 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.

IX. INDEPENDENT EPA POWERS

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.

X. COMPUTATION OF TIME

In computing any period of time prescribed by this MOA the day from which the designated period to time 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 received by EPA.

XI. CREATION OF RIGHTS

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

In witness whereof, the parties have executed this Agreement the day and year last below written.

Martin W. Walsh, Jr.  
Secretary, Maryland Department of the  
Environment

Mar 28, 84  
Date

Ed B. Ercin  
Regional Administrator, Region III  
United States Environmental  
Protection Agency

5/18/89  
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

**SUBJECT:** New Memorandum of Agreement with  
the State of Maryland for NPDES

**DATE:**

APR 13 1989

**FROM:** Alvin R. Morris, Director *Joseph Petrucci*  
Water Management Division (3WM00)

**TO:** Edwin B. Erickson  
Regional Administrator (3RA00)

Attached are two copies of the recently renegotiated MOA with Maryland MDE concerning the NPDES Program. This document replaces the MOA dated 1974 which was signed at the time Maryland's NPDES authority was approved.

This agreement covers the entire spectrum of NPDES topics including permit issuance, enforcement, pretreatment and general permits. The memorandum will take effect for general permits when the State's submission is approved by EPA. It also reflects all the current regulations and issues at this point in time.

The Permits Enforcement Branch, Office of Regional Counsel and Headquarters Office of Water Enforcement and Permits have made significant contributions to finalize this agreement with MDE. I believe this document is fair and equitable to both MDE and Region III and will carry the Agency's objectives into the 1990s. I therefore recommend that you sign both of the attached copies at your earliest convenience.

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

MAY 18 1989

Honorable Martin W. Walsh, Jr.  
Secretary, Maryland Department of  
the Environment  
2500 Broening Highway  
Baltimore, Maryland 21224

Dear Mr. Walsh:

I am pleased to return to you a signed original copy of the new Memorandum of Agreement (MOA) between Maryland Department of the Environment and Region III concerning the National Pollutant Discharge Elimination System (NPDES).

With my signature today, this agreement becomes effective and replaces the MOA signed at the time the program was delegated to Maryland in 1974. It forms the basis for the working relationship of our respective organizations in the common goal of controlling the discharge of pollutants to the surface water of the State of Maryland. Further, it defines the roles and obligations of both EPA and MDE in order to maintain efficient program operation into the 1990's. Although the MOA covers general permits, it will not take effect as to general permits until the State's application for delegation is approved by EPA. This eliminates the necessity of having to modify the MOA to when the State assumes the responsibility for general permits.

I look forward to your continued cooperation on this and other environmental issues in the future.

Sincerely,

Edwin B. Erickson  
Regional Administrator

Enclosure

OCT 01 1991



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

SEP 30 1991

Honorable William Donald Schaefer  
Governor of Maryland  
Annapolis, MD 21404

Dear Governor Schaefer:

It is with great pleasure that I am today approving the State of Maryland's National Pollutant Discharge Elimination System (NPDES) General Permits Program in accordance with 40 CFR Parts 122 and 123. I am also herewith authorizing the State of Maryland to administer the General Permits Program as it applies to municipalities, industries and individuals within the State.

You and the Department of the Environment staff are to be congratulated for the diligent effort put forth in moving to assume administration of this important environmental program. The delegation of the General Permits Program will allow the State to meet the Federal storm water permitting deadlines. The program will also regulate discharges of wastewater which are more appropriately controlled under a general permit rather than by individual NPDES permits, thus saving valuable resources.

The Environmental Protection Agency looks forward to working with you and the Department of the Environment in continuing our efforts toward the prevention and control of water pollution in the State of Maryland.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. T. Erickson".

*for*  
Edwin B. Erickson  
Regional Administrator

cc: Robert Perciasepe, Secretary  
Maryland Department of the Environment