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**N P D E S**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

**AND**

**THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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NPDES MEMORANDUM OF AGREEMENT BETWEEN  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND  
THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

I. PREFACE

A. Introduction

The State Water Resources Control Board (State Board) is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The State Board has been authorized by the U.S. Environmental Protection Agency (EPA), pursuant to Section 402 of the Clean Water Act (CWA), to administer the National Pollutant Discharge Elimination System (NPDES) program in California since 1973.

The Chairman of the State Board and the Regional Administrator of EPA, Region 9 hereby affirm that the State Board and the Regional Boards have primary authority for the issuance, compliance monitoring, and enforcement of all NPDES permits in California including NPDES general permits and permits for federal facilities; and implementation and enforcement of National Pretreatment Program requirements except for NPDES permits incorporating variances granted under Sections 301(h) or 301(m), and permits to dischargers for which EPA has assumed direct responsibility pursuant to 40 CFR 123.44. The State may apply separate requirements to these facilities under its own authority.

This Memorandum of Agreement (MOA) redefines the working relationship between the State and EPA pursuant to the Federal regulatory amendments that have been promulgated since 1973, and supersedes:

1. THE MEMORANDUM OF UNDERSTANDING REGARDING PERMIT AND ENFORCEMENT PROGRAMS BETWEEN THE STATE WATER RESOURCES CONTROL BOARD AND THE REGIONAL ADMINISTRATOR, REGION IX, ENVIRONMENTAL PROTECTION AGENCY, signed March 26, 1973; and
2. The STATE/EPA COMPLIANCE AND ENFORCEMENT AGREEMENT, dated October 31, 1986. The State's standard operating procedures for the NPDES and pretreatment programs are described in the State's Administrative Procedures Manual (APM).

The State shall implement the provision of this MOA through the APM. The State's annual workplan, which is prepared pursuant to Section 106 of the CWA, will establish priorities, activities and outputs for the implementation of specific components of the NPDES and pretreatment programs. The basic requirements of this MOA shall override any other State/EPA agreements as required by 40 CFR 123.24(c). EPA shall implement the provisions of this MOA through written EPA policy guidance and the annual State/EPA 106 agreement.

**B. Definitions**

The following definitions are provided to clarify the provisions of this MOA.

1. "The APM" means the State's Administrative Procedures Manual. The APM describes standard operating requirements, procedures, and guidance for internal management of the State Board and Regional Boards in the administration of the NPDES and pretreatment programs. The APM is kept current through periodic updates.
2. "Comments" means recommendations made by EPA or another party, either orally or in writing, about a draft permit.
3. "Compliance monitoring" means the review of monitoring reports, progress reports, and other reports furnished by members of the regulated community. It also means the various types of inspection activities conducted at the facilities of the regulated community.
4. "CWA" means the Clean Water Act [33 USC 1251 et. seq.].
5. "Days" mean calendar days unless specified otherwise.
6. "Prenotice draft permit" is the document reviewed by EPA, other agencies, and the applicant prior to public review.
7. "Draft permit" is the document reviewed by EPA and the public.

8. "Enforcement" means all activities that may be undertaken by the Regional Boards, the State Board, or EPA to achieve compliance with NPDES and pretreatment program requirements.
9. "EPA" means the U.S. Environmental Protection Agency (EPA) Region 9, unless otherwise stated.
10. "Formal enforcement action" means an action, order or referral to achieve compliance with NPDES and pretreatment program requirements that: (a) specifies a deadline for compliance; (b) is independently enforceable without having to prove the original violation; and (c) subjects the defendant to adverse legal consequences for failure to obey the order (see footnote #6, p.19, National Guidance for Oversight of NPDES Programs, FFY 1986, dated January 20, 1985). Time Schedule Orders, Administrative Civil Liability Orders, Cease and Desist Orders, Cleanup and Abatement Orders, and referrals to the Attorney General meet these criteria. Effective January 1, 1988, the State and Regional Boards will have authority to impose administrative civil liability, consistent with the requirements of 40 CFR 123.27(a)(3)(i), for all NPDES and pretreatment program violations.
11. "Issuance" means the issuance, reissuance, or modification of NPDES permits through the adoption of an order by a Regional Board or the State Board.
12. "Objections" means EPA objections to applications, prenotice draft permits, draft permits, or proposed permits that are based on federal law or regulation, which are filed as "objections", and which must be resolved before a NPDES permit can be issued, or reissued or modified thereto. "Objection" and "formal objection" mean the same thing.
13. "Proposed permit" means a permit adopted by the State after the close of the public comment period which may then be sent to EPA for review before final issuance by the State. The State's common terminology of "adopted permit" is equivalent to the term "proposed permit" as used at 40 CFR 122.2.

14. "Quality Assurance" means all activities undertaken by the State or EPA to determine the accuracy of the sampling data reported on Discharge Monitoring Reports (DMRs), inspection reports, and other reports.
15. "State" means the staff and members of the Regional Boards and the State Board collectively.
16. "106 Workplan" means the annual agreement that is negotiated between the State and EPA.

C. Roles and Responsibilities

1. EPA Responsibilities

EPA is responsible for:

- a. Providing financial, technical, and other forms of assistance to the State;
- b. Providing the State Board with copies of all proposed, revised, promulgated, remanded, withdrawn, and suspended federal regulations and guidelines;
- c. Advising the State Board of new case law pertaining to the NPDES and pretreatment programs;
- d. Providing the State Board with draft and final national policy and guidance documents;
- e. Monitoring the NPDES and pretreatment programs in California to assure that the program is administered in conformance with federal legislation, regulations, and policy;
- f. Intervening as necessary in specific situations (such as development of draft permits, or permit violations) to maintain program consistency throughout all states and over time;
- g. Administering the program directly to the following classes of facilities:



- (1) Dischargers granted variances under Sections 301(h) or 301(m) of the CWA; and
- (2) Dischargers which EPA has assumed direct responsibility for pursuant to 40 CFR 123.44, and

2. State Board Responsibilities

The State Board is responsible for supporting and overseeing the Regional Board's management of the NPDES and pretreatment programs in California. This responsibility includes:

- a. Evaluating Regional Board performance in the areas of permit content, procedure, compliance, monitoring and surveillance, quality assurance of sample analyses, and program enforcement;
- b. Acting on its own motion as necessary to assure that the program is administered in conformance with Federal and State legislation, regulations, policy, this MOA, and the State annual 106 Workplan;
- c. Providing technical assistance to the Regional Boards;
- d. Developing and implementing regulations, policies, and guidelines as needed to maintain consistency between State and federal policy and program operations, and to maintain consistency of program implementation throughout all nine regions and over time;
- e. Reviewing decisions of the Regional Boards upon petition from aggrieved persons or upon its own motion;
- f. Assisting the Regional Boards in the implementation of federal program revisions through the development of policies and procedures; and
- g. Performing any of the functions and responsibilities ascribed to the Regional Boards.

- h. California Pretreatment Program responsibilities as listed in Section III.B. of this MOA.

3. Regional Board Responsibilities

The following responsibilities for managing the NPDES and pretreatment programs in California have been assigned to the Regional Boards. These responsibilities include:

- a. Regulating all discharges subject to the NPDES and pretreatment programs, except those reserved to EPA, in conformance with Federal and State law, regulations, and policy;
- b. Maintaining technical expertise, administrative procedures and management control, such that implementation of the NPDES and pretreatment programs consistently conforms to State laws, regulations, and policies;
- c. Implementing federal program revisions;
- d. Providing technical assistance to the regulated community to encourage voluntary compliance with program requirements;
- e. Assuring that no one realizes an economic advantage from noncompliance;
- f. Maintaining an adequate public file at the appropriate Regional Board Office for each permittee. Such files must, at a minimum, include copies of: permit application, issued permit, public notice and fact sheet, discharge monitoring reports, all inspection reports, all enforcement actions, and other pertinent information and correspondence;
- g. Comprehensively evaluating and assessing compliance with schedules, effluent limitations, and other conditions in permits;
- h. Taking timely and appropriate enforcement actions in accordance with the CWA, applicable Federal regulations, and State Law; and

- i. California Pretreatment Program responsibilities as listed in Section III. B of this MOA.

D. Program Coordination

In order to reinforce the State Board's program policy and overview roles, EPA will normally arrange its meetings with Regional Board staff through appropriate staff of the State Board. In all cases, the State Board will be notified of any EPA meetings with Regional Boards.

E. Conflict Resolution

Disputes shall be resolved in accordance with the Agreement on a Conflict Resolution Process Between Regional Administrator, EPA, Region 9 and Chairman, State Water Resources Control Board.

II. PERMIT REVIEW, ISSUANCE, AND OBJECTIONS

A. General

The State Board and Regional Boards have primary authority for the issuance of NPDES permits. EPA may comment upon or object to the issuance of a permit or the terms or conditions therein. Neither the State Board nor the Regional Boards shall adopt or issue a NPDES permit until all objections made by EPA have been resolved pursuant to 40 CFR 123.44 and this MOA. The following procedures describe EPA permit review, comment, and objection options that may delay the permit process. These options present the longest periods allowed by 40 CFR 123.44. However, the process should normally require far less time.

The State Board, Regional Boards, and EPA agree to coordinate permit review through frequent telephone contact. Most differences over permit content should be resolved through telephone liaison. Therefore, permit review by the State and EPA should not delay issuing NPDES permits. However, if this review process causes significant delays, the Chief, Division of Water Quality (DWQ) of the State Board (or his or her designee), and the Director, Water Management Division (WMD) of EPA (or his or her designee) agree to review the circumstances of the delays. The State Board and EPA shall determine the reasons for the delays and take corrective action.

To the extent possible, all expiring NPDES permits shall be reissued on or before their expiration. If timely reissuance is not possible, the State Board will notify the Regional Administrator of the reasons for the delay. In no event will permits continued administratively beyond their expiration date be modified or revised.

In the case of the development of a general permit, the Regional Board will collect sufficient data to develop effluent limitations and prepare and draft the general permit. The Regional Board will issue and administer NPDES general permits in accordance with the California Water Code, Division 7 and federal regulations 40 CFR 122.28.

1. EPA Waiver of Review

- a. EPA waives the right to routinely review, object to, or comment upon State-issued permits under Section 402 of the CWA for all categories of discharges except those identified under II.A.2. below.
- b. Notwithstanding this waiver, the State Board and the Regional Boards shall furnish EPA with copies of any file material within 30 days of an EPA request for the material.
- c. The Regional Administrator of EPA, Region 9 may terminate this waiver at any time, in whole or in part, by sending the State Board a written notice of termination.
- d. The State shall supply EPA with copies of final permits.

2. Permits Subject to Review

- a. The Regional Boards shall send EPA copies of applications, prenotice draft permits, draft permits, adopted (proposed) permits, and associated Fact Sheets and Statements of Basis for the following categories of discharges.

- (1) Discharges from a "major" facility as defined by the current major discharger list;

- (2) Discharges to territorial seas;
- (3) Discharges from facilities within any of the industrial categories described under 40 CFR Part 122, Appendix A;
- (4) Discharges which may affect the water quality of another state;
- (5) Discharges to be regulated by a General Permit (excludes applications since they are not part of the General Permit process);
- (6) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons;
- (7) Discharges from any other source which exceeds a daily average discharge of 0.5 million gallons; and
- (8) Other categories of discharges EPA may designate which may have an environmental impact or public visibility. The Regional Boards or the State Board will consult with EPA regarding other significant discharges.

**B. Applications**

The provisions for EPA review of applications do not apply to General Permits, because applications are not part of the General Permit Process.

**1. Initial Applications**

- a. The Regional Boards shall forward a complete copy of each NPDES application to EPA and the State Board within 15 days of its receipt.

- b. EPA shall have 30 days\* from receipt of the application to comment upon or object to its completeness.
  - (1) EPA shall initially express its comments and objections to the Regional Board through staff telephone liaison.
  - (2) EPA shall send a copy of comments or objections to an application to the Regional Board, the State Board, and the applicant.
  - (3) If EPA fails to send written comments or objections to an application within 30 days of receipt, EPA waives its right to comment or object.
- c. An EPA objection to an application shall specify in writing:
  - (1) The nature of the objection;
  - (2) The sections of the CWA or the NPDES regulations that support the objection; and
  - (3) The information required to eliminate the objection.

2. State Agreement with EPA Objections and Revised Applications

- a. If the State agrees with EPA's objections, the Regional Board shall forward a complete copy of the revised application to EPA within 10 days of its arrival at the Regional Board offices.

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\*COMPUTATION OF TIME: Pursuant to 40 CFR 124.20(d), three(3) days shall be allowed for transit of documents by mail. Therefore, the State must allow at least 36 days, from the postmark date on the application for receipt of an EPA response. If the State Board or a Regional Board delivers a document to EPA within less than three days, the number of days saved by such delivery may be subtracted from the 36 days. All of the timeframes mentioned in this MOA are in calendar days.

- b. Another 30-day review period shall begin upon EPA's receipt of the revised application; and
- c. This application review process shall be repeated until the application complies with all NPDES regulations.
- d. When EPA has no objections pursuant to 40 CFR 123.44, the Regional Board may complete development of a prenotice draft NPDES permit.
- e. If an objection is filed, EPA shall advise the State Board and the Regional Board in writing when the application is complete.
- f. The Regional Board will be responsible for notifying the applicant.

3. State Disagreement with EPA Objections and Draft Permits

If the Regional Board or the State Board disagrees with EPA's assertion that an application is incomplete, they may issue a prenotice draft permit, provided that:

- a. The Regional Board or the State Board states in a transmittal letter that the prenotice draft permit has been issued and an EPA objection to the application;
- b. EPA may add comments upon or objections to the prenotice draft permit including a reiteration of its objection to the application;
- c. Objections to an application will be subject to the same procedures as an EPA objection to the prenotice draft permit, as described below except that the State shall not issue a public notice for a draft permit for which there is an unresolved EPA objection.

C. Prenotice Draft Permits

1. EPA Review of Individual Prenotice Draft Permits

- a. It is the intent of the Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES permit, to issue a prenotice draft NPDES permit. A copy of

associated Statement of Basis or Fact Sheet shall be sent to EPA. As a matter of urgency the Regional Board or the State Board may decide not to issue a prenotice draft NPDES permit.

b. EPA shall have 30 days from its receipt to send comments upon, or an initial objection to, the prenotice draft permit to the Regional Board and State Board.

(1) If EPA mails an initial objection pursuant to 40 CFR 23.44 within 30 days from its receipt of a prenotice draft permit, EPA shall have 90 days from its receipt of the prenotice draft permit to mail a formal objection.

(2) If EPA requests additional information on a prenotice raft permit, a new 30-day review shall begin upon EPA's receipt of the additional information.

(3) If EPA mails an initial objection pursuant to 40 CFR 123.44 within 30 days from its receipt of additional information, EPA shall have 90 days from its receipt of the additional information to mail a formal objection.

c. If a prenotice draft permit is not issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4, shall apply to the draft permit.

## 2. EPA Review of Prenotice Draft General Permits

a. The Regional Boards, or the State Board whenever it undertakes the issuance of an NPDES General Permit, shall mail a copy of each prenotice draft Generalmit and Fact Permit Sheet, except for those for stormwater point sources, to:



(1) Director  
Office of Water Enforcement and  
Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street S.W.  
Washington, D.C. 20460; and

(2) EPA, Region 9.

- b. EPA, Region 9, and the Director of the Office of Water Enforcement and Permits, EPA Headquarters, shall have 90 days from their receipt of the prenotice draft General Permit to send comments upon or objections to the State Board and Regional Board.
- c. If a prenotice draft general permit is issued, the procedures and schedules for EPA review, comment, and objections to a prenotice draft permit, described in Section II.C.4 shall apply to the draft general permit.

3. EPA Comments

- a. The Regional Boards and State Board shall treat any comments made by EPA upon a prenotice draft individual permit or upon a prenotice draft General Permit as they would comments from any authoritative source.
- b. The Regional Boards or the State Board shall prepare a written response to each significant comment made by EPA that they do not accommodate by revising the draft permit.

4. EPA Objections

The discussion below describes the procedures the Regional Boards and State Board may pursue if EPA issues an objection to a prenotice draft permit. NPDES regulations restrict the resolution of an EPA objection to three alternatives, or a combination thereof: (a) the Regional Board or the State Board changes the permit, (b) EPA withdraws the objection, or (c) EPA acquires exclusive NPDES jurisdiction over the discharge.

a. Timing of EPA Objections

- (1) If the Regional Board or the State Board receives an initial objection from EPA within 36 days of the postmark on the prenotice draft permit sent to EPA, the Regional Board or the State Board shall delay issuance of the public notice until one of the following events occur:
  - (a) The Regional Board has received EPA's formal objection;
  - (b) EPA withdraws the initial objection; or
  - (c) Ninety-six (96) days have passed from the postmark on the prenotice draft (See Section II.C.2 for timing of EPA objections to prenotice general permits).
- (2) Whenever EPA files an initial objection to a prenotice draft permit, EPA shall expedite its effort to file the formal objection, in order to avoid undue delay of the permit's final issuance.
- (3) EPA may not make an initial objection to the prenotice draft permit once its 30-day review period has lapsed.
- (4) EPA may not make a formal objection to the prenotice draft permit, if it failed to make an initial objection within the 30-day period.
- (5) EPA may not make a formal objection to the Preenotice draft permit once the 90-day objection period has lapsed.
- (6) EPA may not modify the objection, after the 90-day formal objection period, to require more change to the prenotice draft permit than was required under the original objection.

- (7) EPA may revise the objection within its allotted 90-day objection period to require additional changes to the prenotice draft permit than were required under its original objection. Such a change to an objection by EPA shall cause the State's allotted 90 day response period to restart upon the State's receipt of the revised objection.
- (8) If the Regional Board receives an EPA formal objection within the 96 days specified above, the State Board or the Regional Board may exercise one of the options described under II.C.4.c. and II.C.4.d. below.

b. Content of EPA Objections

- (1) For initial objections that must be filed within 30 days, EPA may simply identify:
  - (a) The name of the facility and its NPDES number; and
  - (b) The general nature of the objection.
- (2) For formal objections that must be filed within 90 days, EPA shall specify:
  - (a) The reasons for the objections;
  - (b) The section of the CWA, the regulations or the guidelines which support the objection; and
  - (c) The changes to the permit that are required as a condition to elimination of the objection.
- (3) Every EPA objection shall be based upon one or more of the grounds for objection described under 40 CFR 123.44(c). EPA shall:
  - (a) Cite each of the grounds which applies to the objection; and

(b) Explain how each citation applies to a deficiency of the prenotice draft permit.

(4) Correspondence from EPA which objects to a prenotice draft permit, but which fails to meet the substantive criteria of this part (II.C.4.b) does not constitute an objection and may be treated by the State as comments.

c. State Board Options

(1) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the State Board may mediate the disagreement to a resolution that is satisfactory to EPA and to the Regional Board.

(2) If the disagreement proves intractable, the State Board may:

(a) Revise and resubmit the prenotice draft permit in accordance with the required by the EPA objection (The State Board would then be obliged to continue the issuance process and adopt the permit if the Regional Board declines to do so);

(b) Request a public hearing pursuant to 40 CFR 123.44(e); or

(c) Hold a public hearing on the EPA objection.

d. Regional Board Options

(1) If the Regional Board changes the prenotice draft permit to eliminate the basis of the EPA formal objection within 90 days of the Regional Board's receipt of that objection, the permit will remain within the

Regional Board's jurisdiction (see 40 CFR 123.44(h)). The Regional Board may then continue on to the public notice of the permit.

(2) If EPA and a Regional Board are unable to resolve a disagreement over provisions of a prenotice draft permit to which EPA has filed a formal objection, the Regional Board may:

(a) Request that EPA conduct a public hearing, pursuant to 40 CFR 123.44(e); or

(b) Hold a public hearing on the EPA objection.

e. The State Board or a Regional Board Holds a Public Hearing

(1) If either the State Board or a Regional Board decide to hold a public hearing on an EPA objection, that Board shall:

(a) Prepare a written rebuttal describing the legal and environmental reasons why each each provision of the prenotice draft permit should not be changed to accommodate the objection.

(b) Issue a public notice in accordance with 40 CFR 124.10 and 40 CFR 124.57(a) to open the public comment period and announce the public hearing;

(c) Make available for public review:

- o The permit application;
- o The draft permit;
- o The Fact Sheet or Statement of Basis;
- o All comments received upon the draft permit;

- o The EPA objections; and
      - o The Regional Board's rebuttal;
    - (d) Conduct the hearing in accordance with 40 CFR 124.11 and 124.12; and
    - (e) Decide whether to accommodate the EPA objection.
  - (2) A representative of EPA shall attend the hearing to explain EPA's objection.
- f. State Board and Regional Board Failure to Respond within 90 days (see 40 CFR 123.44(h))

EPA shall acquire exclusive NPDES authority over the discharge pursuant to 40 CFR 123.44(h)(3), if within 90 days of their receipt of an EPA formal objection:

- (1) Neither the State Board nor the Regional Board changes the permit to eliminate the basis of the EPA objection;
- (2) Neither the State Board nor the Regional Board requests EPA to hold a public hearing pursuant to 40 CFR 123.44(e); and
- (3) EPA does not withdraw the objection.

This applies whether or not the State Board or a Regional Board holds a public hearing on the EPA objection.

- g. EPA Public Hearing of an EPA Objection
- (1) If the State Board or a Regional Board requests a public hearing pursuant to 40 CFR 123.44(e) within the 90-day response period, EPA shall hold a public hearing in accordance with the procedures of 40 CFR Part 124.
    - (a) If the State Board or Regional Board withdraws its request for

a public hearing before EPA has issued the public notice, EPA shall cancel the hearing unless third party interest otherwise warrants a hearing pursuant to 40 CFR 123.44(e).

- (b) If the State Board or Regional Board withdraws its request for a public hearing after EPA has issued the public notice of the hearing, and EPA determines that there is not sufficient third party interest pursuant to 40 CFR 123.44(e), the State Board or Regional Board shall publish a public notice and send a cancellation to everyone on the EPA mailing list.
- (2) Within 30 days after the EPA public hearing, EPA shall:
- (a) Reaffirm, withdraw, or modify the original objection; and
  - (b) Send notice of its action to:
    - o The State Board;
    - o The Regional Board;
    - o The applicant; and
    - o Each party who submitted comments at the hearing.
- (3) If EPA does not withdraw the objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.
- (4) If EPA modifies the objection to require less change to the prenotice draft permit than was required under the original objection, the State Board or Regional Board shall have 30 days from its receipt of the EPA notice to change the permit to eliminate the basis of the objection.

- (5) EPA may not modify the objection to require more change to the prenotice draft permit than was required by the original objection.
- (6) If the State Board or Regional Board fails to send a revised draft permit to EPA within 30 days of its receipt of the EPA notification, EPA acquires exclusive NPDES authority over the discharge pursuant to 40 CFR 123.44(h)(3).

**h. Resolved Objections**

- (1) Whenever EPA has filed a formal objection to a prenotice draft permit and the State Board or Regional Board has changed the permit to eliminate the basis of the objection, or EPA has withdrawn the objection, EPA shall send notice to:
  - (a) The State Board;
  - (b) The Regional Board;
  - (c) The applicant; and
  - (d) Every other party who has submitted comments upon the EPA objection.
- (2) EPA shall send the notice within 30 days of its receipt of the revised State permit, or upon its withdrawal of the objection.

**D. Public Notice**

1. If the State Board or Regional Board does not receive an EPA initial objection within 36 days of the postmark on the individual prenotice draft permit or within 96 days of the postmark of the prenotice draft general permit, the State Board or Regional Board may proceed with the public notice process.
2. The State Board or Regional Board shall issue the public notice and conduct all public



participation activities for NPDES permits in accordance with the provisions of 40 CFR Part 124 applicable to State Programs.

- (a) The Regional Boards and State Board shall make electronic or stenographic recordings of each of the EIR public hearings, pursuant to 23 California Administrative Code Section 847.4(a).
  - (b) The Regional Board or the State Board shall make a copy of all comments, including tapes or transcripts of oral comments presented at Board Hearings, and the Board's written responses to the comments, available to EPA and the public upon request, pursuant to 40 CFR 124.17(a) and (c).
3. All EPA comments upon and objections to a prenotice draft permit, draft permit or both, and all correspondence, public comments and other documents associated with any EPA objections shall become part of the administrative record/permit file and shall be available for public review.

E. Draft Permits

1. The State Board and Regional Boards shall send a copy of each draft permit and its Statement of Basis or Fact Sheet to EPA as part of the public notice process. A copy of each draft general permit, and accompanying fact sheet except those for stormwater point sources, shall be sent to EPA and:

Director  
Office of Water Enforcement  
and Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street SW  
Washington, DC 20460

2. EPA may not object to a draft permit which it had an opportunity to review as a prenotice draft permit, except to the extent that it includes changes to the prenotice draft permit, or the bases of the objection were not reasonably ascertainable during the prior review period (e.g., because of new facts, new science, or new law).

3. If EPA issues an objection to a draft permit, the procedures described under II.C.4. shall apply.

F. Final Permits

1. Final Permits Become Effective Upon Adoption

NPDES permits other than general permits, adopted by the State Board or Regional Boards shall become effective upon the adoption date only when:

- a. EPA has made no objections to the permit;
- b. There has been no significant public comment;
- c. There have been no changes made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments); and
- d. The State Board or Regional Board does not specify a different effective date at the time of adoption.

2. Permit Becomes Effective 50 Days after Adoption

NPDES permits, other than general permits, adopted by the State Board or Regional Board shall become effective on the 50th day after the date of adoption, if EPA has made no objection to the permit; if:

- a. There has been significant public comment; or
- b. Changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only change were made to accommodate EPA comments).

3. Permit Becomes Effective 100 days after Adoption

General permits adopted by the State Board or the Regional Boards shall become effective on the 100th day after the date of adoption, if EPA has made no objection to the permit, if:

- a. There has been significant public comment;  
or
- b. Changes have been made to the latest version of the draft permit that was sent to EPA for review (unless the only changes were made to accommodate EPA comments).

4. EPA Review of Adopted Permits

a. Transmittal of Adopted Permits to EPA

The Regional Boards shall send copies of the following documents to EPA and the State Board, upon adoption of each NPDES permit identified under II.A.2:

- (1) Each significant comment made upon the draft permit, including a transcript or tape of all comments made at public hearings;
- (2) The response to each significant comment made upon the draft permit;
- (3) Recommendations of any other affected states, including any written comments prepared by this State to explaining the reasons for rejecting any other states' written recommendations.
- (4) The Executive Officer (or State Board Executive Director) summary sheet;
- (5) The Fact Sheet or Statement of Basis, if it has been changed; and
- (6) The final permit.

For general permits, except those for stormwater point sources, the State Board also shall send copies of these documents to:

Director  
Office of Water Enforcement  
and Permits (EN 335)  
U.S. Environmental Protection Agency  
401 M Street SW  
Washington, DC 20460

b. EPA Review Period

EPA shall have 30 days from its receipt of these materials to review and comment upon or object to an NPDES permit which becomes effective 50 days after the date of adoption under II.F.2.

EPA shall have 90 days from its receipt of these materials to review and comment upon or object to a general permit which becomes effective 100 days after the date of adoption under II.F.2.

c. EPA Comments upon Adopted Permits

If EPA comments upon an adopted permit pursuant to II.F.3.b. above, the State Board or Regional Board must either change the permit to accommodate the comments, or respond to the comments as follows:

- (1) If, the State Board or Regional Board changes the permit, the permit will have to be readopted unless the only changes fall within the definition of minor modifications under 40 CFR 122.63, in which case the permit may take effect as originally scheduled (at least 50 days after the date of adoption); or
- (2) If the State Board or Regional Board responds to the EPA comment instead of changing the permit, the permit may take effect as originally scheduled (at least 50 days after the date of adoption).

d. EPA Objection to Adopted Permits

If EPA mails an initial objection to an adopted permit within 30 days of its receipt pursuant to II.F.3.b., the full objection process will have begun, as described under II.C.4. and the permit effective date shall be stayed until the basis of the EPA objection has been eliminated.

e. **Restrictions upon EPA Comments and Objections**

- (1) EPA shall use this review period to make objections which pertain only:
  - (a) To changes made to the draft permit;
  - (b) To comments made upon the permit;
  - (c) To new information that was not reasonably ascertainable during the initial review period; or
  - (d) To objections made by EPA to the draft permit.
- (2) EPA shall not use this review period to file comments or objections which it neglected to file during the prenotice comment period or during the public notice comment period.

G. **Permit Modification**

1. When a Regional Board or State Board decides to modify an NPDES permit, a prenotice draft permit shall be given public notice and issued in accordance with NPDES regulations.
2. Whenever a Regional Board or State Board decides to modify an NPDES permit, the Regional Board or State Board shall follow the EPA review procedures for prenotice draft permits described under II.C. through II.F.
3. Minor permit modifications (not the same as modifications to minor permits) as described under 40 CFR 122.63 may be accomplished by letter, and are not subject to public review prior to their issuance under NPDES. However, they are subject to notice and review provisions under State law. The following protocol shall apply to "minor permit modifications":
  - a. The Regional Boards or State Board, as appropriate, shall send a copy of each

minor permit modification to EPA and the State Board.

- b. If EPA or the State Board notice that a minor modification has been issued (by either a Regional Board or the State Board) which does not conform to the criteria of 40 CFR 122.63, the State Board shall notify the permittee and the Regional Board that the minor modification was improper. The State should initiate promptly any proceedings necessary to void or rescind the modification. The Regional Board or State Board may then initiate a formal permit modification that is subject to public review as specified by NPDES regulations.

4. No NPDES permit shall be modified to extend beyond the maximum term allowed by NPDES regulations. If a Regional Board or State Board decides to extend a permit expiration date to a date more than five years from the date of issuance of the permit, the Board shall revoke and reissue the permit in accordance with NPDES regulations.

#### H. Administrative or Court Action

If the terms of any permit, including any permit for which review has been waived pursuant to Part II.A.1. above, are affected in any manner by administrative or court action, the Regional Board or State Board shall immediately transmit a copy of the permit, with changes identified, to EPA and shall allow 30 days for EPA to make written objections to the changed permit pursuant to Section 402(d)(2) of the CWA.

#### I. Variance Requests

##### 1. State Variance Authority

- a. The State may approve applications for the following variances, subject to EPA objections under Section C.4 above:

- (1) Compliance extension based on delay of a publicly owned treatment works (POTW), under Section 301(i) of the CWA;

- (2) Compliance extension based upon the use of innovative technology, under Section 301(k) of the CWA; and
  - (3) Variances from thermal pollution requirements, under Section 316(a) of the CWA.
- b. Unless the State denies the variance application, the State shall adopt approved modifications as either formal modifications to active permits or as provisions of reissued permits.

2. State/EPA Shared Variance Authority

- a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:
- (1) Variances based upon the presence of fundamentally different factors (FDF), under Section 301(n) of the CWA;
  - (2) Variances based upon the economic capabilities of the applicant, under Section 301(c) of the CWA;
  - (3) Variances based upon water quality factors, under Section 301(g) of the CWA; and
  - (4) Variances based on economic and social costs or upon the economic capabilities of the applicant for achieving EPA promulgated water quality related effluent limitations, under Section 302(b)(2) of the CWA.
- b. Unless the State denies the variance application at the outset, the State will subsequently issue an NPDES permit based upon EPA's final decision.

3. Certification and Concurrence in EPA Variance Decisions under Sections 301(h) and 301(m)

- a. The State may deny or forward to EPA, with or without recommendations, applications for the following variances:

- (1) Variances based upon the quality of coastal marine waters under Section 301(h) of the CWA (these are addressed by a separate agreement.); and
  - (2) Variances based upon the energy and environmental costs of meeting requirements for wood processing waste discharged to the marine waters of Humboldt Bay, under Section 301(m) of the CWA.
- b. If EPA decides to prepare a draft permit on the application for a variance, the State will issue or deny waste discharge requirements under its own authority as part of the concurrence process.
- (1) The State's decision on issuance of waste discharge requirements shall constitute the State's decision on concurrence in the variance. Any amendment or rescission of the waste discharge requirements, and any State Board order finding that a Regional Board's action in issuing the waste discharge requirements was inappropriate or improper, shall constitute a modification of the State's concurrence if the amendment, rescission, or State Board order is issued before EPA issues a final permit authorizing the variance.
  - (2) Waste discharge requirements issued by the State shall require compliance with any condition EPA imposes in the final permit. Any authorization made by the waste discharge requirements to discharge under a variance will be contingent upon issuance of a permit by EPA authorizing the variance.
  - (3) EPA will not issue a final permit until the State issues waste discharge requirements. If the waste discharge requirements are issued by a Regional Board, EPA will not issue a final permit until at least 31 days after the Regional Board's decision.



While any timely petition is still pending before the State Board, EPA will not issue a final permit until after 10 months have passed without State Board action on the petition. After 10 months have passed without State Board action on the petition EPA may issue a 301(h) permit provided that the permit includes a reopener clause allowing EPA to revise the permit consistent with the State Board's order on the petition for review. If the State Board initiates action on the petition within 10 months, by notifying the parties involved that the petition is complete, EPA will not issue a 301 (h) permit until after the state Board has issued an order on the petition for review.

- (4) A permit issued by EPA shall incorporate any condition of the State's concurrence, including any provisions of the waste discharge requirements issued to the discharge, unless EPA substitutes a more stringent requirement.

### III. PRETREATMENT PROGRAM

#### A. General

This Section defines the State Board, the Regional Boards, and EPA responsibilities for the establishment, implementation, and enforcement of the National Pretreatment Program pursuant to Sections 307 and 402(b) of the CWA, and as described in Section VI of the "NPDES Program Description, January 1988".

#### B. Roles and Responsibilities

EPA will oversee California Pretreatment Program operations consistent with the requirements of 40 CFR Part 403, this Section of the MOA, and Section VI of the "NPDES Program Description, January 1988".

Consistent with State and federal law, and the State Clean Water Strategy, the State will administer the California Pretreatment Program.

The State Board will have primary responsibility for:

1. Developing, implementing, and overseeing the California Pretreatment Program;
2. Providing technical and legal assistance to the Regional Boards, publicly owned treatment works (POTWs), and industrial users;
3. Developing and maintaining a data management system;
4. Providing information to EPA or other organizations as required and/or requested; and
5. Reviewing and ruling on petitions for review of Regional Board decisions.

The Regional Boards, with the assistance and oversight of the State Board, will have primary responsibility for:

1. Enforcing the National pretreatment standards: prohibited discharges, established in 40 CFR 403.5;
2. Enforcing the National categorical pretreatment standards established by the EPA in accordance with Section 307 (b) and (c) of the CWA, and promulgated in 40 CFR Subchapter N, Effluent Guidelines and Standards;
3. Review, approval, or denial of POTW Pretreatment Programs in accordance with the procedures discussed in 40 CFR 403.8, 403.9, and 403.11;
4. Requiring a Pretreatment Program as an enforceable condition in NPDES permits or waste discharge requirements issued to POTWs as required in 40 CFR 403.8, and as provided in Section 402(b)(8) of the CWA;
5. Requiring POTWs to develop and enforce local limits as set forth in 40 CFR 403.5(c);
6. Review and, as appropriate, approval of POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with 40 CFR

403.7, 403.9, and 403.11, and enforcing related conditions in the POTW's NPDES permit or waste discharge requirements;

7. Overseeing POTW Pretreatment Programs to ensure compliance with requirements specified in 40 CFR 403.8, and in the POTW's NPDES permit or waste discharge requirements;
8. Performing 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;
9. Providing the State Board and EPA, upon request, copies of all notices received from POTWs that relate to a new or changed introduction of pollutants to the POTW; and
10. Applying and enforcing all other pretreatment regulations as required by 40 CFR Part 403.

C. POTW Pretreatment Program and Removal Credits Approval

Each Regional Board shall review and approve POTW applications for POTW pretreatment program authority and POTW applications to revise discharge limits for industrial users who are, or may in the future be, subject to categorical pretreatment standards. It shall submit its findings together with the application and supporting information to the State Board and EPA for review. No POTW Pretreatment Program or request for revised discharge limits shall be approved by the Regional Boards if the State Board or EPA objects in writing to the approval of such submission in accordance with 40 CFR 403.11(d).

Note: No removal credits can be approved until EPA promulgates sludge regulations under Section 405 of the Clean Water Act.

D. Requests for Categorical Determination

Each Regional Board shall review requests for determinations of whether an industrial user does or does not fall within a particular industrial category or subcategory. The Regional Boards will make a written determination for each request

stating the reasons for the determinations. The Regional Board shall then forward its findings, together with a copy of the request and any necessary supporting information, to the State Board and EPA for concurrence. If the State Board or EPA does not modify the Regional Board's decision within 60 days after receipt thereof, the Regional Board finding is final. A copy of the final determination shall be sent to the requestor, the State Board, and EPA Region 9.

E. Variances From Categorical Standards For Fundamentally Different Factors

Each Regional Board shall make an initial finding on all requests from industrial users for fundamentally different factors variances from the applicable categorical pretreatment standard. If the Regional Board determines that the variance request should be denied, the Regional Board will so notify the applicant and provide reasons for its determination in writing. Where the Regional Board's initial finding is to approve the request, the finding, together with the request and supporting information, shall be forwarded to the State Board. If the State Board concurs with the Regional Board's finding, it will submit it to EPA for a final determination. The Regional Board may deny but not approve and implement the fundamentally different factor(s) variance request until written approval has been received from EPA.

If EPA finds that fundamentally different factors do exist, a variance reflecting this determination shall be granted. If EPA determines that fundamentally different factors do not exist, the variance request shall be denied and the Regional Board shall so notify the applicant and provide EPA's reasons for the denial in writing.

F. Net/Gross Adjustments to Categorical Standards

If the Regional Board receives a request for a net/gross adjustment of applicable categorical pretreatment standards in accordance with 40 CFR 403.15, the Regional Board shall forward the application to EPA for a determination. A copy of the application will be provided to the State Board. Once this determination has been made, EPA shall

notify the applicant, the applicant's POTW, the Regional Board, and State Board and provide reasons for the determination and any additional monitoring requirements the EPA deems necessary, in writing.

#### G. Miscellaneous

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

The State Board and EPA will communicate, through the Section 106 Workplan process, commitments and priorities for program implementation including commitments for inspection of POTWs and industrial users. The Section 106 Workplan will contain, at a minimum, the following: (1) a list of NPDES permits or waste discharge requirements to be issued by the Regional Boards to POTWs subject to pretreatment requirements; and (2) the number of POTWs to be audited or inspected on a quarterly basis.

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

#### IV. COMPLIANCE MONITORING AND ENFORCEMENT

This Section constitutes the State/EPA Enforcement Agreement. The State Board and EPA will review this section of the MOA each year.

##### A. Enforcement Management Systems (EMS)

The State Board will maintain compliance monitoring and enforcement procedures in the APM which are consistent with the seven principles of the EPA Enforcement Management System Guide (listed below), and this MOA. The APM shall constitute the State Enforcement Management System for the NPDES program, and shall describe criteria for:

1. Maintaining a source inventory (of information about discharges subject to NPDES permits) that is complete and accurate;
2. Processing and assessing the flow of information available on a systematic and timely basis;
3. Completing a preenforcement screening (of compliance-related information coming into the inventory) by reviewing the information as soon as possible after it is received;
4. Performing a more formal enforcement evaluation (of the same information) where appropriate;
5. Instituting formal enforcement action and follow-up wherever necessary;
6. Initiating field investigations based upon a systematic plan; and
7. Using internal management controls to provide adequate enforcement information to all levels of the organization.

These compliance and enforcement-related provisions of the APM shall constitute the framework (within which the circumstances of

noncompliance are reviewed) for making NPDES enforcement decisions, and evaluation of those decisions by others.

B. Inspections

1. State Inspections

- a. The Regional Boards shall conduct compliance inspections to determine the status of compliance with permit requirements, including sampling and non-sampling inspections.
- b. The State Board will maintain up-to-date procedures in the APM for conducting compliance inspections, which conform to NPDES regulations.
- c. The State is responsible for inspecting annually all major dischargers. To enable this goal to be accomplished EPA may assist the State by inspecting some dischargers. The 106 workplan will specify the number of sampling inspections and the number of reconnaissance inspections to be conducted by the State each year.

2. EPA Inspections

- a. EPA retains the authority to perform compliance inspections of any permittee at any time.
- b. For those inspections scheduled more than 15 days in advance, EPA will notify the appropriate Regional Board and the State Board within 15 days in advance. For inspections scheduled less than 15 days in advance, EPA will provide as much advance notice as possible.
- c. EPA will send copies of inspection reports to the Regional Board and State Board within 30 days of the inspection if there are no effluent samples to be analyzed. EPA will usually send copies of inspection results to the State within 60 days of the inspection if there are effluent samples to be analyzed.

### 3. Inspection Assistance

- a. EPA and the State Board will provide technical assistance to the Regional Boards in their inspection programs whenever staff are available. This assistance may be requested at any time by the Regional Boards.
- b. If neither EPA nor the State Board are able to provide such assistance when it is requested, the State Board shall schedule the assistance at the earliest possible date, and so notify the Regional Board and EPA.

### C. Discharger Reports

#### 1. Review of Reports

The Regional Boards shall require each NPDES permittee to send copies of its Discharge Monitoring Reports (DMRs) to EPA and the Regional Boards for review.

- a. Whenever a Regional Board cannot complete the review of DMRs and other compliance reports within 30 days of their arrival, the Regional Board shall follow the "exception procedures" in the APM.
- b. For auditing and reporting purposes Regional Boards (or the State Board if it should undertake DMR review) shall track and document the date of receipt, the date of review, and the review results (i.e., compliance status) of each DMR and compliance report.

#### 2. Quality Assurance Reviews

EPA routinely conducts technical studies of the accuracy of the reported effluent data from NPDES permittees. EPA send check samples to selected permittees for analysis as part of these studies. The permittees are required to return the results to EPA.

##### a. Delinquent Permittees

- (1) EPA will send the State Board a list of permittees who declined to return



the analytical results of the check samples.

- (2) The State Board shall transmit the list to the Regional Boards and assure that they require the permittee to participate in all subsequent studies.
- (3) The State Board or Regional Board shall take other appropriate enforcement action against NPDES permittees that have failed to return the analytical results of the sample.

b. Unacceptable Quality of Analysis

- (1) EPA will send the State Board and Regional Boards a list of permittees who failed the analysis study.
- (2) The Regional Boards will determine whether the causes of failure are due to clerical errors in report preparation or procedural errors in sample analysis.
  - (a) If the problem is due to clerical errors, the Regional Board will clarify the reporting procedures.
  - (b) If the problem is due to analytical errors, the Regional Board will assure that the problems are corrected immediately or that the permittee begins using another laboratory.
  - (c) If the permittee is using in-house laboratory facility, the Regional Board staff shall take action to assure compliance with NPDES requirements.

c. EPA Technical Assistance

Within the constraints of available staff time, EPA will provide technical assistance and guidance concerning acceptable analytical procedures.

D. Public Complaints

1. Telephone Complaints

- a. Telephone complaints received by EPA or the State Board pertaining to a discharge to water of the United States will be referred to the appropriate Regional Board.
- b. The Regional Boards shall maintain written documentation of each telephone complaint and its disposition.

2. Written Complaints

- a. Written complaints pertaining to a discharge to waters of the United States may be responded to by telephone or by letter. All telephone responses shall be documented by memo.
- b. Copies of each response prepared by EPA or the State Board shall be sent to the appropriate Regional Board.
- c. The Regional Boards shall retain documentation of each written complaint and its disposition.

3. Complaint Resolution

- a. The Regional Boards will investigate complaints and inform the complainant of the investigation results.
- b. The Regional Boards shall place a copy of each NPDES-related complaint and a memo of record describing the investigation results thereof into the permit file or compliance file of the appropriate facility.

E. State Enforcement

1. Basis of EPA/State Relationship

- a. The Regional Boards pursue enforcement of NPDES permit requirements, and of all other provisions of the NPDES program under State authority.

- b. The State Board shall assure that enforcement of the NPDES program is exercised aggressively, fairly, and consistently by all nine Regional Boards. The staff of the State Board will review enforcement practices and inform the Regional Board if not taking appropriate enforcement actions.
  - (1) The State Board will assure that Federal facilities are treated the same as other NPDES facilities within the constraints of Section 313 of the Clean Water Act.
  - (2) The State Board will keep a record of all penalties assessed and all penalties collected in NPDES enforcement cases.
- c. EPA shall monitor the State's performance, and may take enforcement action under Section 309 of the CWA, whenever the State does not take timely and appropriate enforcement action.
- d. EPA shall coordinate its enforcement actions with the State Board and with the appropriate Regional Board as described below.
- e. The State Board and EPA will meet periodically to discuss the status of pending and adopted enforcement actions as well as other issues of concern.

2. State Notice to EPA of Enforcement Actions

The State shall send copies of proposed and final enforcement actions, settlements, and amendments thereto, against NPDES facilities to EPA within five working days after the date of signature.

F. EPA Enforcement

1. EPA Initiation of Enforcement Action

EPA will initiate enforcement action:

- a. At the request of the State;

- b. If the State response to the violation is not consistent with the APM and EPA policy or is otherwise determined by EPA not to be timely and appropriate; or
- c. If there is an overriding federal interest.

2. EPA Deferral of Enforcement Action

EPA shall defer formal enforcement action whenever the State initiates an enforcement action determined by EPA to be timely and appropriate for the violation, except when there is an overriding federal interest.

G. Enforcement Procedures

If circumstances require EPA to pursue formal enforcement, EPA, and the State shall observe the following procedures:

1. Enforcement Based on the Quarterly Noncompliance Report

- a. EPA shall notify the State Board and the appropriate Regional Boards by letter, of the facilities (the name and NPDES number) for which for which EPA policy requires formal enforcement action.
- b. The State Board shall respond to EPA by letter within 30 days of its receipt of the EPA notice.
- c. The response shall include:
  - (1) The name and NPDES number of:
    - (a) Each facility which has returned to compliance;
    - (b) Each facility for which the Regional Boards have scheduled formal enforcement actions;
    - (c) Each facility for which a Regional Board or the State Board has taken a formal enforcement action, if the

enforcement action was not shown on the QNCR as part of the response to the violation; and

(d) Each facility against which the State Board will pursue formal enforcement.

(2) Identification of the type of each formal enforcement action;

(3) A description of how each Regional Board plans to address the violations which have not been corrected by the facilities, and for which they are not pursuing formal enforcement; and

(4) A description of the enforcement action State Board staff will recommend to take against any facility.

e. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.

2. Enforcement Based on Information Other than the Quarterly Noncompliance Report

a. EPA shall notify the State Board and the appropriate Regional Board of each violation against which EPA intends to pursue formal enforcement. This notice shall include:

(1) The name and NPDES number of the facility;

(2) An identification of the violations which warrant formal enforcement;

(3) The reasons why EPA believes formal enforcement is necessary; and

(4) The reasons why past or pending State responses are insufficient.

b. Within ten working days of the notification by EPA, and after

consultation with the appropriate Regional Boards, the State Board will respond to the EPA notice. The State Board's response will include:

- (1) A discussion of the circumstances of the identified violations;
- (2) A description of the substance and timing of any past, pending, or planned responses to the violations by the Regional Board or the State Board; including identification of the office and staff responsible for the action;
- (3) The amounts of any penalties sought or collected; and
- (4) Whether or not the State Board believes the responses are appropriate and why.

- c. EPA shall notify the State Board either that the State response to the violation is sufficient to defer a formal action by EPA, or that EPA will proceed with a formal enforcement action pursuant to Section 309 of the CWA.
- d. Normal enforcement action until ten working days from the date of the EPA notice have passed.

3. Overriding Federal Interest:

- a. For the purposes of this MOA, an overriding federal interest exists when:
  - (1) EPA enforcement can reasonably be expected to expedite the discharger's return to full compliance;
  - (2) EPA enforcement can reasonably be expected to increase program credibility; or
  - (3) The violation has significant implications for the success of the NPDES program beyond the borders of California;

- b. EPA shall notify the State Board and the appropriate Regional Board when there is an overriding federal interest;
- c. Within ten working days of the EPA notice, the State Board will inform EPA of any coordination between the federal action and a State action that the State believes to be appropriate;
- d. EPA shall either:
  - (1) Contact the Regional Board and the State Board to work out the details of coordinating the State and federal enforcement actions. Usually, such coordination will entail the exchange of draft enforcement actions for review. Comments can usually be exchanged by telephone, or in a staff meeting at the Regional Board depending upon the complexity of the enforcement action; or
  - (2) Inform the State Board that such coordination is infeasible;
- e. EPA shall not proceed with its enforcement action until ten working days after the date of the EPA notice; and
- f. In any instance of overriding federal interest and upon request by the State, EPA shall send the State Board and the appropriate Regional Board a brief, written explanation of the reasons for overriding federal interest or the reasons for infeasibility of enforcement coordination.

4. Recovery of Additional Penalties

Nothing in this MOA shall be construed to limit EPA's authority to take direct enforcement action for the recovery of additional penalties, wherever the penalties recovered by the State are less than those prescribed by the EPA penalty policy.

5. EPA Enforcement Without Notice to the State

Notwithstanding the provisions above for prior notification to the State of federal enforcement actions, nothing in this MOA limits EPA's authority to take enforcement action without any prior notice to the State. If EPA does take such an action, it shall send copies of its correspondence with the affected facility to the State Board and the appropriate Regional Board.

V. STATE REPORTING

A. The State will submit the following to EPA:

| <u>Item</u> | <u>Description</u>  | <u>Frequency of Submission</u> |
|-------------|---|--------------------------------|
| 1           | A copy of all permit applications except those for which EPA has waived review  | Within 5 days of receipt       |
| 2           | Copies of all draft NPDES permits and permit modifications including fact sheets except those for which EPA has waived review | When placed on public notice   |
| 3           | Copies of all public notices  | As issued                      |
| 4           | A copy of all issued, draft NPDES permits and permit modifications  | As issued                      |
| 5           | A copy of settlements and decisions in permit appeals   | As issued                      |

| <u>Item</u> | <u>Description</u>   | <u>Frequency of Submission</u> |
|-------------|--|--------------------------------|
| 6           | A list of major facilities of the scheduled for compliance inspections | With submission annual program |
| 7           | Proposed revisions to the scheduled compliance inspections             | As needed                      |



|             |   |  |
|-------------|---|--|
| 8           | A list of compliance inspections performed during the previous quarter  | Quarterly  |
| 9           | Copies of all compliance inspection reports and data and transmittal letters to major permittees  | Within 30 days of inspection   |
| 10          | Copies of all compliance inspection reports and data transmittal letters to all other permittees  | As requested   |
| 11          | For major dischargers, a quarterly noncompliance report as specified in 40 CFR 123.45(a) and further qualified in EPA guidance  | Quarterly, as specified in 40 CFR 123.45(c)                                |
| 12          | For minor dischargers, an annual noncompliance report as specified in 40 CFR 123.45(b)  | Within 60 days of the end of the calendar 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, and referrals to the Attorney General) | As issued  |
| <u>Item</u> | <u>Description</u>  | <u>Frequency of Submission</u>   |
| 14          | Copies of correspondence required to carry out the pretreatment program   | As issued or received  |
| 15          | Copies of Discharge Monitoring Report (DMR) and non-  | Within 10 days of receipt  |

compliance notifi-  
cation from major  
permittees

**B. Major Discharger List**

The State annually shall submit to EPA an updated "major dischargers" list. The list shall include those dischargers mutually defined by the State Board and EPA as major dischargers 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. The schedule for submittal of the major discharger list shall be included in the 106 workplan.

**C. Emergency Notification**

1. The Regional Board shall telephone, or otherwise contact, EPA and the State Board immediately if it discovers a NPDES permit violation or threatening violation:
  - a. That has significantly damaged or is likely to significantly damage the environment or the public health; or
  - b. That has or is likely to cause significant public alarm.
2. The Regional Board will describe the circumstances and magnitude of the violation

**VI. CONFIDENTIALITY OF INFORMATION**

- A. All information obtained or used by the State in the administration of the NPDES program shall be available to EPA upon request without restriction, and information in EPA's files which the State needs to implement its program shall be made available to the State upon request without restriction.
- B. Whenever either party furnishes information to the other that has been claimed as confidential, the party furnishing the information will also furnish the confidentiality claim and the results of any legal review of the claim.

- C. The party receiving the confidential information will treat it in accordance with the provisions of 40 CFR Part 2.
- D. The State and EPA will deny all claims of confidentiality for effluent data, permit applications, permits, and the name and address of any permittee.

VII. PROGRAM REVIEW

- A. To fulfill its responsibility for assuring the NPDES program requirements are met, EPA shall:
  - 1. Review the information submitted by the State;
  - 2. Meet with State officials from time to time to discuss and observe the data handling, permit processing, and enforcement procedures, including both manual and automated processes;
  - 3. Examine the files and documents of the State regarding selected facilities to determine:
    - (a) whether permits are processed and issued consistent with federal requirements;
    - (b) whether the State is able to discover permit violations when they occur;
    - (c) whether State reviews are timely; and
    - (d) whether State selection of enforcement actions is appropriate and effective. EPA shall notify the State in advance of any examination under this paragraph so that appropriate State officials may be available to discuss individual circumstances and problems.

EPA need not reveal to the State in advance the files and documents to be examined. A copy of the examination report shall be transmitted to the State when available;


- 4. Review, from time to time, the legal authority upon which the State's program is based, including State statutes and regulations;
- 5. When appropriate, hold public hearings on the State's NPDES program; and
- 6. Review the State's public participation policies, practices and procedures.

- B. Prior to taking any action to propose or effect any substantial amendment, recision, or repeal of any statute, regulations, or form which has been approved by EPA, and prior to the adoption of any statute, regulations, or form, the State shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see 40 CFR 123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).
- C. If an amendment, recision, or repeal of any statute, regulations, or form described in paragraph (B) above shall occur for any reason, including action by the State legislature or a court, the State shall within ten 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 as an alternative to those specified as required for NPDES permitting, the State shall obtain the approval of the Regional Administrator.

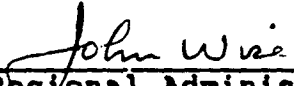
#### VIII. TERM OF THE MOA

- A. This MOA shall become effective upon the date of signature of the Regional Administrator and of the Chair of the State Water Resources Control Board after State Board approval. If it is signed by the two parties on different days, the latter date shall be the effective date.
- B. This MOA shall be reviewed by EPA and the State, and revised as appropriate within five (5) years of its effective date.
- C. Either EPA or the State may initiate action to change this MOA at any time.
  - 1. No change to this MOA shall become effective without the concurrence of both agencies.
  - 2. The STATE REPORTING (V) portion may be changed by the written consent of the Chief, Division of Water Quality, SWRCB, and the Director, Water Management Division, EPA, Region 9. The Director of Permits Division (EN-336) must consent to all substantial changes.

3. All other changes to this MOA must be approved by the State Board and approved by the Regional Administrator, with the prior concurrence of the Director of the Office of Water Enforcement and Permits (EN-335) and the Associate General Counsel for Water for all substantial changes. The Director of the Office of Water Enforcement and Permits and Associate General Counsel for Water shall also determine whether changes should be deemed substantial.
  4. All changes to this MOA determined by EPA to be substantial shall be subject to public notice and comment in accordance with the requirements of 40 CFR 123.62 before being approved.
- D. Either party may terminate this MOA upon notice to other party pursuant to 40 CFR 123.64.
- E. In witness thereof, the parties execute this agreement.

  
\_\_\_\_\_  
W. Don Maughan  
Chairman,  
State Water Resources  
Control Board

Dated: JUN - 8 1979

  
\_\_\_\_\_  
Regional Administrator  
Environmental Protection  
Agency, Region 9

Dated: 22 SEP 1989

AGREEMENT ON A CONFLICT RESOLUTION PROCESS  
BETWEEN  
REGIONAL ADMINISTRATOR, EPA, REGION 9  
AND  
CHAIRMAN, STATE WATER RESOURCES CONTROL BOARD

**I. INTRODUCTION**

The State Water Resources Control Board (State Board) is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The U.S. Environmental Protection Agency (EPA), Region 9 is under the delegation of the Administrator of EPA, responsible for implementing or over-seeing implementation of requirements of the Clean Water Act within the boundaries of Region 9. The State Board and EPA, Region 9 agree that it is desirable to define a process for resolving disagreements or conflicts between the respective agencies which have not otherwise been resolved.

**II. PURPOSE**

The purpose of this agreement is to define a process for resolving conflicts and disagreements where other processes or attempts at reaching agreement have failed or where other opportunities have not been available. This agreement neither supersedes nor replaces existing or prospectively developed processes for resolving disputes.

**III. SCOPE**

This agreement applies to all programs, activities and financial support which is authorized by the Clean Water Act. The agreement is binding on the State Board and EPA, Region 9, and is not binding on Regional Water Quality Control Boards nor on other organizational entities of EPA.

**IV. PROCESS AND STANDARDS FOR DISPUTE RESOLUTION**

**A. General Principles**

1. Whenever possible, disputes should be resolved informally at the lowest possible level.
2. Disputes should be resolved in a timely manner.
3. Attempts to resolve disputes shall be consistent with the Clean Water Act and the President's October 26, 1987 Executive Order, entitled "Federalism".
4. Both parties agree to respond to each other in writing within 30 days of receipt of requests for agreement or decisions or elevation to the next level may occur.

**B. Resolution Process**

Disputes which cannot be resolved at the staff level will be referred to a higher level as follows:

1. First step: Resolution at the State Board Division and EPA Branch level.
2. Second step: Resolution at the State Board Executive Director/EPA Division Director level.
3. Third step: Resolution at the State Board/EPA Regional Administrator level. This is the final step where the Regional Administrator has authority to resolve the conflict.
4. Fourth step: For disputes over requirements originating at EPA Headquarters or for programs where clear delegation of authority has not been made to the Regional Administrator, the Chairman of the State Board may seek resolution by directing the dispute to the Regional Administrator. Upon receipt of the request the Regional Administrator shall consult with or seek assistance from the appropriate office at EPA Headquarters.


Where the Regional Administrator is unable to resolve the dispute, the Chairman of the State Board may pursue a solution to the dispute by direct contact with Headquarters. The Regional Administrator shall, upon request of the Chairman of the State Board, provide assistance to the State in contacting the appropriate managers in EPA Headquarters.

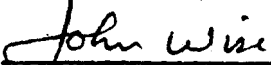
**C. Review of Delegated Authority**

The State reserves the right to advise the Administrator of EPA by letter from the Chairman of the State Board, when it is of the opinion that authority delegated to the Regional Administrator is inappropriate at that level or has been abused.

**V. TERM**

This agreement may be modified from time to time as the parties may agree in order to simplify the procedures. The agreement may be rescinded by either party upon 90 days written notice to the other party.

  
\_\_\_\_\_  
W. Don Maughan  
Chairman  
State Water Resources Control  
Board

  
\_\_\_\_\_  
Daniel W. McGovern  
Regional Administrator  
U.S. Environmental  
Protection Agency,  
Region 9

JUN - 8 1989

22 SEP 1989