MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY - PERMITS BRANCH
AND
THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL
AND ECOLOGY - NPDES BRANCH

Oversight Reduction of NPDES Permitting Activities

MEMORANDUM OF UNDERSTANDING BETWEEN THE PERMITS BRANCH OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE NPDES BRANCH OF THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY RELATING TO REDUCING AND MINIMIZING OVERVIEW ACTIVITIES WITH RESPECT TO THE ADMINISTRATION OF THE ARKANSAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING PROGRAM

I. INTRODUCTION

This Memorandum of Understanding (hereinafter "MOU"), establishes procedures which will be utilized by both the Arkansas Department of Pollution Control and Ecology's (ADPC&E) NPDES Branch and the U.S. Environmental Protection Agency's (EPA) Permit Branch in the overview of the ADPC&E's National Pollutant Discharge Elimination System (NPDES) permitting program as authorized on November 1, 1986.

II. PURPOSE

As the Environmental Protection Agency strives towards enhancement of its partnership role with the State of Arkansas and the ADPC&E, the Region 6 Permits Branch in conjunction with the ADPC&E's NPDES Branch has established this MOU. The purpose of this MOU is to create a framework for the efficient and effective overview by the EPA's Permits Branch of the ADPC&E's administration of its NPDES permitting program. The goals of this framework are in keeping with the Agency's agenda of

optimizing and maximizing resources to the fullest extend possible yet continuing with the spirit of its overview responsibilities. As a result, the EPA Region 6 Permits Branch and the ADPC&E Permits Branch agree to implement and perform the following:

1. EPA will minimize and reduce real time review of the ADPC&E issued NPDES permits.

2. All minor permits and major power plant permits may be proposed and issued without waiting on an EPA response.

3. ADPC&E may request EPA's review or assistance on any permit.

4. EPA reserves the right to review and object to any permit on a case-by-case basis in accordance with 40 CFR 122.44.

5. Region 6 will normally conduct real time review in only the following classes of NPDES permits:

   a. non-power plant major facilities

   b. general permits

6. EPA Region 6 Permits Branch will meet with ADPC&E in Little Rock on a quarterly basis to provide training, in-depth communication on policies, procedures, program

oversight, current progress and problems and communications. These meetings will be contingent on availability of travel funds and program priorities/staffing.

III. MODIFICATION:

This MOU shall take effect after it is signed by both the Branch Chief of the Permits Branch of the EPA and the NPDES Branch Manager of the ADPC&E. Either person may initiate action at anytime to modify this MOU. Any modifications must be in writing and signed by both parties.

In witness whereof, the parties execute this agreement

FOR THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY - NPDES BRANCH

M Jastrzebski

Marysia Jastrzebski

Manager, NPDES Branch

DATE: 01/27/1995

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PERMITS BRANCH:

Jack V. Ferguson

Chief, Permits Branch

DATE:

MEMORANDUM OF AGREEMENT

BETWEEN THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

AND THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VI

CONCERNING APPROVAL OF THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM

A MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VI, AND THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY ESTABLISHING TERMS, CONDITIONS, AND AGREEMENTS RELEVANT TO THE ADMINISTRATION AND ENFORCEMENT OF THE STATE'S NPDES PROGRAM.

Introduction

This Memorandum of Agreement (hereinafter, MOA), establishes policies, responsibilties and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (hereinafter, NPDES) will be administered by the State of Arkansas and the Arkansas Department of Pollution Control and Ecology (hereinafter, ADPC&E) and reviewed by Region VI of the United States Environmental Protection Agency (hereinafter, EPA). All additional agreements between the ADPC&E and the EPA are subject to review by the Administrator of the U. S. Environmental Protection Agency (hereinafter, the Administrator), and the Director of the Arkansas Department of Pollution Control and Ecology (hereinafter, Director).

This Agreement, and any subsequent written modification hereto, shall take effect after it is signed by the State and approved by the Regional Administrator, with concurrence from the Administrator of EPA. Either the State, Regional Administrator, or Administrator of EPA may initiate action to modify this MOA. Any modification must be in writing, signed by the State and approved by the Regional Administrator, with concurrence from the Administrator of the EPA.

123.44

The EPA has promulgated regulations requiring the development of program elements necessary for State administration of the NPDES permit program. These regulatory requirements can be found at 40 CFR Parts 122, 123, 124 and 125. The requirements for the NPDES permit program were prepared pursuant to the authority contained in Section 304(i)(2) of the Clean Water Act of 1977 (hereinafter referred to as the Federal Act). The requirements for the program were published as final regulations in the Federal Register on April 1, 1983, (48 FR 14153). Various sections of the Federal regulations, in particular 40 CFR †123.24, require the Director of the Arkansas Department of Pollution Control and Ecology and the Regional Administrator of EPA, Region VI, to execute a Memorandum of Agreement setting forth the manner in which State assumption of Section 402 authority is to be undertaken. This document is the required Memorandum of Agreement.

This MOA shall be reviewed jointly at least annually by the State and Regional Administrator during the preparation of the annual State Water Pollution Control Program Plan (hereinafter, "State Program Plan"), as required by Section 106 of the Act. The definitions used in this MOA shall be the same as those found in Title 40, Code of Federal Regulations Parts 122, 123, and 124 (40 CFR Part 122, 123 and 124) promulgated April 1, 1983 and revised as of July 1, 1986. In addition, for the purpose of this MOA the following definitions contained in the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended) also apply:

"Director" in the context of this MOA, refers to the State Director of the Arkansas Department of Pollution Control and Ecology.

"Sewage" means the water-carried waste products from residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals; together with such groundwater infiltration and surface water as may be present.

"Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, mining, manufacturing, trade or business or from the development of any natural resources.

"Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shaving, bark, lime, sand, ashes, offal, oil, tar chemicals and all other substances organic or inorganic not sewage or industrial waste which may be discharged into the waters of the State. "Any wastes" and "pollutants" includes sewage, industrial waste, or other wastes.

"Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the State, or such discharge of any liquid, gaseous or solid substance in any waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Sewer system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage or industrial waste or other wastes to a point of disposal.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

"Disposal system" means a system for disposing of sewage, industrial waste and other wastes, and includes sewer systems and treatment works.

"Waters of the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof.

"Discharge into the waters of the State" means a discharge of any wastes in any manner which, directly or indirectly, permits such wastes to reach any of the waters of the State.

"Person" means the State agency, any municipality, governmental subdivision of the State or the United States, public or private corporation, individual, partnership, association, or other entity.

The purpose of this MOA is to establish a basis upon which EPA, Region VI and ADPC&E shall agree, in accordance with 40 CFR Section 123.24, to implement and perform the following:

I. Transmit pertinent administrative data and forms from the Regional Administrator to the Director;

II. Transfer the administration of existing and future NPDES permits from EPA to ADPC&E;

III. Transmit pertinent administrative data and forms from the Director to the Regional Administrator, Region VI.

IV. Establish procedures for EPA access to ADPC&E and permittee information;

V. Establish provisions specifying classes and categories of permit applications, draft permits, and proposed permits as well as permit modifications, revocations and reissuances that ADPC&E will send to the Regional Administrator for review, comment, and concurrence;

VI. Establish monitoring, recordkeeping, and reporting requirements and procedures by which compliance schedule reports shall be sent to EPA from ADPC&E;

VII. Establish ADPC&E/EPA procedures for permit enforcement;

VIII. Define ADPC&E and EPA responsibilities for establishing and enforcing National Pretreatment Standards; and

IX. Modify the MOA, when needed.

Section II Now

Section I

General Responsibilities

It is recognized that upon program approval by the Regional Administrator, EPA, Region VI (hereinafter referred to as the Regional Administrator) (with concurrence from EPA Headquarters), the sole responsibility for the issuance of NPDES permits in the State of Arkansas shall lie with ADPC&E. ADPC&E shall utilize the state wastewater discharge permits to replace NPDES permits issued by EPA. Based on this approval, the Director shall, under existing State statutes and regulations, process and issue State permits which are consistent and compatible with the Federal and State Acts and any regulations promulgated thereunder. EPA shall transfer existing NPDES permits to ADPC&E for administration in accordance with provisions set forth in Section Two of the MOA. In addition, on the date of program approval, the primary responsibility and right to prevent, reduce and eliminate pollution rests with the State, provided that the State's program for these purposes shall also promote and fulfill federal objectives and requirements.

The Director shall administer the State program consistent with this MOA, the Federal and State Acts, current and future Federal and State regulations, and promulgated effluent guidelines. EPA shall, as part of its statutory overview duty, assure that such administration is consistent with this MOA and all applicable requirements embodied in current regulations, policies, and Federal law. In addition the MOA and 106 annual program grant should be consistent. If the State/EPA Agreement indicates that a change is needed in the MOA, the latter may be amended as provided in Section Eight of this MOA. Any State/EPA Agreement or annual program grant may not overide the basic requirements of this MOA. However, State/EPA Enforcement Agreements signed by the Director,

Arkansas Department of Pollution Control and Ecology and the Regional Administrator of EPA will be used to update this MOA on an annual basis.

The parties agree to maintain a high level of cooperation and coordination between ADPC&E and EPA staff persons in a partnership to assure successful and effective administration of the NPDES program. In this partnership, the Regional Administrator shall provide to the Director, on a continuing basis, assistance on the interpretation and implementation of Federal regulations, policies, and guidelines, including technical matters.

The State will administer NPDES in accordance with Section 402 of the CWA, this Agreement, applicable State legal authority, applicable Federal regulations, policies, and the annual State Program Plan. Permit applications by major dischargers and minor facilities causing water quality problems shall normally receive first priority in all ADPC&E wastewater discharge permitting activities, depending on water quality and public health consideration.

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 future Working Agreements between EPA and ADPC&E negotiated annually as part of the State Program Plan required by Section 106 of the Act. If requested by either party, but at least quarterly, meetings between ADPC&E and EPA shall be scheduled to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the State program.

At least annually, and at the discretion of EPA, the EPA shall prepare and send to Public Notice a status report on the performance of the State's NPDES program.

At a minimum, the report shall address the following: 1) To what extent the State has achieved the commitments established in the annual State Program Plan; 2) The adequacy of the State Program Plan to carry out the responsibilities and policies of the NPDES program.

The Regional Administrator shall assess ADPC&E's administration of the State program on a continuing basis for consistency with the Federal Act, this MOA, and all applicable Federal regulations and policies. This assessment shall generally be accomplished by the review of permits, reports, and enforcement actions submitted by the Director in accordance with this MOA, applicable Federal regulations (including 40 CFR 123.45) and policies, and any Working Agreements, including the annual State Program Plan. In the event EPA determines that elements of this NPDES program are in any way deficient or inconsistent with this MOA, the State Program Plan, applicable regulations, and statutes, EPA may proceed in withdrawing the administration of this program in accordance with Section 402(c)(3) of the Act.

With reference to commitments by ADPC&E under this MOA, whenever the wording of the commitment is that ADPC&E "will" or "should" do certain things such statements mean that the particular activity has already been started and will initially, and on a continuing basis, meet the stated requirements.

Section II

NPDES PROGRAM

A. State Responsibilities

In accordance with the priorities and procedures established in this MOA and the annual State Program Plan, the State of Arkansas will:

1. Create and maintain to the maximum extent possible the legal capability and resources required to carry out all aspects of the NPDES program.

2. Process in a timely manner and issue, reissue, modify or deny NPDES permits for all applicable permittees in Arkansas and require that all point sources in Arkansas be required to apply for and receive an NPDES permit.

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

4. Establish and maintain a program of taking timely and appropriate enforcement action in accordance with the Clean Water Act and National and Regional guidance, as outlined in Section IV of this MOA.

5. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section V of this MOA.

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

- permit application
- issued permit
- public notice and fact sheet or statement of basis, as applicable
- discharge monitoring reports (DMRs) for last 3 years
- all inspection reports
- all enforcement actions
- other pertinent information and correspondence
- non-compliance reports
- construction reports
- logs summarizing violations and actions

All effluent data, permits, and permit applications pertaining to the NPDES program will be made available to the public with no restrictions, and other NPDES data will be made available to the public consistent with 40 CFR 122.7, as adopted in Regulation No. 6.

7. The State will submit to the Regional Administrator the information described in Section VI of this MOA, the State Program Plan and applicable portions of 40 CFR Part 123.

B. EPA Responsibilities

1. EPA will commit, to the maximum extent possible, funding to the State to support this effort. It is recognized that it is the State's responsibility after program approval to run and manage the NPDES Program with or without the assistance of Federal funding.

2. Where no effective guidelines exist for a discharge, EPA is responsible for transmitting to the State technical information to assist in writing permit terms and conditions, for example, contractor reports, draft development documents, and available effluent data from similar facilities. Such information will be provided within 30 days of request by the State.

3. As outlined in Section VII of this MOA, EPA will oversee the State administration of NPDES on a continuing basis for consistency with the CWA, this MOA, the State Program Plan, and all applicable Federal regulations, guidelines, and policies. In addition, EPA may consider as part of its assessment, comments from permittees, the public, and Federal and local agencies concerning the State's administration of NPDES. Any such comments considered by EPA will be brought to the attention of the State by written correspondence, if the commenting party has not previously communicated with the State.

C. Jurisdiction over Permits

Upon the Regional Administrator's approval of the NPDES program, EPA will only retain jurisdiction over permits as stated below. The State will

assume responsibility for NPDES, including any general permits, the conduct of State inspections, and the receipt of self-monitoring reports. Permits for which variances or evidentiary hearings have been requested before the NPDES approval date will be handled by EPA until such requests have been finally resolved. As each request is resolved, EPA will notify the State and transfer jurisdiction of that permit. EPA will make every effort to resolve these issues in a timely manner. Also, current enforcement actions by EPA (a list of which will be agreed upon by EPA and the State) will be continued by EPA after program approval until final resolution on the enforcement actions or until an EPA Administrative Order has been replaced with an adequate State enforcement action and both EPA and the State agree that transfer is appropriate. As each is finalized, EPA will notify the State and transfer jurisdiction of that permit.

B. EPA Responsibilities

1. EPA will commit, to the maximum extent possible, funding to the State to support this effort. It is recognized that it is the State's responsibility after program approval to run and manage the NPDES Program with or without the assistance of Federal funding.

2. Where no effective guidelines exist for a discharge, EPA is responsible for transmitting to the State technical information to assist in writing permit terms and conditions, for example, contractor reports, draft development documents, and available effluent data from similar facilities. Such information will be provided within 30 days of request by the State.

3. As outlined in Section VII of this MOA, EPA will oversee the State administration of NPDES on a continuing basis for consistency with the CWA, this MOA, the State Program Plan, and all applicable Federal regulations, guidelines, and policies. In addition, EPA may consider as part of its assessment, comments from permittees, the public, and Federal and local agencies concerning the State's administration of NPDES. Any such comments considered by EPA will be brought to the attention of the State by written correspondence, if the commenting party has not previously communicated with the State.

C. Jurisdiction over Permits

Upon the Regional Administrator's approval of the NPDES program, EPA will only retain jurisdiction over permits as stated below. The State will

Section III

Permit Review and Issuance

The State is responsible for drafting, providing public notice, issuing, modifying, reissuing, and terminating of permits in accordance with Section II and Section VI of this MOA and 40 CFR Parts 122-125, to the extent applicable to States.

A. Transfer of Files from EPA to State.

1. Upon approval of the State NPDES Program by the Regional Administrator, EPA will immediately deliver to the State all project files for pending permit applications proposed for issuance/reissuance. Project files shall include all relevant information including but not limited to application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all project files are complete prior to delivery to the State.

   If the Director finds that any ADPC&E file is incomplete with respect to any EPA-issued permit where jurisdiction has been transferred to ADPC&E, the Director shall so notify the Regional Administrator, and he/she shall ensure that a copy of the final permit (including all changes, modifications and corrections thereto) or other missing materials shall be furnished to ADPC&E within 60 days of such notification.

2. No later than 30 days after the date of EPA's approval of ADPC&E's NPDES program, the Regional Administrator shall submit to the Director a complete list of all non-filers and potential non-filers known to the Regional Administrator within the State of Arkansas. This list shall include the name and address of the non-filer, any information available which is relative to the non-filers's type of operation, steps taken by the Regional Administrator to obtain NPDES permit application from said non-filer, and the current status of each non-filer.

3. In accordance with a mutually agreed upon schedule, EPA will deliver files for all other permits to the State. Files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all Discharge Monitoring Reports (DMRs), all compliance reports, all enforcement actions, and other pertinent information and correspondence. EPA will ensure all files are complete prior to delivery to the State.

B. Review and Issuance of Permits

1. ADPC&E is responsible for expeditiously drafting, circulating, issuing, modifying, revoking and reissuing, and terminating wastewater discharge permits and shall do so in conformance with 40 CFR 123.25(a). Additionally, the provisions of 40 CFR 123.25(c) shall be strictly adhered to by the State of Arkansas in the administration of the NPDES program.

2. Upon receipt of a permit application, the State will enter into EPA's National Permit Compliance System (PCS), all required information. The State will enter this information within thirty (30) working days of receipt.

3. ADPC&E shall consult with EPA from time to time prior to the issuance of public notices in connection with the development of draft permits, in order to ensure that the permits shall comply with Federal guidelines and requirements. ADPC&E may transmit to EPA appropriate portions of working documents in connection with such consultation.

4. EPA may request, in writing, that the State issue, reissue, or modify a permit. EPA will provide to the State specific reasons why EPA is requesting permitting action. If within six months after the initial request the State has been unable to issue said permit, EPA, at its discretion, will conduct a public hearing to review the facts surrounding the nonissuance of the subject permit.

5. Promptly after the receipt of a completed ADPC&E permit application, ADPC&E will forward a copy of the application to EPA for those categories of permits where EPA has not waived its right of review. In accordance with Section III.A.7., ADPC&E shall transmit to the Regional Administrator for review a copy of the draft permit, the public notice, the statement of basis, and the fact sheet (if required). In accordance with 40 CFR § 123.43(a), when requested by EPA, ADPC&E shall supply EPA with copies of permit applications as well as other documents pertaining to permits for which EPA review has been waived. For all draft

general permits and proposed general permits, the above material shall also be transmitted to the EPA Deputy Assistant Administrator for Water Enforcement or the appropriate official in EPA Headquarters.

6. During the first year of program approval, EPA will, in implementing an effective overview role, review all permit applications, draft permits, and proposed final permits, except as provided in the annual State Program Plan. The annual State Program Plan may provide for EPA to waive certain categories of permit applications, draft permits and proposed final permits, with the following exceptions:

   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 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;

   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; and

   i. POTW's required to have a pretreatment program (40 CFR Part 403).

7. Since EPA has agreed to review draft, rather than proposed permits, references in the federal regulations to "proposed permits" will be treated as though the provision referred to draft permits. Unless otherwise waived in the annual State Program Plan, EPA will review all draft NPDES permits a minimum of forty-five (45) days prior to public notice of the permit action. Upon preparation of a draft permit and forty-five (45) days prior to the public notice date, the State will send the EPA one copy of the public notice, the draft permit, the fact sheet or statement of basis (as appropriate), and any permit rationale prepared for each facility. Each submittal must be accompanied by a new source/new discharger determination (if applicable). Upon receipt of the draft permit and other information specified above, EPA shall promptly review and submit to the State its approval, comments, objections, or recommendations on the draft permit. All comments submitted to the State shall include a statement of the reasons for the comments or objections and the Sections of the CWA or regulations which support them. It is the policy of EPA, Region VI to attempt to process each request for approval within thirty (30) days of receipt. If no comment has been received within the thirty (30) days, the State may proceed with issuance of the public notice. If no comment has been received within ninety (90) days of EPA receipt of the draft permit, the state may assume EPA has no objection to the issuance of the NPDES permit.

8. EPA may make a general objection in the initial time period

by written notice to the Director from the Regional Administrator. Such notice shall include a statement setting forth the grounds for objection to the permit. A request by EPA during the initial time period for more information from ADPC&E constitutes an interim objection to the draft permit. On the date that EPA receives the information necessary to satisfy its query, the initial time period for EPA review recommences. A written request from EPA for additional time to review an individual draft permit submitted during the initial time period shall constitute a general objection. Requests for additional time shall only be made under exceptional circumstances.

9. Whenever EPA files a general objection to a draft permit within the initial time period, the Regional Administrator shall have additional time, but no more than 90 days from the date of receipt of the draft permit, to supply the specific reasons for objections in accordance with 40 CFR 123.44(c) and the actions that must be taken by the Director to eliminate the objections. If the Regional Administrator fails to provide a written objection to a draft permit within the initial time period or fails to provide timely written notice of the specific grounds for objection to a draft permit after making a general objection, EPA shall be deemed to have waived its right to object to permit terms and conditions.

10. In case of draft general permits, EPA shall have 90 days from the date of receipt of the draft general permit to

comment upon, object to or make recommendations with respect to the draft general permit in accordance with 40 CFR 123.43 and 123.44. If EPA fails to provide an objection to a draft general permit within 90 days from the receipt of the draft permit, EPA shall be deemed to have waived its right to object to permit terms and conditions. The Director, Office of Water Enforcement and Permits or the appropriate official in EPA Headquarters may comment upon, object to, or make recommendations with respect to any draft general permits on EPA's behalf.

11. After the public notice period has expired, the ADPC&E shall consider all comments received as a result of the public notice, including those comments from EPA, and may revise the draft permit as it considers appropriate. Public hearings may be held as provided for in 40 CFR 124.12. If a public hearing is held, the ADPC&E shall consider all comments and may revise the draft permit as it considers appropriate, and prepare a proposed final permit. If (a) the proposed final permit is the same as or more stringent than the draft permit submitted to EPA in accordance with Section III.B.(7) of this MOA, and (b) EPA has not objected to such draft permit, and (c) valid and significant public comments have not been made, the State may issue the permit without further review by EPA. In all other cases, the State will send one copy of the proposed final permit and other information to EPA. The EPA will, within thirty (30) working days after receipt of the proposed final permit, notify the State and the permit applicant of any formal

objections authorized under 402(d) of the Act. This notification shall 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, the Regional Administrator shall notify the State 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(c). State requests for a hearing on the objection and the procedure for resolving the objection shall be governed by 40 CFR 123.44.

12. If EPA has a specific objection to a draft or proposed permit and that objection is not resolved within the time limits set forth in 40 CFR 123.44(h), ADPC&E may not issue the permit and exclusive authority to issue passes to EPA.

13. ADPC&E shall provide for transmission by the Director to EPA of a copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permit (except those comments regarding permits for which permit review has also been waived and for which EPA has not otherwise requested receipt), if (1) the Regional Administrator requests this information, or (2) the proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit, or (3)

significant comments objecting to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice. Whenever ADPC&E prepares a written explanation to an affected state explaining the reasons for failure to accept any of its written recommendations, ADPC&E shall transmit a copy of the explanation to the Regional Administrator.

14. If ADPC&E proposes to issue a general permit which is different from a draft general permit reviewed by EPA, if EPA has objected to a draft general permit, or if there is significant public comment on the draft general permit, the State shall transmit the proposed permit to the Regional Administrator. The timing of any objection to the proposed general permit shall be as stated above for a draft general permit. EPA objections to draft or proposed permits shall be governed by 40 CFR 123.44(c) through (i).

15. In accordance with 40 CFR 123.43(a)(3), the Director shall transmit a copy of every issued final permit to EPA no later than 30 days after the issuance of such permit. The Director shall work closely with EPA to ensure that all required information is entered into EPA's computer system.

16. The Director shall notify the Regional Administrator whenever the Director proposes to modify, revoke and reissue, or terminate any permit for those categories of discharges where the Regional Administrator has not waived

the right to review, comment upon or object to the permit. In addition, within 30 days of any final action with respect to a proposed modification, revocation and reissuance, or termination of a permit, the Director shall notify the Regional Administrator of such action. Notification shall include a description of the final action and a copy of the final permit, if necessary. Also, the Director shall notify the Regional Administrator of any final action with regard to a proposed modification, revocation and reissuance, or termination of a permit for those categories of discharges where the Regional Administrator has waived the right to review, comment upon, or object to the permit.

17. For any permit for which EPA has not waived its right of review, ADPC&E will inform the arbiter of any court or administrative appeal action which may affect the terms of a permit that EPA may object to said terms pursuant to Section 402(d)(2) of the Federal Act. If the terms of any permit are affected in any manner by court action or by the final disposition of an administrative appeal, the Director shall promptly transmit to the Regional Administrator a copy of the modified permit and the supporting judicial or administrative decision. The procedures set forth above for general and specific objections by the Regional Administrator shall be followed with respect to permit issuance, modification, revocation and reissuance, or termination as required by a judicial or administrative decision.

18. The Regional Administrator retains the right to terminate any waiver provided for in the Annual State Program Plan as to future permit actions, in whole or in part, by written notice to the Director. Termination of this waiver shall not affect any final action taken by ADPC&E prior to notice of termination. This waiver does not affect the duty of ADPC&E to transmit a copy of every issued final discharge permit to EPA.

19. The ADPC&E shall conduct an initial review of all requests for fundamentally different factors 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.

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

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

20. Nothing in this MOA shall be construed to authorize the issuance of

permits which do not comply with applicable provisions of federal or State laws, rules, regulations, or effluent guidelines, nor to relinquish the right of EPA to petition the State for review of any action or inaction because of violation of Federal or State laws, rules, regulations, or effluent guidelines.

C. Public Participation

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

2. Unless otherwise waived by the specific organization, the State will provide to the following organizations, copies of all public notices and fact sheets when prepared in accordance with 40 CFR 124.8 and 124.10:

- *U.S. Army Corps of Engineers*

- U.S. Fish and Wildlife Service

- National Marine Fisheries Service

- Other appropriate State and Federal Agencies

- Adjacent States (only for permits which affect them)

- Major commands of the Department of Defense (DOD) (only for DOD permits)

3. In addition to general public notices required by 40 CFR 124.10(d)(1), the applicant and all agencies listed in C.2. above shall be provided a copy of the fact sheet or statement of basis, the permit application and draft permit.

D. Major Discharger List

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

E. Transmittal of Data

1. Submission of information and reports from the Director to the Regional Administrator shall be accomplished in a manner consistent with this MOA, any Working Agreement between EPA and ADPC&E, 40 CFR § 123.43, 40 CFR 123.44, and other agreed upon procedures. ADPC&E shall allow EPA to review ADPC&E's records, reports, and files relevant to the administration and enforcement of the wastewater permit program at least quarterly and more frequently if determined necessary by either party to this MOA. EPA shall provide

reasonable notice prior to such review.

2. Whenever either party requests information concerning a specific discharger and the requested information is available from the files, that information shall be provided within 20 days of receipt of the request. If the requested information is not available, the party to whom the request was directed shall promptly notify the requestor.

3. ADPC&E shall immediately notify the Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to the public health and welfare, or to the environment resulting from the actual or threatened direct discharge of pollutants into waters of the State.

SECTION IV

ENFORCEMENT

BACKGROUND

The Clean Water Act (CWA) authorizes EPA and approved States to Administer the National Pollutant Discharge Elimination System (NPDES) Program, which is the basic regulatory mechanism for ensuring that dischargers meet the requirements of the CWA. The State of Arkansas has been authorized by EPA to administer the NPDES program and retains lead responsibility for the CWA in the State.

EPA has continuing overall responsibility for oversight of the NPDES program in Arkansas in order to promote the achievement of national program goals and objectives, to ensure adherence to Federal and State statutory and regulatory requirements implementing the CWA, and to maintain national consistency.

This section of the MOA provides a set of criteria for evaluating and overseeing the Arkansas NPDES enforcement program. It defines the respective roles and responsibilities of EPA Region VI and the Arkansas Department of Pollution Control and Ecology in carrying out the NPDES program, as well as areas where specific items need to be included in the annual program plans. Specifically, this agreement discusses two operational elements of the NPDES program: compliance monitoring and tracking, and enforcement response. In addition, it covers program authority and conflict resolution.

I. Compliance Monitoring and tracking

Compliance monitoring is essential to maintaining the overall integrity of the NPDES permit program and for identifying instances of noncompliance so that the

State can initiate appropriate and timely action as needed. The ADPC&E 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 (when applicable). For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the Department to assure full compliance with NPDES program requirements.

A. Timely receipt and review of accurate and complete self-monitoring reports and maintenance of complete and accurate records. The State will maintain a written Enforcement Management System (EMS).

1. As part of its EMS, the ADPC&E will have procedures and time frames for review of DMR's and maintenance of complete and accurate data. At a minimum, the approved EMS will be reviewed by Region VI annually along with any needed changes submitted by ADPC&E for review and approval. The FY 87 EPA review shall be completed by June 30, 1987, and any needed changes to the State EMS manual must be submitted to EPA within 60 days after completion of EPA review of the ADPC&E EMS Guide. EPA will review and provide either approval or comments within 45 days of receipt.

   The ADPC&E shall 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 conditiions of a NPDES permit, approved pretreatment program (when applicable), or court order.

The ADPC&E shall 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.

ADPC&E should enter the reported data into PCS for major permittees and minor 92-500 permittees within 30 days of receipt of the DMR. Response to nonreceipt or unacceptable DMR's should be consistent with the time frames in the regulation and the EMS; failure to submit DMR's within 30 days of the required date, or submittal of unacceptable DMR's without subsequent submittal of acceptable revisions within 30 days of the required date are instances of significant noncompliance.

2. The Region will perform routine reviews of a random sample of DMR's and PCS entries during periodic audits of the ADPC&E program. These audits will not normally exceed two per year.

3. ADPC&E shall 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, and any other reports that permittees may be required to submit under the terms and conditiions of an NPDES permit, approved pretreatment program, or court order.

B. <u>Maintenance of a reporting system that contains accurate, up-to-date, accessible information on current compliance status.</u>

1. The ADPC&E will prepare and submit this Quarterly Noncompliance Report

regulation and national guidance. The ADPC&E will prepare the QNCR automatically by using DMR data and other compliance data that are entered into PCS and update PCS at regularly scheduled intervals according to established procedures. The State will use Category II violation in the preparation of the QNCR when such violations result in an enforcement action.

2. The Region will verify the accuracy and completeness of both the QNCR and the data in PCS at periodic intervals.

C. Timely conduct of appropriate and effective compliance inspections.

1. The Department shall conduct field activities to determine the status of compliance with permit requirements including sampling and nonsampling inspections. the ADPC&E will conduct routine and special inspections in accordance with NPDES regulations and the EPA Compliance Inspection Manual, 1976, updated 1980 and the NPDES Compliance Inspection Strategy and Guidance. For purposes of this MOA, the term Compliance Inspections includes evaluation inspections, performance audits, sample inspections and biomonitoring inspections.

The ADPC&E will submit annually a separate list of facilities that are to be inspected by quarters and update this list quarterly. This list should clearly specify municipal majors and minors (including completed 92-500's) and nonmunicipal majors and minors. The ADPC&E is responsible for conducting sampling and analysis in the prescribed manner, completing the required reports on findings, and for ensuring the entry of available data into PCS within 30 days of the availablility of data. Copies of all inspection reports for major facilities will be sent to

appropriate in those cases where inspections reveal deficiencies at the facilities visited. When deficiencies are reported as a result of inspections done by EPA personnel, this follow-up will be documented in writing to EPA.

The ADPC&E will conduct compliance inspections of all the major permittees annually. The State and Regional Administrator will develop a list of the major permittees to be the subject of these inspections pursuant to a neutral inspection scheme consistent with the annual Section 106 work plan. The list may be modified with concurrence of both parties. The ADPC&E shall also furnish to EPA an estimate of the other compliance inspections to be performed during the year. The ADPC&E will give EPA adequate notice and opportunity to participate in surveys performed by the State.

The ADPC&E is also responsible for taking proper action in cases where permittees fail to respond to DMR Quality Assurance (QA) requirements and for initiating appropriate follow-up to DMR QA test results. The ADPC&E will document its actions for each case. Finally, the ADPC&E will plan and initiate a program for the inspection of contract laboratories serving the wastewater treatment facilities in the State.

2. The Region will normally provide a minimum 10 day prior notice to the State before conducting joint or independent inspections, and supply the ADPC&E with mid-year reports of its findings. Results of inspections will be forwarded to the State for their follow-up as soon as the results are available. EPA will participate in joint inspections with ADPC&E (number to be negotiated annually) and will conduct a number of independent inspections in order to evaluate the

of inspection reports and case files will be made during State program audits as described under I.A.2. above.

3. EPA or the ADPC&E 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 ADPC&E and may request the ADPC&E to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will notify the ADPC&E to give it an opportunity to participate and will otherwise keep the ADPC&E informed of its plans and results.

4. The ADPC&E shall also be responsible for entering all inspection data into the PCS and preparing a list of all noncomplying major permittees in accordance with the regulations at 40 CFR 123.45.

5. Reports on compliance inspections for major permittees shall be available for review by the ADPC&E or the Regional Administrator, as appropriate, within 30 days of the date of the inspection. The Department 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 ADPC&E shall initiate enforcement action with 30 days of the date of the discovery of the violation(s) or make a decision in writing to exercise enforcement discretion not to take any action. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in procedures developed by the ADPC&E.

6. 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.

D. Effective integration of pretreatment compliance monitoring activities.

1. The ADPC&E will establish procedures and time frames for: reviewing monitoring reports, including annual reports submitted by POTW's and semi-annual reports submitted by categorical users in areas without local programs; establishing and maintaining a complete inventory of POTW's with pretreatment programs, as well as a plan for completing an inventory of all categorical users and significant industrial users; conducting annual inspections of categorical users of POTW's without local programs; and conducting annual inspections of POTW's with approved programs, as well as inspecting a sampling of the industrial users of these POTW's. The number of industrial users to be inspected will be negotiated annually in the 106 Program Work Plan. Pretreatment inspection data shall be reported in the Quarterly Enforcement Activities report discussed in II.B.1. Pretreatment inspections include Pretreatment Compliance Inspections (PCI) and Pretreatment Audits as described in the Pretreatment Compliance Inspection and Audit Manual for Approval Authorities (May 2, 1986).

II. Enforcement Response

The CWA (§309) requires EPA or NPDES States to respond to NPDES permit violations (including, but not limited to pretreatment requirements, compliance schedules, effluent limitations and reporting requirements) by initiating

appropriate enforcement action(s). The ADPC&E has assumed primary responsibility for these activities in Arkansas. This includes violations detected by state or federal surveys. Enforcement response involves a series of actions, starting with the initial reaction to the identification of a violation and ending with the discharger's return to full compliance and formal close-out of any enforcement actions taken. The following are therefore important to a credible enforcement program and will be achieved as indicated:

A. Timely evaluation and appropriate initial response to identified violations.

1. The State will continue to use, in a State EMS, current pre-enforcement procedures that are consistent with the principles in EPA's National EMS and NPDES oversight criteria including the Violations Review Action Criteria (VRAC) and the Enforcement Response Guide (ERG). The procedures should include: application of the State's VRAC for screening DMR's to determine the significance of the violations; procedures and time frames for applying appropriate initial response options to identified violations; and procedures for maintaining a chronological summary of all violations. The ADPC&E will screen all DMR's from permittees to determine the level and frequency of all violations and will evaluate instances of noncompliance by all major permittees, all P.L. 92-500 minor permittees within an average of 30 days from the identification of a violation; determine the appropriate initial response, consistent with the EMS, and document any action taken/not taken (including the technical reason). The date of identification of the violation is the point at which the ADPC&E enforcement staff learn of the violation. Remaining minor permittees will be evaluated as resources permit.

2. The Region will verify the timeliness and appropriateness of a State's DMR evaluation and its initial enforcement responses through periodic audits. These audits will normally not exceed two per year.

B. Timely and appropriate enforcement response, follow-up, and escalation until compliance is obtained.

1. The ADPC&E will maintain current enforcement response procedures that are consistent with the ERG Section of the State EMS, as well as an up-to-date strategy for addressing instances of significant noncompliance consistent with National and State priorities. The procedures should set forth: an analytical process for determining the appropriate level of action for specific categories of violation; procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and time frames for escalating enforcement responses where the noncompliance has not been resolved.

The ADPC&E should be able to demonstrate that its enforcement procedures result in: appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent, and timely manner; formal enforcement actions that clearly define what the permittee is expected to do by a reasonable date certain; the assessment of a civil penality, when appropriate, and an amount appropriate to the violation; and compilaton of complete and accurate permanent records that can be used in future formal enforcement actions. In the case of major permittees, by the time a permittee appears on the QNCR and is determined to be in significant noncompliance, the ADPC&E is expected

to have already initiated enforcement actions to achieve compliance. Prior to a permittee appearing on the subsequent QNCR for the same instance of significant noncompliace, the permittee should either be in compliance or the ADPC&E should have taken formal enforcement action (within 60 days of the first QNCR) to achieve final compliance. These formal actions are identified as administrative orders, civil actions and criminal actions.*

Where formal action is not taken by the ADPC&E as described above, EPA will initiate independent action. The specific time period for EPA to send a §309 NOV to the State will be negotiated and made a part of the annual enforcement agreement between EPA and ADPC&E. However, in no case will EPA send a §309 NOV until at least 90 days have elapsed from the date of violation discovery by ADPC&E.

The Department understands that attempts by the NPDES Branch technical staff to obtain consent administrative orders prior to the filing of a Notice of Violation as described in the EMS Manual does not constitute commencement of formal enforcement action.

*A formal enforcement action is defined as one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person or entity to adverse legal consequences for noncompliance.

The State will prepare and submit to EPA a Quarterly Enforcement Activities Report in accordance with the terms of the annual Enforcement Agreement summarizing enforcement activities for the preceeding quarter. Included in this report will be an update of the State's actions related to Administrative Order (AO) issuance, AO closeouts, civil actions, penalties assessed/collected, pretreatment inspections, judicial decree data, and other information required by SPMS.

2. The Region will verify the timeliness and appropriateness of a State's enforcement actions through periodic audits and meetings as described in the annual State/EPA Enforcement Agreement.

C. Effective integration of pretreatment enforcement activities into the established NPDES program.

1. The State will have procedures and time frames for initiating appropriate enforcement action where POTW's: fail to meet milestones in enforceable schedules for submitting approvable pretreatment programs; have violations of NPDES effluent limitations; fail to implement approved pretreatment programs; and fail to submit annual reports or submit delinquent annual reports. The ADPC&E should also have procedures and time frames for evaluating whether POTW's are initiating timely and appropriate enforcement responses to significant violations by I.U.'s consistent with their established procedures; and, where POTW's are not the primary control authorities, the ADPC&E is directly responsible for having these procedures in place for categorical and noncategorical industrial users. The ADPC&E is expected to initiate enforcement response against permittees having pretreatment programs that are listed on the QNCR and are in significant noncompliance

consistent with the criteria and time frames for the NPDES program; this applies to: failure to meet milestones in enforceable schedules for submitting required local pretreatment programs and for implementing that program; violations of effluent limits; and delinquent POTW pretreatment reports. In addition, the ADPC&E should conduct inspections of local pretreatment programs to ensure that POTW's comply with their approved program procedures for taking action against significant violations by IUs. The criteria for a significant violation is contained in paragraph I.C.2. below. In accordance with the terms and conditions of their permit the POTW should provide for annual public notification of such violations in the largest daily newspaper published in the municipality in which the POTW is located.

Also, where POTW's are not the primary control authorities, the ADPC&E should initiate appropriate enforcement actions in accordance with their procedures against industrial users who are violating categorical standards.

2. Criteria for Significant Violation

The criteria listed below apply to all major [1] industrial users. The Publicly Owned Treatment Works (POTW) or Control Authority may, at its discretion, apply this criteria to any other industrial user including retail establishments. Also, at its option, the POTW may use more stringent criteria to identify significantly violating industrial users in its municipality.

A significantly violating major industrial user is one which has:

a. discharged a pollutant to the POTW which has caused an "imminent endangerment" to the health or welfare of persons and/or has presented an endangerment to the environment or;

b. caused or substantially contributed to any violations of the POTW;s NPDES permit requirements or has impaired the use or disposal of the POTW's sludge or;

[1] A major industrial user is defined as any industry which discharges to a POTW that:

- Is subject to categorical standards
- Discharges a nondomestic wastestream of 25,000 gallons per day (0.025 MGD) or more
- Contributes a nondomestic wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW
- Has a reasonable potential, in the opinion of the POTW to adversely affect the POTW (inhibition, pass through of pollutants, sludge contamination, or endangerment of POTW workers.)

c. has violated the pretreatment effluent requirements (categorical standard or conventional pollutant) 20% or more of the time over a 12 month period based on any sampling analysis performed either by the POTW's own monitoring program or the industrial user self-reporting data (i.e., if 20% or more of the samples taken by the industrial user exceed pretreatment effluent requirements, the industrial user is to be listed as a significant violator) or;

d. not "corrected" a violation within 45 days of notification of noncompliance by the POTW, ("corrected", i.e., return to compliance) or;

e. failed to accurately report noncompliance or;

f. any other discharge which is deemed a significant violation by the POTW.

D. Sharing of information on the status of the program and the improvement of compliance rates.

1. The ADPC&E will prepare and submit to EPA Region VI information on the operation of the NPDES program in the manner prescribed by national guidance.

E. Nothing in this agreement should be construed to constitute or create a valid defense to regulated parties in violation of environmental statutes, regulations, or permits.

III. Conflict Resolution

The effectiveness of environmental programs is best served by a free and frequent exchange of information between the States and EPA. Examples of general information are special problems or policy changes in compliance, and enforcement; budget information; press releases; and trends in program operations. Specific actions that will be coordinated or discussed with the State prior to EPA action are joint/independent inspection requirements, permit/compliance audits, and unresolved violations which will result in issuance of a 309 NOV. Participants in this information exchange will normally be the EPA Compliance Section and/or Unit Chiefs and corresponding individuals from the State. If decisions are required where there are significant differences of opinion, EPA and the State participants should present the divergent viewpoints to their respective Branch Chiefs or Division Directors, who will make ultimate decisions in discussion with each other. Decisions should be escalated to the Branch/Division Directors as the exception rather than the rule.

IV. Penalty Policy

The ADPC&E understands, supports and agrees to employ the spirit of the EPA Penality Policy as established in the Memoranda of the Assistant Administrator for Enforcement, (February 11, 1986). EPA will supply the ADPC&E a copy of these memoranda and any subsequent additions or revisions thereto.

Section V

Pretreatment

This section defines State and EPA responsibilities in carrying out the establishment, implementation and enforcement of National Pretreatment Standards (NPS) for new and existing sources pursuant to Sections 307 and 402(b) of the CWA.

A. Basic program

1. The State shall meet all requirements established under 40 CFR Part 403.10 and shall apply and enforce all other pretreatment regulations as required by 40 CFR Part 403 by:

   a. Taking appropriate enforcement against sources introducing prohibited pollutants into POTWs, under the provisions and conditions described in 40 CFR 403.5(e);

   b. Application and enforcement of National Categorical Pretreatment Standards established by the EPA in accordance witgh section 307(b) and (c) of the Act, local Publicly Owned Treatment Works (POTW) limitations and State standards;

   c. Reviewing requests from POTWs or Industrial Users (UI) for subcategory determinations under the provisions of 40 CFR 403.6;

   d. Reviewing and approving requests from Publicly Owned Treatment

Works (POTWs) for modification of categorical pretreatment standards to reflect POTW removal of pollutants in accordance with the provisions of 403.7;

e. Reviewing and approving POTW pretreatment programs developed under the provisions of 40 CFR 403.8 and 403.9, in accordance with the procedures described in 40 CFR 403.11;

f. Incorporating POTW pretreatment conditions in permits issued to POTWs in accordance with the provisions of 40 CFR 403.8; overseeing POTW pretreatment programs to ensure compliance with 40 CFR 403.8 and the requirements in the POTW's NPDES permit.

g. Reviewing and making an initial finding on all requests from IU's for variances from categorical NPS for Fundamentally Different Factors (FDF). If the ADPC&E determines that the variance request should be denied, the ADPC&E will so notify the applicant and provide reasons for its determination in writing. Where the ADPC&E's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the EPA Regional Water Management Division Director for a final determination. The ADPC&E may deny, but not approve and implement the fundamentally different factor(s) variance request until written approval has been received from the Water Management Division Director.

If the Water Management Division Director finds that Fundamentally different factors do exist a variance reflecting this determination

shall be granted. If the Water Management Division Director determines that fundamentally different factors do not exist, the variance request shall be denied and the ADPC&E shall so notify the applicant and provide reasons for the denial in writing.

h. Requiring industrial reports as outlined in 40 CFR 403.12.

i. Monitoring required PCS data elements for pretreatment regarding reports that are required and received, and pretreatment codes for required and approved programs.

2. The ADPC&E 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. Upon request, the ADPC&E will provide to EPA copies of all notices received from POTWs that relate to a new or changed introduction of pollutants to the POTW. EPA will conduct indpendent pretreatment inspections in accordance with national and regional policy and guidance. The State will be informed of these inspections and may accompany EPA at the State's discretion.

3. The State will issue, reissue, or modify permits to incorporate pretreatment program requirements in accordance with the procedures described in Section III of this MOA.

4. Upon request, copies of notices received by ADPC&E from POTWs that relate to new introduction of pollutants, or substantial changes in the volume or character of pollutants will be provided to EPA.

5. EPA will overview state pretreatment operations consistent with 40 CFR Part 403.

6. If the ADPC&E receives a request for a net/gross adjustment of applicable categorical standards in accordance with 40 CFR 403.15, the ADPC&E 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 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.

B. Section 403.6 NPS Categorical Standards

1. The State shall review requests from a POTW or Industrial User (IU) for industrial subcategory determinations in accordance with the provisions of 40 CFR 403.6 and prepare a written determination and justification as to whether the IU does or does not fall within a particular subcategory.

2. The State shall forward its findings together with a copy of the request and necessary supporting information to EPA Water Management Divison Director, Region VI for concurrence. If EPA does not object to or modify the State's decision within sixty (60) days of receipt

thereof, the State's decision is final. If EPA modifies the State's decision, then EPA's decision will be final. A copy of the final determination shall be sent to the requestor and to the ADPC&E.

C. Section 403.7 NPS Revisions Reflecting POTW Removal Credits and Section 403.9 POTW Pretreatment Programs

1. The ADPC&E shall review applications from POTWs seeking authorization to revise discharge limits for Industrial Users who are or in the future may be subject to categorical pretreatment standards submitted pursuant to 40 CFR 403.7 and shall review applications from POTWs for approval of pretreatment programs developed pursuant to 40 CFR 403.8, ADPC&E shall be governed by 40 CFR 403.7(c)(3) in the review of applications for authorization to revise discharge limits and shall ensure that the appropriate approval authority actions specified in 403.9 and 403.11 are conducted. No pretreatment program or authorization to grant removal allowances shall be approved by ADPC&E if following the thirty (30) day (or extended) evaluation period provided by 40 CFR 403.11(b)(1)(ii) and any hearing held pursuant to 403.11(b)(2), EPA Region VI Water Management Division Director objects in writing to the approval of such submission, stating the reaons for such objections. Unless retracted, EPA's objections shall constitute a final ruling to deny approval of a POTW pretreatment program or authorization to grant removal allowances.

D. Enforcement

The State shall take formal enforcement action for noncompliance by the

POTW with pretreatment conditions incorporated into the POTW permit and for noncompliance with pretreatment requirements by Industrial Users, consistent with current EPA guidance and policies.

Section VI.

Reporting and Transmittal of Information

A. STATE to EPA

ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
1.	A copy of all permit applications except those for which EPA has waived review.	Within 5 days of receipt.
2.	A copy of all public notices, draft permits, and permit modifications including fact sheets or statement of basis, except those for which EPA has waived review.	45 days prior to public notice.
3.	A copy of all proposed final permits (including general permits).	When drafted.
4.	A copy of all issued NPDES permits and permit modifications, and documentation related to or affecting authorization of the permit.	As issued.

5.	A list of major facilities scheduled for compliance inspections.	With submission of the 106 (CWA) plan.
6.	Proposed revisions to the scheduled compliance inspections.	As needed.
7.	A list of compliance inspections performed during the previous quarter.	Quarterly
8.	Copies of all compliance inspection reports and data transmittal letters to all major permittees.	Within 30 days of inspection.
9.	Copies of all compliance inspection reports and data transmittal letters to all other permittees.	As requested.
10.	Copies of all noncompliance notifications from major permittees.	Within 10 days of receipt
11.	For major dischargers, a quarterly noncompliance report	Quarterly, as specified in 40 CFR 123.45(c).

	as specified in 40 CFR 123.45(a) and further qualified in EPA Guidance.	
12.	For minor discharges, an annual noncompliance report as specified in 40 CFR 123.45(e).	Within 60 days of the end of the calendar year as specified in 40 CFR 123.45(c).
13.	Copies of all enforcement actions against NPDES violators (including letters, notices of violation, administrative orders, initial determinations, processing for judicial action).	As issued.
14.	Copies of correspondence required to carry out the pretreatment program.	As issued or received
15.	92=500 minor municipal facilities semi-annual report for compliance statistics.	Within 30 days of receipt.
16.	Quarterly Enforcement Activities Report.	Quarterly as specified in Section IV of this MOA.

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

ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
1.	A list of compliance inspections EPA intends to conduct jointly with the State as part of its State Overview Plan.	Annually.
2.	Proposed revisions to the schedule of compliance inspections.	As needed.
3.	Copies of all EPA compliance inspection reports and data.	Within 30 days of inspection.
4.	Copies of all EPA enforcement actions against NPDES violators including notices of violation, administrative orders.	As issued.
5.	A review of the State administration of the NPDES Permit Program based on State reports, meetings with State officials, and file audits.	As performed or as indicated in Section IV.

Section VII.

Program Review

EPA is responsible for assuring that Arkansas' NPDES program is consistent with all federal regulations, EPA policies and guidance, requirements of this MOA, the State Program Plan, and applicable sections of 40 CFR Parts 122 through 125 and Part 140. To fulfill this responsibility, EPA shall:

1. Review the information transmitted from the State to assure that all the requirements of Section VI of this MOA are met.

2. Meet with State officials at least quarterly to observe the data handling, permit processing and development, compliance monitoring, and enforcement procedures, including both manual and automated data processing.

3. Examine in detail the State files and documentation of selected facilities to determine whether:

   a. Permits are processed and issued consistently with Federal requirements;

   b. Capability exists to facilitate discovery of permit violations when they occur;

   c. Compliance reviews are timely;

d. Selection of enforcement actions is appropriate;

e. Enforcement actions are both timely and effective.

f. Penalties are appropriate for violations and penalties are collected.

These detailed file audits shall be conducted by EPA in the appropriate State office at least semi-annually. The State shall be notified fifteen days in advance of the audit so that appropriate State officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the State when available.

4. Determine the need for (and to hold) public hearings on NPDES with respect to adequacy of the program.

5. Review the State's public participation policies, practices, and procedures. In the event EPA determines that elements of the State Program are in any way deficient or inconsistent with this MOA, the State Program Plan, applicable Federal and State regulations, and statutes, EPA shall notify the State in writing of these inconsistencies or other deficiencies. The State shall respond in writing, within thirty (30) days of its determination, whether noted inconsistencies or deficiencies have been rectified. If they have not been corrected, EPA may proceed in accordance with Sections 309 and 402(c)(3) of the Act.

The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its NPDES forms and NPDES program procedures.

a. Prior to taking any action to proposed or effect any substantial amendment, decision, or repeal of any statute, regulation, directive, or form which the State Director has submitted to the Regional Administrator or agreed to make use of in connection with aproval of the State's program, and prior to the adoption of any new statute, regulation, directive or form, the State shall notify the Regional Administrator and shall transmit the test of any such change or such new form to the Regional Administrator. The State agrees that EPA concurrence will be obtained before any changes become effective.

b. If an amendment, recession, or repeal of any statute, regulation, directive, or form described in paragraph (a) above shall occur for any reason, including action by the Arkansas Legislature or a court, the ADPC&E shall, within ten (10) days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

c. Prior to the approval of any test method other than those specified as required for NDPES permitting, the ADPC&E shall obtain the approval of the Regional Administrator.

d. The ADPC&E 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, and maintain consistency with national goals and program requirements.

e. Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to Section 308, 309, 311, 402, 504, or other Sections of the CWA.

Section VIII.

Modification

This MOA shall take effect immediately upon approval by the Regional Administrator. It shall be reviewed jointly from time to time by the State and Regional Administrator. Either the State, Regional Administrator, or Administrator of EPA may initiate action to modify this MOA. Before the agreement may be modified, however, any proposed revisions must be put in writing and signed by the State and the Regional Administrator.

Section IX.

Computation of Time

In computing any period of time prescribed by this MOA, the day from which the designated period of 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 modification, the period for review shall not commence until receipt by EPA.

Section X.

Public Access to Information

All claims for confidentiality for information submitted to ADPC&E shall be subject to 40 CFR § 122.7. Any information obtained or used by ADPC&E regarding its authorized NPDES permitting program shall be made available to EPA on request without restriction. The state will notify the applicant when confidential information is requested by EPA. If the information has been submitted to ADPC&E under a claim of confidentiality, ADPC&E must inform EPA of the claim. Any information obtained from ADPC&E shall be treated by EPA in accordance with 40 CFR Part 2. If EPA obtains information from ADPC&E that is not claimed to be confidential, EPA may make that information available to the public without further notice. ADPC&E will not accept a claim of confidentiality for any information required to be submitted as part of the NPDES permit application. All effluent data, permits and permit applications submitted for and NPDES permit will be made available to the public without restrictions, and other relevant NPDES data will be made available to the public consistent with 40 CFR 122.7, as adopted in Regulation No. 6.

Section XI.

Effective Date of MOA

This Memorandum of Agreement shall take effect upon approval of the Regional Administrator, Environmental Protection Agency, Region VI.

Phyllis Garnett

Director

Arkansas Department of Pollution

Control and Ecology

Little Rock, Arkansas

Frances E. Phillips

Date

Regional Administrator

Region VI

United States Environmental

Protection Agency

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. ENVIRONMENTAL PROTECTION AGENCY - PERMITS BRANCH
AND
THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL
AND ECOLOGY - NPDES BRANCH

Oversight Reduction of NPDES Permitting Activities

MEMORANDUM OF UNDERSTANDING BETWEEN THE PERMITS BRANCH OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE NPDES BRANCH OF THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY RELATING TO REDUCING AND MINIMIZING OVERVIEW ACTIVITIES WITH RESPECT TO THE ADMINISTRATION OF THE ARKANSAS POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING PROGRAM

I. INTRODUCTION

This Memorandum of Understanding (hereinafter "MOU"), establishes procedures which will be utilized by both the Arkansas Department of Pollution Control and Ecology's (ADPC&E) NPDES Branch and the U.S. Environmental Protection Agency's (EPA) Permit Branch in the overview of the ADPC&E's National Pollutant Discharge Elimination System (NPDES) permitting program as authorized on November 1, 1986.

II. PURPOSE

As the Environmental Protection Agency strives towards enhancement of its partnership role with the State of Arkansas and the ADPC&E, the Region 6 Permits Branch in conjunction with the ADPC&E's NPDES Branch has established this MOU. The purpose of this MOU is to create a framework for the efficient and effective overview by the EPA's Permits Branch of the ADPC&E's administration of its NPDES permitting program. The goals of this framework are in keeping with the Agency's agenda of

optimizing and maximizing resources to the fullest extend possible yet continuing with the spirit of its overview responsibilities. As a result, the EPA Region 6 Permits Branch and the ADPC&E Permits Branch agree to implement and perform the following:

1. EPA will minimize and reduce real time review of the ADPC&E issued NPDES permits.

2. All minor permits and major power plant permits may be proposed and issued without waiting on an EPA response.

3. ADPC&E may request EPA's review or assistance on any permit.

4. EPA reserves the right to review and object to any permit on a case-by-case basis in accordance with 40 CFR 122.44.

5. Region 6 will normally conduct real time review in only the following classes of NPDES permits:

   a. non-power plant major facilities

   b. general permits

6. EPA Region 6 Permits Branch will meet with ADPC&E in Little Rock on a quarterly basis to provide training, in-depth communication on policies, procedures, program

oversight, current progress and problems and communications. These meetings will be contingent on availability of travel funds and program priorities/staffing.

III. MODIFICATION:

This MOU shall take effect after it is signed by both the Branch Chief of the Permits Branch of the EPA and the NPDES Branch Manager of the ADPC&E. Either person may initiate action at anytime to modify this MOU. Any modifications must be in writing and signed by both parties.

In witness whereof, the parties execute this agreement

FOR THE ARKANSAS DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY - NPDES BRANCH

Marysia Jastrzebski
Manager, NPDES Branch
DATE: January 27, 1995

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PERMITS BRANCH:

Jack V. Ferguson
Chief, Permits Branch
DATE: January 30, 1995