

MEMORANDUM OF AGREEMENT

Iowa Department of Natural Resources

And The

U.S. Environmental Protection Agency

National Pollution Discharge Elimination System

And

Pretreatment Program

December 2015

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I. PURPOSE

The purpose of the Memorandum Of Agreement, hereafter "MOA", is to establish policies, responsibilities and procedures pursuant to the Federal Water Pollution Control Act, or Clean Water Act (CWA), 33 U.S.C. § 1251, *et seq.*, and Title 40 of the Code of Federal Regulations (40 CFR) Part 123 and Parts 403-471 for program commitments between the Iowa Department of Natural Resources (IDNR) and the U.S. Environmental Protection Agency, Region 7 (EPA) for the administration of the National Pollutant Discharge Elimination System (NPDES) and Pretreatment Programs by the IDNR. This MOA shall constitute the agreement between the IDNR and the EPA. This MOA is intended to address the administration of the NPDES program and is not intended to address criminal investigatory proceedings.

On August 10, 1978, the Administrator of the EPA approved the State of Iowa's NPDES program pursuant to the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b). As part of the approval, the Administrator approved a MOA between the Regional Administrator of the EPA, Region 7, and the Director of the Iowa Department of Environmental Quality, now the Iowa Department of Natural Resources (IDNR), which was signed on August 1, 1978. This MOA established policies, responsibilities, and procedures for the IDNR's participation in the NPDES program. The parties agree that a new MOA should replace the original MOA. Therefore, the parties enter into this MOA, which upon approval by the Regional Administrator and the Director, shall supersede the original MOA.

Each of the parties has a responsibility to assure that the NPDES and Pretreatment Program requirements are met. The Director and the Regional Administrator agree to maintain a high level of cooperation and coordination between the IDNR and the EPA staffs in a partnership to assure successful, effective and efficient administration of the NPDES and Pretreatment Program. Meetings will be scheduled periodically between the IDNR and the EPA to review specific operating procedures, resolve problems, or discuss, mutual concerns involving the NPDES and Pretreatment Program.

The strategies for issuance, compliance monitoring, and enforcement of permits, as established by this MOA, may be set forth in more detail in the IDNR CWA Section 106 program grant and other IDNR/EPA agreements. The CWA Section 106 program grant document contains terms and conditions consistent with the CWA and its implementing regulations regarding appropriate use of grant funds. This MOA and the IDNR CWA Section 106 program grant should be consistent with each other; however, responsibilities of the IDNR in administering the NPDES and Pretreatment Programs may extend beyond activities covered under the Section 106 program grant. This MOA, the IDNR CWA Section 106 program grant and other IDNR/EPA agreements should be consistent with this MOA. The MOA controls in case of conflict, except that the September 11, 2013 Work Plan Agreement between the IDNR and the EPA regarding concentrated animal feeding operations (CAFOs) shall control in case of conflict with respect to regulation of CAFOs, until the September 11, 2013 Work Plan terminates.

II. SCOPE OF AUTHORIZATION

The IDNR and the EPA agree that the IDNR has authority to administer the NPDES permitting, compliance monitoring and enforcement activities (including federal facilities), and Pretreatment activities in Iowa in accordance with the CWA and its implementing regulations. The IDNR does not administer the NPDES or Pretreatment Programs in federally recognized Indian Tribal lands. The IDNR has authority to regulate discharges from point sources including, but not limited to, publicly owned treatment works (POTWs) and privately owned treatment works, industrial sources, CAFOs, stormwater associated with industrial activity, and discharges of stormwater from municipal separate storm sewer systems. The IDNR also has primary responsibility for implementing the Pretreatment Program, authorized June 3, 1981, the Federal Facilities Program, authorized August 10, 1978, and the General Permits Program, authorized August 12, 1992.

This MOA sets forth procedures under which the EPA and the IDNR will coordinate their actions and share information regarding civil matters, consistent with their respective legal obligations and authorities, in the administration of the CWA. Nothing herein shall be construed as expanding the respective authority of either agency or as requiring or authorizing the IDNR to implement or administer any federal law, including the Endangered Species Act, other than those portions of the CWA that the EPA has authorized the IDNR to implement and administer.

III. STATE AND FEDERAL RESPONSIBILITIES

The NPDES and Pretreatment Programs administered by the IDNR, equivalent to applicable provisions of the CWA and its implementing regulations, are implemented through the Iowa Code chapters 455B, 459, 459A, 459B and the Administrative Code, Agency 567, Title IV: Wastewater Treatment and Disposal.

A. IDNR Responsibilities

The IDNR shall exercise the legal authority through the IDNR regulations and the State statutes required by the CWA and, to the maximum extent possible, maintain the resources required to carry out all aspects of the authorized NPDES and Pretreatment Programs. For a complete list of IDNR responsibilities see Appendix A. The legal authority to carry out the requirements of permitting (40 CFR § 123.25), for compliance evaluation programs (40 CFR § 123.26), for enforcement authority (40 CFR § 123.27), and for the Pretreatment Program (40 CFR § 403.10) is described in more detail in the Attorney General's Statements dated September 27, 1976 and October 6, 1978 (permitting and Pretreatment Program, respectively) and is listed in Appendix C.

B. EPA Responsibilities

The EPA shall, to the maximum extent possible, provide funding to the IDNR to support the authorized NPDES and Pretreatment Programs and oversee the IDNR's administration of the NPDES and Pretreatment Programs for consistency with the CWA, this MOA, any applicable

IDNR/EPA agreements, the CWA Section 106 program grant and all applicable federal regulations. A complete list of the EPA responsibilities is included in Appendix A of this document.

IV. PERMIT PROCESSING, REVIEWING AND ISSUANCE

The IDNR is responsible for drafting permits, ensuring public notice, providing the opportunity for public comment and hearings, issuing permits, amending (modifying), renewing (reissuing) and denying and revoking (terminating) permits in accordance with applicable State statutes, rules, and this MOA and consistent with federal statutes and rules.

A. Administrative Review of Applications

The IDNR shall be responsible for the administrative review of all NPDES permit applications within the IDNR's jurisdiction. The IDNR will make completeness determinations and inform applicants if additional information is required. Appropriate application information will be transmitted to a national database as required by the EPA's mandatory data requirements.

B. Permit Development

A draft permit will be developed by the IDNR in accordance with State statutes and rules after an application is determined to be complete and consistent with federal statutes and rules.

Technology based effluent limits in NPDES permits for non-POTW dischargers will be at least as stringent as applicable Effluent Guidelines and Standards specific in 40 CFR Chapter I, Subchapter N. Permit requirements will be based on best professional judgment, in accordance with 40 CFR § 125.3, when specific Effluent Guidelines and Standards regulations do not apply to a particular discharge. Technology limits for POTWs will at a minimum reflect the secondary treatment definition found in 40 CFR Part 133.

Water quality based effluent limitations will be included in NPDES permits when needed to ensure compliance with State water quality standards approved by the EPA. All final limitations in an NPDES permit will be consistent with any approved Total Maximum Daily Load (TMDL). Endangered species concerns will be addressed through interagency coordination.

The IDNR will include standard conditions and special conditions in NPDES permits, as required by 40 CFR § 123.25.

C. EPA Review of Draft and Proposed Permits, Permit Revocations and Activities Authorized by Rule

1. The EPA waives the review of draft and proposed permits except for the following categories:
 - a. Discharges that may affect the waters of an adjacent state(s) or Indian country;
 - b. Discharges from POTWs with daily average flows of 1.0 million gallons per day (MGD) or greater;

- c. Discharges from POTWs with approved Pretreatment Programs;
 - d. Discharges of cooling water that exceed a daily average of 500 MGD;
 - e. Discharges from all designated "Major" facilities (as defined in 40 CFR § 122.2);
 - f. Discharges from all primary industry categories, as listed in 40 CFR Part 122, Appendix A but only to the extent that the discharge is subject to federal Effluent Guidelines and Standards in 40 CFR Chapter I, Subchapter N;
 - g. Discharges from other non-POTW sources with permitted daily average flows of 0.5 MGD or greater, except for those facilities that discharge only non-process wastewater;
 - h. Permits for municipal separate storm sewer systems (MS4s);
 - i. Permits for Combined Sewer Overflows (CSO) communities;
 - j. Permits for POTWs that in any manner authorize or require monitoring of discharges from any point in the collection system prior to the headworks of the wastewater treatment plant. This would include, but not be limited to, permits for systems with sanitary sewers, or satellite treatment facilities;
 - k. All general permits, or authorizations by rule;
 - l. All permits EPA has requested to review consistent with paragraph 3 below; and,
 - m. Permits for CAFOs that use alternative technology.
2. The EPA waives review of permit modifications which are considered minor modifications.
 3. Upon written notice and request, the EPA retains the right, per 40 CFR § 123.43, to review any NPDES draft permit proposed to be issued by the State. The EPA retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time per 40 CFR § 123.24.
 4. Any waiver of EPA review shall not be construed to authorize the issuance of a permit by the IDNR that does not comply with applicable provisions of federal or State statutes, rules, regulations or effluent guidelines.
 5. Where the EPA review is not waived, the EPA agrees to review draft permits rather than proposed permits. For purposes of this MOA, a draft permit is a document indicating the IDNR's tentative recommendation to issue or deny, amend, revoke, or renew a permit. Such draft permits are subject to public notice. For purposes of this MOA, a proposed permit means an NPDES permit prepared after the close of public notice, a public meeting, or a contested case hearing. If the IDNR proposes to issue a permit which is substantively different from the draft permit submitted for the EPA review, the IDNR Director shall transmit the new proposed permit to the EPA. The EPA shall have the right to comment further upon, object to, or make recommendations with respect to the new proposed permit.
 6. The IDNR will notify the EPA of the availability of the draft permit package, concurrent with the beginning of the public notice period using the Wastewater Permit Information Exchange (WWPIE) System or its successor for permits for which the EPA has not waived review.
 7. The permit package to be submitted to the EPA for review of either draft or proposed permit for which the EPA has not waived review shall include:
 - a. Draft or proposed permit;
 - b. Public notice, as applicable;
 - c. Permit application and all information submitted by the applicant relating to the draft or proposed permit, as applicable;

- d. Fact sheet or Statement of Basis;
 - e. New Source determination, if applicable, and
 - f. Water quality standards variance request and response, if applicable.
8. The EPA may provide written comments, objections or recommendations to draft permits, in accordance with 40 CFR § 123.44, within thirty (30) days from its receipt of a draft or proposed permit, or the end of the public notice period, whichever is later, unless an interim objection is filed by the EPA (see paragraph 10, below). If, within this thirty (30) day period, a general objection to a draft or proposed permit is made, the EPA will then have ninety (90) days from receipt of the draft permit to submit specific objections. For a general permit, the EPA will have ninety (90) days from its receipt of the draft or proposed permit for its review.
 9. Where the EPA has objected to a draft or proposed permit, the EPA will set forth in writing its objection(s), all citations to the CWA, and specific federal regulations that support the objection(s). The EPA shall also include the specific action that the IDNR must take to satisfy the objection.
 10. The EPA shall consider all data transmitted in the permit package, and may request all or portions of the information in the IDNR's files for review if the EPA determines that the information provided by the IDNR is inadequate to determine whether the proposed permit meets the guidelines and requirements of the CWA. If a request for additional file information is made within thirty (30) days of receipt of the draft or proposed permit package, such request will be considered an interim objection. After receipt by the EPA of the requested material, or a notification that the IDNR does not have the requested material, or a notification that the IDNR has no further response to the request for additional information; the full period of time for the EPA's review under 40 CFR § 123.44 and this MOA will recommence.
 11. The procedures for the EPA's notice to the IDNR and the permit applicant of any EPA comment, objection or recommendation regarding a draft or proposed permit, for the IDNR's response to an EPA objection to a draft or proposed permit, for requesting and conducting a public hearing regarding an objection by the EPA to a draft or proposed permit, and for the EPA action following such public hearing are set forth in 40 CFR § 123.44.
 12. Exclusive authority to issue the permit for one permit term shall pass to the EPA if the IDNR does not resolve the EPA's specific objection within ninety (90) days from receipt of the objection, unless a public hearing is requested within the ninety (90) days and the Regional Administrator determines that a hearing will be held.
 13. The IDNR shall transmit copies of significant comments received during the public comment period and recommendations from states, or federally established Indian Tribes, whose waters may be affected by the issuance of the permit, and responses to these comments and recommendations to the EPA, limited to permits for which the EPA has not waived review.
 14. Each permit proposed to be modified shall be considered a new draft permit and subject to public notice, unless it is a minor modification, as defined in 40 CFR § 122.63.
 15. The EPA shall be notified whenever the IDNR proposes to deny or revoke any permit for which the EPA has not waived review.
 16. The IDNR shall transmit, or otherwise make available to the EPA through the WWPIE System or its successor, copies of every permit for which the EPA has not waived its review,

following issuance, along with any and all conditions, requirements or documents which are related to or affect the authorization of the permit to the EPA.

17. If the terms of any permit are affected in any manner by court action or an administrative appeal, the IDNR shall transmit to the EPA a copy of the amended permit.

D. Public Participation

The IDNR shall provide public notice of new permits, renewals, and modifications (except minor modifications as described at 40 CFR § 122.63) and public hearings regarding a draft permit. The public notice shall be sent concurrently to the EPA, the U.S. Fish and Wildlife Services (USFWS), the Advisory Council on Historical Preservation, the State Historical Preservation Office, any affected state or federally established Indian tribe, the U.S. Army Corps of Engineers, any industrial user identified in the permit application of a publicly or privately owned treatment works, the designated 208 planning agencies, and other persons who request notice, or who are otherwise on the IDNR mailing list, or who IDNR considers may be affected, for all permits for which such notice has not been waived. The IDNR shall provide an opportunity for judicial review of the final approval or denial of permits consistent with 40 CFR §123.30 that is sufficient to provide for, encourage, and assist public participation in the permitting process. (See Iowa Code chapter 17A and Iowa Code section 455B.178.) The IDNR will also provide a copy of the draft permit, fact sheet or statement of basis, and the permit application to the EPA, and agencies and individuals listed above, for all permits for which such notice or copies have not been waived.

The public notice for draft permits shall set a deadline in which to file public comments or requests for public meetings or hearings. The public comment period for draft permits shall not be less than thirty (30) days.

V. COMPLIANCE EVALUATION AND PERMIT ENFORCEMENT

A. Background

As stated earlier, the IDNR has been authorized by the EPA to administer the NPDES program and retain lead responsibility under the CWA in the State with respect to sources, activities, and facilities within the IDNR's jurisdiction. The EPA retains responsibility under Section 402 of the CWA for oversight of the NPDES program in Iowa in order to ensure adherence to federal statutory and regulatory requirements implementing the CWA. This section of the MOA addresses the portion of the NPDES program that includes compliance evaluation and enforcement at NPDES regulated facilities.

B. Compliance Review

The IDNR shall conduct timely and substantive reviews and keep complete records of all material relating to the compliance status of entities subject to regulation under the NPDES program, including but not limited to, Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that entities may be required to submit under the terms and conditions of an NPDES permit, approved Pretreatment Program, administrative order or judicial enforcement action. The IDNR shall maintain records of

information submitted by the public concerning potential violations by entities subject to regulation and records of the IDNR's follow-up.

The IDNR shall operate a system to determine if:

1. The self-monitoring reports required by permits are submitted;
2. The submitted reports are timely, complete and accurate; and
3. The permit conditions or requirements of an applicable administrative or judicial enforcement action are met.

At a minimum, the IDNR will transmit the required data into the national database for NPDES permittees within thirty (30) days from receipt of the data. The IDNR will use procedures that ensure data accuracy and that are consistent with the EPA NPDES data management program.

The IDNR shall initiate appropriate actions, including enforcement, whenever an entity's required performance is not achieved or when reports are not received.

The IDNR shall prepare and submit a Quarterly Noncompliance Report (QNCR) consistent with the requirements and time frames described at 40 CFR § 123.45(a) and (d). The IDNR shall prepare the QNCR using Discharge Monitoring Report data and other compliance data. The EPA will verify the accuracy and completeness of the QNCR quarterly.

The IDNR shall coordinate with the EPA to generate, semiannually, a semi-annual statistical summary report (SSSR) in accordance with 40 CFR § 123.45(b). Included in this report will be information concerning the number of major dischargers with two (2) or more violations of the same monthly average limitation within a six (6) month period.

The IDNR shall prepare and submit an Annual Noncompliance Report (ANCR) for non-major NPDES permittees in accordance with 40 CFR § 123.45(c)(1). The IDNR shall also submit a listing of non-majors that are one or more years behind construction phases of their compliance schedules in accordance with 40 CFR § 123.45(c)(2). In accordance with 40 CFR § 123.45(d)(2), the annual reports shall cover each calendar year ending December 31 and be completed and available to the public no more than sixty (60) days after the end of that calendar year.

If any of the reports named in this section, such as the QNCR, ANCR, or SSSR, are eliminated due to the EPA's NPDES electronic reporting rule, the IDNR will electronically submit to the EPA the data necessary to produce comparable reports nationally and will continue to maintain and update their records and data systems.

C. Compliance Evaluations

The IDNR shall conduct activities to determine the status of compliance with state and federal CWA requirements, including sampling and non-sampling inspections at NPDES regulated facilities consistent with 40 CFR §123.26 and the IDNR CWA Section 106 program grant.

Inspection procedures will be in accordance with the IDNR's standard operating procedures and the IDNR's Enforcement Management System. For purposes of this MOA, the term "compliance inspection" may include, but is not limited to, compliance evaluation inspections, performance audits, compliance sampling inspections, biomonitoring inspections, complaint investigations, and investigations of reported discharges that potentially endanger public health.

The EPA retains the right to perform compliance inspections of any NPDES facility to determine compliance with the CWA; however, the EPA will generally notify the IDNR of the inspection to give the IDNR an opportunity to participate and will otherwise keep the IDNR informed of its plans and results. The EPA and the IDNR may participate in joint compliance inspections as they are needed. The EPA will conduct oversight inspections in order to assess the effectiveness of the IDNR activities.

Reports on compliance inspections for major permittees shall be available for review by the IDNR and the EPA, as appropriate. The IDNR's inspection reports will be submitted to the EPA upon request in accordance with Section VII of this MOA. The IDNR shall thoroughly review each report to determine what, if any, enforcement action should be initiated, as outlined in Section D, below.

D. Enforcement Response

The CWA Section 309 authorizes the EPA, or NPDES Program authorized states, to respond to unpermitted discharges, violations of the CWA, and NPDES violations by initiating appropriate enforcement action(s). The EPA and the IDNR hold concurrent authority to initiate enforcement actions for violations of the CWA consistent with Sections 309 and 401(i) of the CWA. The IDNR shall have primary responsibility for enforcing the CWA in Iowa, except for enforcement actions associated with violations from inspections where the EPA was the lead agency or as otherwise agreed to by the IDNR and the EPA. Nothing in this MOA shall be construed to limit the authority of the EPA to take enforcement action pursuant to Section 309 of the CWA.

1. The IDNR shall be responsible for taking timely and appropriate action in accordance with 40 CFR §123.27 against persons in violation of NPDES program requirements (illegal discharges, effluent limitations, Pretreatment requirements, compliance schedules, reporting requirements, and other permit conditions) and previous administrative or judicial enforcement actions. If the EPA determines that the IDNR has not initiated timely and appropriate enforcement action against a violator, the EPA may proceed with any or all of the enforcement options available under Section 309 of the CWA with appropriate notice to and consultation with the IDNR.
2. The IDNR will not adopt State policies or guidance that would conflict with the CWA or applicable federal regulations or limit the IDNR's ability to implement the NPDES program.
3. The IDNR will develop and maintain written enforcement procedures that establish at a minimum:
 - a. A process for determining the appropriate level of action for specific categories of violation;

- b. Procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and
 - c. The timeframes for escalating enforcement responses where the noncompliance has not been resolved.
4. The IDNR shall be able to demonstrate that its enforcement response procedures result in:
- a. Appropriate initial and follow-up enforcement actions that are applied in a timely manner;
 - b. Formal enforcement actions, when appropriate, that require actions to achieve compliance, specify a timetable, contain consequences for noncompliance that are independently enforceable and that subject the violator to adverse legal consequences for noncompliance;
 - c. The assessment of an administrative or judicial penalty, when appropriate (administrative penalties will be developed based upon the authority of 567 Iowa Administrative Code Chapter 10, and the amount appropriate to the violation), which shall account for economic benefit and gravity of the violation, including the collection of penalties; and
 - d. Compilation of complete and accurate records that can be used in future enforcement actions.

VI. PRETREATMENT PROGRAM

A. Program Requirements

The IDNR shall administer and implement all applicable Pretreatment Regulations as required in 40 CFR Part 403, and any National Pretreatment Standards established by the EPA in accordance with Sections 307(b) and (c) of the CWA. The EPA will provide oversight of the IDNR Pretreatment Program consistent with Pretreatment regulations and this MOA.

1. The IDNR will serve as:
 - a. The Approval Authority and the Control Authority, where applicable, as defined by the General Pretreatment Regulations, 40 CFR Part 403.
2. The IDNR has primary responsibility for:
 - a. Enforcement against prohibited discharges;
 - b. Application and enforcement of national categorical Pretreatment standards and local POTW limitations, including at POTWs that do not have an approved Pretreatment Program;
 - c. Ensuring development and enforcement of local limits, as necessary;
 - d. Requiring industrial reports from Significant Industrial Users (SIUs) outside of cities having approved Pretreatment Programs;
 - e. Requiring, obtaining, and reviewing Pretreatment Implementation Annual reports from cities having approved Pretreatment Programs;
 - f. Reviewing, approving, and overseeing POTW developed and authorized Pretreatment Programs;
 - g. Incorporating local POTW Pretreatment implementation requirements into the POTW's NPDES permit for cities without an approved Pretreatment Program;

- h. Reviewing and approving modifications with Categorical Standards reflecting POTW pollutant removal (Removal Credits) in coordination with the EPA as required by 40 CFR § 403.7 and 40 CFR § 403.11;
- i. Reviewing, approving, and coordinating with the EPA on any requests pursuant to Fundamentally Different Factors as applied to promulgated Categorical Standards. IDNR shall conform to procedures specified in 40 CFR § 403.13; and
- j. Reviewing, approving, and coordinating with the EPA on all Net/Gross allowances as detailed at 40 CFR § 403.15. Net/Gross allowances shall be made available to the EPA for review prior to issuance.

B. Pretreatment Program Activities

1. The program will be administered in accordance with the program description contained in the State's request for EPA approval to administer the Pretreatment Program as part of the NPDES permit program, or as amended by the IDNR and approved by the EPA, and in accordance with the IDNR rules and regulations governing the IDNR Pretreatment Program.
2. Reporting requirements covering State implementation activities and POTW implementation activities, including Significant Industrial User compliance status information for the Pretreatment Program, will be delineated in the annual work plan.
3. The IDNR will apply and enforce all applicable Pretreatment regulations as required by 40 CFR Part 403. The EPA will oversee the IDNR Pretreatment Program operations consistent with 40 CFR Part 403 and this MOA.
4. The IDNR shall perform inspections, surveillance and monitoring activities which will determine, independent of information provided by each SIU, compliance or noncompliance by the SIU with Pretreatment requirements incorporated into the SIUs Control Mechanism, for SIUs located outside cities that have approved Pretreatment Programs.
5. Requests for Categorical Determination. The IDNR shall review requests for determinations of whether the industrial user does or does not fall within a particular industrial category or subcategory in accordance with 40 CFR § 403.6(a). The IDNR will make a written determination for each request stating the reasons for the determination. The IDNR shall then forward its findings, together with a copy of the request and any necessary supporting information, to the EPA Region 7 Water Wetlands and Pesticides Division Director for concurrence. The EPA Region 7 Water Wetlands and Pesticides Division Director may waive receipt of these determinations as specified in 40 CFR § 403.6(a)(4)(ii). If the EPA Region 7 Water Wetlands and Pesticides Division Director does not modify the IDNR decision within sixty (60) days after receipt thereof, the IDNR findings are final. The EPA will send a copy of any final determination or concurrence to the requester and the IDNR.
6. The IDNR and the EPA will communicate, through the CWA Section 106 or other appropriate State planning process, commitments and priorities for program implementation including commitments for inspections of industrial users and Approved Program Cities.
7. The IDNR shall perform audits and Pretreatment Compliance Inspections of approved POTW Pretreatment Programs in accordance with agreements established with the EPA through the CWA Section 106 Work Plans or Compliance Monitoring Strategy (CMS)

commitments. The EPA will provide assistance with audits of approved POTW Pretreatment Programs.

C. Pretreatment Program Review

The EPA shall review and comment on any reports submitted by the IDNR in accordance with requirements of the annual work plans.

D. Other Provisions

Nothing in this MOA is intended to affect any Pretreatment requirement, including any standards or prohibitions established under Iowa or local law, as long as the IDNR or local requirements are not less stringent than any requirements set forth in the National Pretreatment Program, or other applicable requirements or prohibitions established under the CWA or federal regulations.

VII. TRANSMITTAL OF INFORMATION

Information obtained or used in the administration of the IDNR NPDES and Pretreatment Programs shall be available to the EPA upon request without restriction, provided that arrangements have been made between the agencies which ensure that such transmittal will not constitute a waiver of attorney-client or attorney work product privileges as to any other party. The IDNR and the EPA agree to transmit information in accordance with the schedules listed in Appendix B. The EPA shall furnish to the IDNR all information in its files to implement its approved program as specified in 40 CFR § 123.41(b). If information has been submitted to the IDNR under a claim of confidentiality, the IDNR must submit that claim to the EPA when providing information. The EPA shall furnish to the IDNR information submitted to the EPA under a claim of confidentiality, which the IDNR needs to implement its approved program, subject to the conditions in 40 CFR Part 2 and 40 CFR § 122.7(b), or analogous state law. The IDNR and the EPA will deny all claims of confidentiality for effluent data, permit applications, permits, and the name and address of any permittee in accordance with 40 CFR § 122.7(b).

VIII. NPDES PROGRAM REVIEW

The IDNR and the EPA are responsible for assuring that Iowa's NPDES program is consistent with all requirements of this MOA, the annual work plan, and applicable sections of the CWA and the regulations promulgated thereunder. To fulfill this responsibility, the EPA shall conduct a Program Review to examine in detail the IDNR files and documentation to ensure implementation of the NPDES and approved Pretreatment Programs.

In the event the EPA determines that elements of the IDNR's NPDES Program are in any way deficient and/or inconsistent with this MOA, or applicable federal and State regulations and/or statutes, the EPA shall notify the IDNR of these inconsistencies or other deficiencies. Procedures for review of state programs are set forth in Section 402 (c) of the CWA and 40 CFR Part 123, Subpart D.

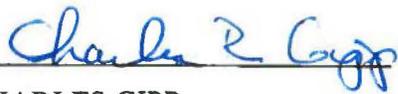
IX. AMENDMENTS TO BE APPROVED BY EPA

1. The IDNR will keep the EPA fully informed of any proposed modifications regarding its basic statutory or regulatory authority, its forms, procedures, or policies.
2. If an amendment, revision, or repeal of any statute or regulation shall occur for any reason, including action by the IDNR, federal legislature or a court, the affected agency shall be notified as soon as possible of such event and a copy of the text of such revision will be transmitted to the designated official of the affected agency.
3. Revision of a state program shall be accomplished in accordance with 40 CFR § 123.62(b).

Prior to the approval by the IDNR of any test method as an alternative to those specified as required for NPDES permitting, the IDNR shall obtain the approval from the EPA. The EPA shall review and respond to requests for alternative test methods as soon as possible.

X. APPROVAL AND EFFECTIVE DATE OF THE MOA

1. This MOA may be modified only by the written consent of both parties; however, either the EPA or the IDNR may initiate an action to modify this MOA at any time.
2. This MOA shall be reviewed by the EPA and the IDNR and revised as appropriate.
3. Time frames stated in Appendix B of this MOA may be changed by the written consent of the IDNR and the EPA.
4. Any revisions or modifications to this MOA must be in writing and must be signed by the IDNR Director and the EPA Regional Administrator.
5. Nothing in this MOA shall be construed to limit the authority of the EPA pursuant to the applicable sections of the CWA.
6. Nothing in this MOA shall be construed to constitute or create a valid defense for regulated parties in violation of National or State environmental statutes, regulations or permits.
7. This MOA shall become binding when signed by both parties.



CHARLES GIPP
Director
Iowa Department of Natural Resources



MARK HAGUE
Regional Administrator
U.S. EPA, Region 7

Dated: 3/1/2016

Dated: 3/10/16

APPENDIX A

AGENCY RESPONSIBILITIES

The IDNR shall:

1. Process all incoming applications for new, modifications to existing, and reissuance and revocations of NPDES permits, including:
 - a. Non-domestic wastewater discharges, including industrial, federal facilities, commercial, silviculture, concentrated animal feeding operations (CAFOs), and concentrated aquatic animal production activities;
 - b. Domestic wastewater discharges, including POTWs and privately owned treatment works; and
 - c. Stormwater discharges regulated under NPDES, including municipal separate storm sewer systems and stormwater associated with industrial activities.
2. Evaluate and assess compliance, consistent with 40 CFR §123.26 and the IDNR CWA Section 106 program grant, with State issued enforceable documents including permits, administrative orders, consent orders, and court orders which deal with NPDES and Pretreatment issues including compliance with effluent limitations, reporting, compliance schedules, and proper operation and maintenance.
3. Monitor compliance with approved Pretreatment Programs and with Pretreatment Program standards, including industrial users outside approved POTW Pretreatment Programs.
4. Maintain an effective enforcement program by taking timely and appropriate actions for NPDES permit violations, unpermitted discharges, and Pretreatment Program violations in accordance with Iowa statutes and the Iowa Administrative Code, and consistent with 40 CFR § 123.27, federal NPDES requirements, and the CWA. The IDNR agrees to review the EPA's national and regional policies and guidance when adopting corresponding or related State policies and guidance, and will not adopt State policies or guidance that are inconsistent with the CWA and applicable federal regulations.
5. Maintain adequate file information relating to each NPDES permit. This information will be readily available to the EPA and shall include the following information:
 - a. Permit application;
 - b. Proposed permit and/or current final issued permit, or final order of denial;
 - c. Draft permit submitted for public notice;
 - d. Public notice;
 - e. Written public comments and documentation of oral comments made and their content, and the IDNR's response to comments;
 - f. Fact sheet or statement of basis, including supporting documentation;
 - g. Inspection reports and compliance information;
 - h. The rationale, if not included in the fact sheet, which details the permit limit calculations and development. The rationale shall include both the technology and the water quality basis for the draft or proposed permit;
 - i. Enforcement related documents for both formal and informal enforcement actions;
 - j. Compliance schedule reports;
 - k. Discharge monitoring reports, including whole effluent toxicity (WET), toxicity reduction evaluation (TRE) and toxicity identification evaluation (TIE) information, and in-stream sampling results where applicable;

- l. Documents related to the Pretreatment Program, including Program approvals, Program modification approvals, local limits calculations, Annual reports from Program cities, Pretreatment inspection reports and periodic compliance reports from SIUs where the IDNR is the Control Authority;
 - m. For combined sewer overflow (CSO) communities, the long term control plan (LTCP), any other documentation related to compliance with the CSO provisions of the permit and documentation related to discharges from the CSOs;
 - n. Information regarding any bypass events or sanitary sewer overflows (SSOs);
 - o. Concentrated Animal Feeding Operations (CAFO) related documents, including nutrient management plans, if required by federal regulations;
 - p. Requests submitted to the IDNR for hearing, motions for reconsideration and rehearing, and any order issued regarding a permit appeal or challenge; and
 - q. Other information, memoranda, and correspondence pertinent to the NPDES permit.
6. Make available to the public all permit applications, permits, effluent data, inspection reports and other documents pertaining to the NPDES program (except information claimed and/or determined to be confidential in accordance with 40 CFR Part 2, or analogous state law).
 7. Issue and administer general permits, in accordance with 40 CFR § 122.28.
 8. Transmit all required permit, compliance, and enforcement data into a national database as required and in accordance with 40 CFR § 123.26(e)(4).
 9. Submit to the EPA the information described in the CWA Section 106 program grant between the IDNR and the EPA or other related IDNR/EPA agreements and submit information specified in applicable portions of 40 CFR Part 123. Additionally, upon request by the EPA, the IDNR shall submit information and allow access to files for evaluating the IDNR's administration of the NPDES program.
 10. Provide statistical information on compliance of facilities with NPDES permits (i.e., quarterly, semi-annual and annual reports) in accordance with 40 CFR § 123.45.
 11. Maintain an approved Continuing Planning Process (CPP) in accordance with 40 CFR § 123.25(b) and § 130.5. A separate document describing how Iowa water quality standards are implemented must be maintained consistent with 40 CFR § 130.5(b)(6). This document shall be revised, as necessary, with the triennial review of the Iowa surface water quality standards and as needed between standards revisions.
 12. Assess or sue to recover civil penalties and criminal remedies, as appropriate and in accordance with 40 CFR § 123.27 and the IDNR Enforcement Management System, to address noncompliance with the NPDES and/or Pretreatment Programs and take whatever steps are necessary to ensure a return to compliance within the shortest time possible.
 13. Ensure new federal NPDES and Pretreatment Program regulations are incorporated into state regulations in accordance with 40 CFR § 123.62 (e), within one year of federal promulgation or within two (2) years if a state statute must first be enacted.
 14. Ensure, to the extent possible, that the EPA is kept fully informed and up-to-date regarding:
 - a. Draft and final policy and program development documents related to the NPDES and Pretreatment programs, including revisions to such documents;
 - b. Draft, proposed and final statutes and regulations related to the NPDES and Pretreatment programs;

- c. New case law, settlement agreements, and remands of state regulations related to the NPDES and Pretreatment programs;
 - d. Draft, proposed and final technical guidance and policies which pertain to the NPDES and Pretreatment programs; and
 - e. Draft and final NPDES and Pretreatment forms and the Enforcement Management System.
15. Ensure that any proposed revision to the State NPDES Program is submitted to EPA for approval pursuant to 40 CFR § 123.62(b).
 16. Administer the NPDES and Pretreatment Programs in compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d, *et seq.* Ensure that all public comments regarding such compliance that are received in accordance with Environmental Protection Commission rules will be considered, responded to, and acted upon appropriately.

The EPA shall:

1. Ensure that the IDNR is kept fully informed and up-to-date, to the fullest extent allowable, regarding:
 - a. Draft and final policy and program development documents related to NPDES and Pretreatment;
 - b. Draft, proposed, and final regulations related to NPDES and Pretreatment; and
 - c. Draft, proposed and final technical guidance and policies which pertain to NPDES and Pretreatment.
2. Provide the IDNR with a timely opportunity for meaningful involvement and input in developing and establishing federal or Regional NPDES and Pretreatment Program policies, rules, strategies, and guidance, as appropriate and practical.
3. Review and comment on draft permits, proposed permits, water quality standards variance requests, Pretreatment Program actions, and any future NPDES or Pretreatment Program modifications in a timely manner in accordance with Sections IV and VI, as applicable, of this MOA.
4. Oversee the IDNR's administration of the NPDES and Pretreatment Programs for consistency with the CWA, this MOA, any applicable IDNR/EPA agreements, the CWA Section 106 program grant and all applicable federal regulations. As part of its assessment of the NPDES and Pretreatment Programs, the EPA shall consider permits, reports, and enforcement actions submitted by the IDNR any may also consider comments from permittees, the public, and federal and local agencies concerning the IDNR's administration of the NPDES and Pretreatment Programs. The EPA shall promptly transmit to the IDNR substantial or unresolved comments that the EPA receives from permittees, the public, and federal and local agencies.
5. Provide technical assistance regarding the interpretation of regulations and guidance for the development of draft and proposed permits.
6. Develop annually a Compliance Monitoring Strategy (CMS) in collaboration with the IDNR that establishes numerical objectives for the IDNR and the EPA to conduct inspections,

audits, and investigations across the various categories of entities subject to NPDES regulation. The annual CMS should specify the apportionment of the IDNR and the EPA compliance monitoring resources in accordance with priorities of the two agencies.

7. In accordance with Section V. of this MOA, conduct independent, timely, and appropriate enforcement and compliance monitoring activities within the state of Iowa.
8. Provide the IDNR with a list of facilities the EPA proposes to inspect during each fiscal year and seek the IDNR input on appropriate EPA inspection targets.
9. Provide the IDNR with copies of all inspection reports and formal enforcement actions.

APPENDIX B

SUMMARY OF TRANSMITTALS

Summary of Transmittals from the IDNR to the EPA

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
1. For all permits for which the EPA has not waived automatic right of review, the IDNR shall notify the designated EPA contact(s) that a copy of the public notice, draft permit, or permit modification and the Fact Sheet or Statement of Basis are available through the Wastewater Permit Information Exchange (WWPIE) System or any successor system. Permit applications are not available through WWPIE, but shall be provided by the IDNR to the EPA contact(s).	At time of public notice.
2. For all permits for which the EPA has not waived automatic right of review, a copy of any proposal for decision or settlement agreement in principle that resolves an appeal of said permit.	When such agreement is made, but with adequate time for the EPA to comment before agreement is effective.
3. For all permits for which the EPA has not waived automatic right of review, a copy of any administrative or court decision/actions affecting permit authorization.	Within 15 days of receipt by the IDNR.
4. A copy of every major facility NPDES permit and modification, draft and final general permit and every draft and final permit that proposes to approve a Pretreatment Program modification.	As issued.
5. For all permits for which the EPA has waived automatic right of review, the IDNR shall notify the designated EPA contacts that copies of the draft permit, final permit, or other documents related to the permit are available through the Wastewater Permit Exchange (WWPIE) System. Permit applications are not available through WWPIE, but shall be provided by the IDNR to the EPA contacts.	Within 10 days of request by the EPA.
6. For major facility NPDES permittees, a quarterly noncompliance report (QNCR) as specified in 40 CFR § 123.45(a).	The last working day of May, August, November, and February of each calendar year. Reports must be made available to the public for inspection and copying on this date.

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
7. Semiannual enforcement activities report.	Semiannually
8. Annual noncompliance report, per 40 CFR § 123.45(c).	Reports shall cover the calendar year ending December 31 of each year and shall be submitted within 60 days of the end of the calendar year.
9. Copies of public notices for Pretreatment removal allowances, Pretreatment Program approvals, substantial modification approvals, and other program submittals.	Concurrent with the public notice.
10. Pretreatment audit reports, Pretreatment Compliance Inspections (CPI), and associated correspondence.	Transmitted to the EPA when transmitted to the Program City.
11. If IDNR takes an action on a variance request identified in 40 CFR § 124.62, it shall forward the information specified in 40 CFR § 124.62 for that particular type of variance to the Regional Administrator.	At time of State action on the variance request. (See 40 CFR § 124.62 for the procedures on variances.)
12. Copies of final enforcement orders and judicial actions.	Within 10 days of the effective date.
13. Provide the EPA with all State NPDES and Pretreatment Program policies, rules, forms, strategies and guidance, including but not limited to policies for waste load allocations, mixing zones, permit derivation methods, and the Enforcement Management System. As appropriate and practical, provide the EPA with a timely opportunity for meaningful involvement and input in developing, establishing, and revising all such policies, rules, strategies and guidance.	As developed, revised, and established.
14. Copies of Pretreatment Program Cities' Annual Reports.	30 days following due date of Annual Report.
15. Summary report of the compliance status of each Pretreatment SIU located outside a Pretreatment Program City.	March 1 st and September 1 st of each calendar year.

Summary of Transmittals from EPA to IDNR

DESCRIPTION OF TRANSMITTAL	FREQUENCY OF TRANSMITTAL
1. Written comments, recommendations, interim objections, and general objections to draft or proposed permits.	Within 30 days from receipt of the draft or proposed permit and 90 days from the receipt of the proposed general permit.
2. Specific written objection(s) to draft or proposed permits, along with CWA and federal regulation citations supporting the objection, and specific actions the IDNR must take to satisfy the objection(s).	Within 30 days from receipt of the draft or proposed permit, and 90 days from the receipt of the proposed general permit, unless a general objection has been made. If a general objection has been made, the EPA will have 90 days from the receipt of the draft or proposed permit to transmit the specific objection.
3. Written withdrawal of the EPA's objection to a permit, following receipt from the IDNR of a draft permit and letter specifying all the EPA requirements have been met.	After the EPA review is concluded.
4. Written comments or objections to a Proposal for Decision (PFD) by an administrative law judge.	Within 30 days from receipt of the PFD.
5. Notification that the EPA enforcement actions are finalized/terminated.	Upon occurrence.
6. Copies of the EPA compliance inspection reports for the EPA inspections in the state.	Within 60 days from the date of inspection.
7. Copies of final enforcement orders and judicial actions.	Within 10 days of the effective date.
8. Decisions on requests for the EPA approval of variances that have been forwarded or submitted by the IDNR.	At the time of decision.

APPENDIX C

AUTHORIZING DOCUMENTS



Region VII

TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
LARRY J. WILSON, DIRECTOR

December 12, 1991

Ralph Summers
Water Mgmt Division
Water Compliance Branch
U.S. EPA - Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Dear Ralph:

Enclosed is Iowa's rule making package relating to the storm water discharge permit program. If you need additional copies please call me at (515)281-7017.

Sincerely,

Monica

Monica Wnuk
Environmental-Specialist
Surface and Groundwater Protection Bureau

Enclosure





TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
LARRY J. WILSON, DIRECTOR

Date: November 22, 1991

To: INTERESTED PARTIES

RE: PROPOSED RULES FOR STORM WATER DISCHARGE PERMITS

Enclosed for your information is a copy of:

- the *proposed* storm water discharge permit rules amending Chapters 60 and 64 of the Iowa Administrative Code (567);
- the *proposed* General Permit #0001 for "Storm Water Discharge Associated with Industrial Activity"; and,
- the *proposed* Notice of Intent (DNR Form 542-1415).

Persons wishing to make written comments on the proposed rules, General Permit #0001 or Notice of Intent should mail or FAX comments no later than January 13, 1992 to:

Monica Wnuk, Storm Water Coordinator
DNR
900 E. Grand Avenue
Des Moines, IA 50319-0034
FAX (515)281-8895

Oral and written comments will also be accepted at the following scheduled public hearings:

- January 3, 1992, at 10 a.m. in the Auditorium of the Wallace State Office Building, 900 E. Grand Avenue, Des Moines, Iowa;
- January 7, 1992, at 4 p.m. at the Community Room (2nd floor), City Hall, 620 Erie Street, Storm Lake, Iowa;
- January 8, 1992, at 10 a.m. in the Council Chambers, City Hall, 19 S. Delaware, Mason City, Iowa;
- January 8, 1992, at 7 p.m. in the Council Chambers (2nd floor), City Hall, 715 Mulberry, Waterloo, Iowa;
- January 9, 1992, at 1 p.m. in the public library (meeting room A), 321 Main Street (corner of 4th and Main), Davenport, Iowa; and,
- January 10, 1992, at 1 p.m. in the mini-auditorium of the Community Hall (room 018A), 205 South Main Street, Council Bluffs, Iowa.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.103A 455B.173, and 455B.105, the Environmental Protection Commission proposes to amend 567--Chapter 60 "SCOPE OF TITLE--DEFINITIONS--FORMS--RULES OF PRACTICE" and 567--Chapter 64 "WASTEWATER CONSTRUCTION AND OPERATION PERMITS".

These amendments provide for the administration and implementation of a NPDES permit program for storm water discharges as required under 40 CFR Parts 122, 123, 124, and 126. The proposed rules introduce the use of a general NPDES permit for storm water discharges as provided in House File 661, 1991 Acts, as an optional type of permit in lieu of an individual NPDES permit.

The amendments to Chapter 60 include updating the SCOPE OF TITLE, DEFINITIONS AND FORMS TO BE USED for the department's wastewater program. The amendments to Chapter 64 differentiate permitting procedures between an individual and general NPDES permit. In addition, the proposed rules contain specific procedures for applying for an individual NPDES permit or applying for coverage under a general permit, permit modification, public notification and publication participation procedures in the permitting process, and reissuance procedures for individual and general NPDES permits. A fee schedule consisting of permit application fee and a permit fee are proposed for both individual NPDES permits and coverage under the general permit for storm water discharges.

The proposed Chapter 64 rules include adoption by reference of General Permit #0001 "*Storm Water Discharges Associated with Industrial Activity*" and an application form for applying for coverage under the general permit. This application form is called a Notice of Intent, Form 542-1415. Copies of these documents have been filed with the Code Editor and will be available upon request from the Department of Natural Resources.

The Department of Natural Resources will conduct six public hearings to receive comments on these proposed rules. They will be held at the following times and places:

- January 3, 1992, at 10 a.m. in the Auditorium of the Wallace State Office Building, 900 E. Grand Avenue, Des Moines, Iowa;
- January 7, 1992, at 4 p.m. at the Community Room (2nd floor), City Hall, 620 Erie Street, Storm Lake, Iowa;
- January 8, 1992, at 10 a.m. in the Council Chambers, City Hall, 19 S. Delaware, Mason City, Iowa;
- January 8, 1992, at 7 p.m. in the Council Chambers (2nd floor), City Hall, 715 Mulberry, Waterloo, Iowa;
- January 9, 1992, at 1 p.m. in the public library (meeting room A), 321 Main Street (corner of 4th and Main), Davenport, Iowa; and,

-January 10, 1992, at 1 p.m. in the mini-auditorium of the Community Hall (room 018A), 205 South Main Street, Council Bluffs, Iowa.

Persons wishing to make written comments concerning this proposal should mail or FAX the comments to Monica Wnuk, Department of Natural Resources, Environmental Protection Division, 900 E. Grand Avenue, Des Moines, IA 50319-0034, FAX (515)281-8895, through January 13, 1992.

This proposed rule may impact on small business.

These rules are intended to implement Iowa Code section 455B.103A and section 455B.105(11)(a) as amended by 1991 Iowa Acts, House File 661.

The following amendments are proposed.

Amend 567-Chapter 60 as follows:

ITEM 1. Amend third unnumbered paragraph of rule 567-- 60.1(455B, 17A) to read as follows:

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to specific permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and discharge permits for wastewater disposal systems other than those associated with animal-feeding operations. Chapter 65 specifies minimum waste control requirements and permit requirements for animal-feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 68 contains standards and licensing requirements applicable to commercial

septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal.

ITEM 2. Amend rule 567--60.2(455B) by adding the following definitions in alphabetical order:

"General permit" means an NPDES permit issued to a class of facilities which could be conditioned and described by a single permit. DNR's statutory authority for general permits is restricted to storm water discharges pursuant to 455B.103A of the Iowa Code.

"Storm water" means storm water runoff, snow melt runoff and surface runoff and drainage. (Note: Agricultural storm water runoff is excluded by Federal regulation 40CFR 122.3(e)).

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in subparagraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or

disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 40 CFR 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this definition:

- (i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under

40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this paragraph);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44, and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance. (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbances of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36,

37 (except 373), 38, 39, 4221-24, (and which are not otherwise included within categories (l)-(x));

"Storm water point sources" means point sources that serve to collect, channel, direct, and convey storm water and which are subject to Section 402(p) of the federal Clean Water Act and Parts 122, 123, and 124 of title 40 of the Code of Federal Regulations.

ITEM 3. Amend subrule 567--60.3(2) as follows:

567--60.3(2) *Operation permit application forms.*

- a. Form 30 - public or private domestic sewerage systems 542-3220
- b. Form 31 - treatment agreement 542-3221
- ~~c. Form 32 - industrial, manufacturing or commercial systems~~
- ~~d. Form 33 - confinement animal feeding operation 542-3224~~
- eg. Form 34 - open feedlots 542-3225
- d. Form 1 - general information for industrial, manufacturing or commercial systems 542-1376 (For storm water discharges EPA Form 3510-1, also referred to as EPA Form 1, may be used).
- e. Form 2 - facilities which do not discharge process wastewater - industrial, manufacturing or commercial systems 542-1377. (For storm water discharges EPA Form 3510-2E, also referred to as EPA Form 2E, may be used).
- f. Form 3 - facilities which discharge process wastewater existing sources - industrial, manufacturing, and commercial systems 542-1378. (For storm water discharges EPA Form 3510-2C, also referred to as EPA Form 2C, may be used).

g. Form 4 - facilities which discharge process wastewater - new sources - Industrial, manufacturing or commercial systems 542-1379. (For storm water discharges EPA Form 3510-2D, also referred to as EPA Form 2D, may be used).

h. EPA Form 2F (EPA Form 3510-2F) - application for NPDES individual permit to discharge storm water discharges associated with industrial activity.

i. Notice of Intent for Coverage Under Storm Water NPDES General Permit #0001 "Storm Water Discharge Associated with Industrial Activity" 542-1415.

ITEM 4. Amend subrule 567--60.4(2) paragraph "b" as follows:

b. Amendments. A permittee seeking an amendment to its operation permit shall make a written request to the department which shall include the nature of the requested amendment and the reasons therefor. A variance or amendment to the terms and conditions of a general permit shall not be granted. If a variance or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4)"a".

Amend 567--Chapter 64(455B) as follows:

ITEM 5. Amend subrule 567--64.1(4) as follows:

64.1(4) "Operation permit" means a written permit by the director authorizing the operation of a wastewater disposal system or part thereof or

discharge source, and, if applicable, the discharge of wastes from said disposal system or part thereof or discharge source to waters of the state. An operation permit will be issued as an NPDES permit if the regional administrator has approved the department's NPDES program and an NPDES permit is required for the disposal system.

ITEM 6. Amend subrule 64.2(8) paragraph "a" as follows:

a. Storm sewers or storm water disposal systems that transport only surface storm water runoff.

ITEM 7. Amend subrule 64.3(1) paragraph "f" as follows:

f. Any discharge of pollutants directly to another waste disposal system for final treatment and disposal, with the exception of storm water point sources. (This exclusion from requiring an operation permit applies only to the actual addition of materials into the subsequent treatment works. Plans or agreement to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that, in all appropriate cases, pretreatment standards promulgated by the administrator pursuant to section 307(b) of the Act and adopted by reference by the commission and other pretreatment standards and requirements must be complied with.)

ITEM 8. Add a new subparagraph 4 to subrule 567--64.3(1)h as follows:

(4) Storm water discharges associated with industrial activity as defined in 567--Chapter 60(455B).

ITEM 9. Amend subrule 567--64.3(4) by creating new subparagraphs *a* and *b* as follows:

567--64.3(4) Applications.

a. Individual permit. Except as provided in 64.3(4)"b" or 64.3(4)"c", Applications for operation permits required under 64.3(1) and 64.3(2) must be made on forms provided by the department. The application for an operation permit under 64.3(1) shall be filed at least one hundred eighty (180) days prior to the date operation is scheduled to begin unless a shorter period of time is approved by the director. Permit applications for a new discharge of storm water associated with construction activity as defined in 567--Chapter 60(455B) under "storm water discharge associated with industrial activity" must be submitted at least 30 days before the date on which construction is to commence. Applications submitted to the department must be accompanied by the appropriate permit fee as specified in rule 64.16. The director shall issue operation permits for applications filed pursuant to 64.3(1) within ninety (90) days of the receipt of a complete application unless the application is for an NPDES permit or unless a longer period of time is required and the applicant is so notified. The director may require the submission of additional information deemed necessary to evaluate the application. If the application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

b. General permit. A Notice of Intent for coverage under a general permit must be made on the appropriate form provided by the department listed in

60.3(2) and in accordance with 64.6. A Notice of Intent must be received by the department according to the following:

(1) for existing storm water discharges associated with industrial activity, within one hundred eighty (180) days of the effective date of the general permit.

(2) for new storm water discharges associated with industrial activity, with the exception of construction activities, one hundred eighty (180) days prior to the date operation is scheduled to begin, or

(3) for new discharges of storm water associated with construction activity as defined in 567--Chapter 60(455B) under "storm water discharge associated with industrial activity", at least 30 days before the date on which construction is to commence.

c. Group permit applications. Group applications identified in 40 CFR Part 122.26(c)(2) that were submitted and approved by the U.S. Environmental Protection Agency will be accepted by the department as an application for a NPDES permit for a storm water discharge associated with industrial activity. A copy of the group permit application does not need to be submitted to the department. The department will notify a participant in a group application of the required application and permit fees as specified in rule 64.16.

ITEM 10. Amend the title of subrule 567--64.3(5) as follows:

64.3(5) *Requirements for industries that discharge to another disposal system except storm water point sources.*

ITEM 11. Amend subrule 567-64.3(7) as follows:

64.3(7) Operation permits may be granted for any period of time not to exceed five (5) years. Applications for renewal of an operation permit must be submitted to the department one hundred eighty (180) days in advance of the date the permit expires. General permits will be issued for a period not to exceed five (5) years. Each permit to be renewed shall be subject to the provisions of all rules of the department in effect at the time of the renewal.

ITEM 12. Amend subrule 567-64.3(8) by adding the following new paragraph "e":

e. *Storm water discharge associated with construction activity.* In the case of a storm water discharge associated with construction activity, either the owner of the site or the general contractor.

ITEM 13. Amend subrule 567-64.3(11) as follows:

64.3(11) The director may ~~modify,~~ suspend or revoke any individual operation permit or coverage under a general permit for cause. Except for general permits, the director may modify in whole or in part any individual operation permit for cause. A variance or modification to the terms and conditions of a general permit shall not be granted. If a variance or modification to a general permit is desired, the applicant must apply for an individual permit following the procedures in 64.3(4)"a".

Cause for modification, suspension or revocation of a permit includes the following:

a. (No change)

- b. (No change)
- c. (No change)
- d. (No change)
- e. Failure or refusal of an NPDES permittee to carry out the requirements of 64.67(5)"c"
- f. Failure to provide all the required application materials.

ITEM 14. Amend rule 567--64.4(455B) as follows:

567--64.4(455B) Issuance of NPDES permits.

64.4(1) Individual permit. ~~If the administrator has approved the department's NPDES program,~~ The director shall, when an operation permit expires and an NPDES permit is required for the discharge, and, upon proper application, issue an Individual NPDES permit in accordance with 64.5(455B), to 64.7(455B), 64.8(1)(455B) and 64.9(455B).

64.4(2) General permit.

a. The director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2)(455B), and 64.9(455B) for the following activities:

(1) Storm water point sources requiring a NPDES permit pursuant to Section 402(b) of the federal Clean Water Act and 40 CFR 122.26.

(2) Reserved.

b. Each general permit issued by the department must:

(1) be adopted as a departmental rule in accordance with Chapter 17A of the Iowa Code, the Administrative Procedures Act. Each proposed permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development.

(2) correspond to existing geographic or political boundaries, and,

(3) be identified in 567--64.15.

c. If a NPDES permit is required for an activity covered by a general permit, the applicant may seek either general permit coverage or an individual permit. Procedures and requirements for obtaining an individual NPDES permit are detailed in 567-64.3(4)"a"(455B). Procedures for filing a Notice of Intent for coverage under a general permit are described in 567--64.6 "Completing a Notice of Intent for Coverage Under a General Permit".

ITEM 15. Amend the title to rule 567--64.5 as follows:

567--64.5(455B) Notice and public participation in the individual NPDES permit process.

ITEM 16. Renumber existing rule 567--64.6 as 567--64.7, add the following new 567--64.6, renumber existing 567--64.7 through 567--64.13 as 567--64.8 through 567--64.14, respectively, renumber existing 567--64.14 as 567--64.17, and renumber existing 567--64.15 as 567--64.18.

567--64.6(455B) Completing a Notice of Intent for Coverage Under a General Permit.

64.6(1) Contents of a Complete Notice of Intent. An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in 64.6(1)"a", "b" and "c".

a. Notice of Intent Application Form. The following Notice of Intent forms must be completed for the corresponding general permit.

(1) General Permit #0001 "Wastewater Discharges Associated with Industrial Activity"; Form 542-1415, containing the following information:

1. Name, mailing address, and location of the facility and owner for which the notification is submitted;

2. Up to four 4-digit SIC codes that best represent the principal products or activities provided by the facility;

3. The operator's name, address, telephone number, ownership status and status as Federal, State, private, public or other entity;

4. The 1/4 section, township, range and county, or the latitude and longitude of the facility;

5. The type of discharge (new or existing), whether or not the discharge is to a municipal separate storm sewer, the date the discharge is to commence, the permit status of the discharge, the name of the receiving water(s); and

6. Existing quantitative data describing the concentration of pollutants in storm water discharges;

7. For construction sites that need a storm water discharge permit, in addition to the information required above, include a brief description of the project, estimated timetable for major activities, and an estimate of the number of acres of the site on which soil will be disturbed. Applicants must coordinate their projects with county Soil and Water Conservation Districts to ensure compliance with section 467A.64 of the Code of Iowa.

(2) Reserved.

b. General Permit Fee. The general permit fee according to the schedule in 64.16 payable to the Department of Natural Resources.

c. Public Notification. The following public notification requirements must be completed for the corresponding general permit.

(1) *General Permit #0001 "Wastewater Discharges Associated with Industrial Activity"*. A demonstration that a public notice was published in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur. The newspaper notices shall appear in the following format:

.....

PUBLIC NOTICE OF STORM WATER DISCHARGE

The (*applicant name*) plans to submit a Notice of Intent to the Iowa Department of Natural Resources to be covered under NPDES General Permit #0001 "Storm Water Discharges Associated with Industrial Activity". The storm water discharge will be from (*description of industrial activity*) located in (*1/4 section, township, range, county*). Storm water will be discharged from (*number*) point source(s) and will be discharged to the following streams: (*stream name(s)*).

Comments may be submitted to the Storm Water Discharge Coordinator, IOWA DEPARTMENT OF NATURAL RESOURCES, Environmental Protection Division, 900 E. Grand Avenue, Des Moines, IA 50319-0034. The public may review the Notice of Intent from 8:00 AM to 4:30 PM, Monday through Friday, at the above address after it has been received by the department.

.....

(2) Reserved.

64.6(2) Department approval of coverage under a general permit. The applicant will receive notification by the department of coverage under the general permit. If any of the items required for filing a Notice of Intent specified in 64.6(1) are missing, the department will consider the application incomplete and will notify the applicant of the incomplete items.

64.6(3) General permit suspension or revocation. In addition to the causes for suspension or revocation which are listed in 64.3(11), the director may suspend or revoke coverage under a general permit issued to a facility or a class of facilities for the following reasons and require the applicant to apply for an individual NPDES permit in accordance with 64.3(4)"a":

a. The discharge would not comply with Iowa's water quality standards pursuant to 567--Chapter 61, or,

b. The department finds that the activities associated with a Notice of Intent filed with the department do not meet the conditions of the general permit. The department will notify the affected discharger and establish a deadline, not longer than one year, for submitting an individual permit application.

64.6(4) Eligibility for individual permit holders. A person holding an individual NPDES permit for an activity covered by a general permit may apply for coverage under a general permit prior to expiration of the individual permit expires by filing a Notice of Intent according to procedures described in 64.3(4)"b".

64.6(5) Filing a Notice of Discontinuation. A notice to discontinue the activity covered by the NPDES general permit shall be made in writing to the

department 30 days prior to or after discontinuance of the discharge. The letter should contain the following:

- a. the name of the facility to which the permit was issued;
- b. the general permit number and permit authorization number, and,
- c. the date the permitted activity was, or will be, discontinued.

ITEM 17. To the renumbered rule 567--64.7 amend subrule 64.7(5) as follows:

64.7(5) *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and assure the following:

- a. That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; that if the terms and conditions of a general permit are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit;

ITEM 18. To the renumbered rule 567--64.8 amend 64.8 as follows:

567-64.8(455B) Reissuance of NPDES permits.

64.8(1) Individual NPDES permits. Individual NPDES permits will be reissued according to the procedures identified in 64.8"a" through 64.8(1)"c".

a. Any state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least one hundred eighty (180) days prior to the expiration date of the permit. The application may be a simple written request. However, the applicant for reissuance must submit or have submitted information to show:

a.(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring NPDES permit.

b.(2) Up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge.

c.(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards and other legally/applicable requirements listed in 64.67(2), including any additions to, or revision or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

64.7(2)b. The director shall follow the notice and public participation procedures specified in 64.5(455B) in connection with each request for reissuance of an NPDES permit.

64.7(3)c. Notwithstanding any other provision in these rules, any new point source the construction of which is commenced after the date of

enactment of the Federal Water Pollution Control Act Amendments of 1972 (October 18, 1972) and which is so constructed as to meet all applicable standards of performance for new sources shall not be subject to any more stringent standard of performance during a ten (10)-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, as amended through December 31, 1976, whichever period ends first.

64.8(2) Renewal of coverage under a general permit. Coverage under a general permit will be renewed subject to the terms and conditions in 64.8(2) "a" through "c".

a. If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent as follows:

(1) For storm water discharge associated with industrial activity, complete Notice of Intent requirements are listed in and 64.6(1).

(2) Reserved.

b. A complete Notice of Intent must be submitted to the department within one hundred eighty (180) days after the effective date of a reissued or renewed general permit.

c. A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 567-64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the general permit in effect at the time of permit expiration will prevail but the discharge will not be permitted. If the person continues an activity for which the general

permit has expired and the general permit has not been reissued, the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4)"e".

ITEM 19. Amend the renumbered 567-64.13 as follows:

567-64.13(455B) Separate storm sewers. The following is adopted by reference: 40 CFR 122.26 as promulgated ~~September 26, 1984 (49 FR 38050)~~ November 16, 1990 and amended March 21, 1991 (56 FR 12098).

ITEM 20. Amend the renumbered 567-64.14(455B) as follows:

If title to any disposal system or part thereof for which a permit has been issued under 64.2(455B), or 63.3(455B) or 64.6 is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified of such change within thirty (30) days.

Rules 64.3 to 64.14~~5~~ are intended to implement Iowa Code section 455B.173.

ITEM 21. Add new rule 567-64.15 as follows:

567-64.15 General permits issued by the department. The following is a list of general permits adopted by the department through the Administrative Procedures Act, Chapter 17A of the Iowa Code, and the term of each permit.

64.15(1) Storm Water Discharges Associated with Industrial Activities, NPDES General Permit #0001, (Note to Code Editor: Date to be inserted at time of adopted rule).

64.15(2) Reserved.

ITEM 22. Add new rule 567--64.16 as follows:

567--64.16 Fees.

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and a permit fee as specified in 567--64.16(3). Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. At the time the application is submitted, the applicant has the option of paying an annual permit fee or a five-year permit fee.

Fees are not refundable and are non-transferable; however, if the application is returned to the applicant by the department, the application fee will be retained but the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate application fee and permit fee renders the application incomplete and the department shall suspend processing of the application until the fee is received.

64.16(2) *Payment of fees.* Fees shall be paid by check or money order made payable to the "Iowa Department of Natural Resources".

64.16(3) *Fee schedule.* The following fees have been adopted:

a. For coverage under the NPDES General Permit the following fees apply:

**(1) Storm Water Discharge Associate with Industrial Activity, NPDES
General Permit #0001,**

Application Fee \$100
Annual Permit Fee \$150
Five-year Permit Fee \$450

(2) Reserved.

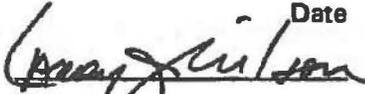
**b. Individual NPDES Permit Fees. The following fees are applicable for
the described individual NPDES permit:**

**(1) for storm water discharge associated with industrial activity,
submitted on Form 2F, where the storm water is composed entirely of storm
water or combined with process wastewater or other non-storm water
wastewater.**

Application Fee \$150
Annual Permit Fee \$300
Five-year Permit Fee \$1,250

**(2) for storm water discharge from large and medium municipal separate
storm sewers (systems serving a population of 100,000 or more).**

Application Fee \$150
Annual Permit Fee \$300
Five-year Permit Fee \$1,250

11/22/91
Date

Larry L. Wilson, Director

Cashier's Use Only

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
NOTICE OF INTENT FOR NPDES COVERAGE
UNDER GENERAL PERMIT #0001
STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY

PROPOSED RULE

PERMIT STATUS

Has this storm water discharge been previously permitted? Yes No
If yes, please list authorization number or permit number. _____

FACILITY INFORMATION Enter the name and full address of the facility for which permit coverage is requested.

NAME		STREET ADDRESS			
P.O. BOX	CITY	COUNTY	STATE	ZIP CODE	

OPERATOR Give the name, as it is legally referred to, of the person, firm, public organization, or any other entity which operates the facility described in this application.

NAME		ADDRESS			
TELEPHONE ()	CITY	STATE	ZIP CODE		

Check the appropriate box to indicate the legal status of the operator of the facility.

Federal Public (other than federal or state) Is the operator also the owner? Yes No
 State Other (specify) _____
 Private

FACILITY LOCATION Give the facility location by section/township/range OR latitude/longitude.

1/4 SECTION	TOWNSHIP	RANGE	LATITUDE			LONGITUDE		
			DEGREES	MINUTES	SECONDS	DEGREES	MINUTES	SECONDS

SIC CODE* List in descending order of significance up to four codes that best represent the principal products or activities provided by the facility.

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* SIC code refers to Standard Industrial Classification code number and descriptions which may be found in the "Standard Industrial Classification Manual" prepared by the Executive Office of the President, Office of Management and Budget, and is available from the Government Printing Office, Washington, D.C.

OWNER INFORMATION (if other than operator) Enter the name and full address of the owner of the facility.

NAME		STREET ADDRESS			
P.O. BOX	CITY	STATE	ZIP CODE		

542-1415 (10/81)

OUTFALL INFORMATION

Is this storm water discharge (check one) New Existing
 If new, date discharge is anticipated to commence. _____
 Is the storm water discharge to a municipal separate storm sewer? Yes No
 Attach all **EXISTING** quantitative data describing the concentration of pollutants in storm water discharges.
 Are you enclosing any quantitative information? Yes No

Receiving Water(s)

FOR STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY ONLY

Description of Project:

P R O P O S E D R U L E

Estimated Timetable for Major Activities:

Number of Acres of Disturbed Soil: _____

Will the Storm Water Pollution Prevention Plan (required in General Permit #0001, Part III(C)) comply with approved State (Section 467A.64, Code of Iowa) or local sediment and erosion plans and be consistent with the requirements of Part III(C)5 of this General Permit? Yes No

CERTIFICATION

I certify under penalty of law that this document was prepared under my direction or supervision in accordance with a system designed to assure that qualified people properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, this information is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NAME (please print)	TITLE
SIGNATURE	DATE

542-1415 (10/91)



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

LARRY J. WILSON, DIRECTOR

Authorization No. _____

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IOWA DEPARTMENT OF NATURAL RESOURCES

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

GENERAL PERMIT #0001

FOR

STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY

This authorization for a storm water discharge associated with industrial activity is issued pursuant to the authority of section 402(b) of the Clean Water Act (U.S.C. 342(b)), Iowa Code 455B.174, and rule 567-64.3, Iowa Administrative Code. A Notice of Intent has been filed with the Iowa Department of Natural Resources that this storm water discharge complies with the terms and conditions of NPDES General Permit #0001. Authorization is hereby issued to discharge storm water associated with industrial activity as defined in Part VIII of the Iowa Department of Natural Resources NPDES General Permit #0001 in accordance with the terms and conditions set forth in the permit.

Permit Coverage Issued To: _____

Discharge Authorization Date: _____

Permit Effective Date: _____

Permit Expiration Date: _____, 1997

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(Date to be inserted at time of adopted rule.)

IOWA DEPARTMENT OF NATURAL RESOURCES

NPDES GENERAL PERMIT #0001

STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY

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(Date to be inserted at time of adopted rule.)

Part I. COVERAGE UNDER THIS PERMIT

A. Permit Area. This permit covers all areas of the State of Iowa.

B. Eligibility.

1. Except for storm water discharges identified under Part I.B.2, this permit may cover all new and existing discharges composed entirely of storm water associated with industrial activity as defined in Part VIII of this permit.
2. Limitations on Coverage. The following storm water discharges associated with industrial activity are not covered by this permit:
 - a. storm water discharges associated with industrial activity from facilities with existing effluent guideline limitations for storm water¹;
 - b. storm water discharges associated with industrial activity from facilities with an existing NPDES individual permit for the storm water discharges or which are issued an individual permit in accordance with Part I.C of this permit;
 - c. storm water discharges associated with industrial activity that the department has shown to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
 - d. storm water discharges associated with industrial activity from inactive mining or inactive oil and gas operations where an operator cannot be identified.
3. Exclusions. The following stormwater discharges do not require an NPDES permit:
 - a. Discharges from agricultural and silvicultural activities including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 CFR 122.23, concentrated aquatic production facilities as defined in 40 CFR 122.24, discharges to aquaculture projects as

defined in 40 CFR 122.25, and discharges from silvicultural point sources as defined in 40 CFR 122.27.

b. Discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come in contact with, any overburden, raw material, intermediate products, finished products, byproduct, or waste productions located on the site of such operations.

C. Requiring an Individual Permit.

1. The department may require any person authorized to discharge under this permit to apply for and obtain an individual NPDES permit. When the department notifies a discharger to apply for an individual permit a deadline, not longer than one year, will be established for submitting the application.

¹ For the purpose of this permit, the following effluent guideline limitations address storm water: cement manufacturing (40 CFR 411); feedlots (40 CFR 412); fertilizer manufacturing (40 CFR 418); petroleum refining (40 CFR 419); phosphate manufacturing (40 CFR 422); steam electric (40 CFR 423); coal mining (40 CFR 434); mineral mining and processing (40 CFR 436); ore mining and dressing (40 CFR 440); and asphalt emulsion (40 CFR 443).

If a person fails to submit an individual NPDES permit application by the deadline established by the department under this paragraph, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any person authorized to discharge by this

(Date to be inserted at time of adopted rule.)

permit may request to be excluded from coverage under this permit by applying for an individual permit or participating in a group application. The application for an individual permit shall include EPA Form 1 and Form 2F and all applicable fees and shall be submitted to the department in accordance with rule 567-54.3(4) of the Iowa Administrative Code. Group applications must be submitted to EPA in accordance with the requirements of 40 CFR 122.26.

3. When an individual NPDES permit is issued for a discharge otherwise subject to this permit the applicability of this permit to the individual NPDES permittee is automatically terminated on the issuance date of the individual permit. When an individual NPDES permit is denied for a discharge otherwise subject to this permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the department.
- D. **Authorization.** Dischargers of storm water associated with industrial activity must submit a complete Notice of Intent (NOI) in accordance with the requirements of Part II of this permit to be authorized to discharge under this general permit. Unless notified by the department to the contrary, persons who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit. Upon review of the NOI, the department may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

Part II. NOTICE OF INTENT REQUIREMENTS

- A. **Deadlines for Notification.** Persons who intend to obtain coverage for an existing storm water discharge associated with shall submit a complete Notice of Intent (NOI) in accordance with the requirements of this Part within 180 days of the effective date of

this general permit. Persons who intend to obtain coverage for a new storm water discharge associated with industrial activity under this general permit shall submit a complete Notice of Intent (NOI) in accordance with the requirements of this Part 180 days prior to the date the operation is scheduled to begin. For a new discharge of stormwater associated with construction activity, a Notice of Intent must be submitted at least 30 days before the date on which construction is to commence.

- B. **Failure to Notify.** Persons who fail to notify the department of their intent to be covered, and discharge pollutants to waters of the state without an NPDES permit, are in violation of the Clean Water Act and the Code of Iowa.
- C. **Contents of Notice of Intent.** A complete Notice of Intent shall include Items 1, 2 and 3 as follows:
 1. Notice of Intent Form
 - a. Name, mailing address, and location of the facility for which the notification is submitted;
 - b. Up to four 4-digit SIC codes that best represent the principal products or activities provided by the facility;
 - c. The operator's name, address, telephone number, ownership status and status as Federal, State, private, public or other entity;
 - d. The 1/4 section, township, and range, or the latitude and longitude, and the county in which the discharge is located;
 - e. The type of discharge (new or existing), whether or not the discharge is to a municipal separate storm sewer, the date the discharge is to commence, the permit status of the discharge, the name of the receiving water(s); and

(Date to be inserted at time of adopted rule.)

- f. Existing quantitative data describing the concentration of pollutants in storm water discharges.
- g. For construction sites that need a storm water discharge permit, in addition to the information required above, include a brief description of the project, estimated timetable for major activities, and an estimate of the number of acres of the site on which soil will be disturbed. Applicants must coordinate their projects with county Soil and Water Conservation districts to ensure compliance with section 467A.64 of the Code of Iowa.
2. **Applicable Fees.** The applicable fees specified in Iowa Administrative Code 567-64.16(3)(a)(1).
3. **Public Notification.** A demonstration that the public notice specified in Iowa Administrative Code 567-64.6(4)(c)(1) was published at least one day, in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur.
- D. **Where to Submit.** Facilities which discharge storm water associated with industrial activity must submit items 1, 2 and 3 above to the department at the following address:
- Iowa Department of Natural Resources
Environmental Protection Division
Storm Water Permits Coordinator
800 East Grand Avenue
Des Moines, Iowa 50319-0034
- E. **Additional Notification.**
- Facilities which discharge storm water associated with industrial activity to a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must, in addition to submitting the Notice of Intent in accordance with Part II.D, submit a copy of

the Notice of Intent form to the operator of the municipal separate storm sewer to which they discharge.

- F. **Renotification.** If a permittee intends to continue an activity covered by this general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent to the department within 180 days of the effective date of a reissued permit.

Part III. SPECIAL CONDITIONS, MANAGEMENT PRACTICES, AND OTHER NON-NUMERIC LIMITATIONS

- A. **Prohibition on Non-Storm Water Discharges.** All discharges covered by this permit shall be composed entirely of storm water. Discharges of material other than storm water must be in compliance with an individual NPDES permit issued for the discharge.
- B. **Releases in Excess of Reportable Quantities.** This permit does not relieve the permittee of the reporting requirements of 40 CFR 117 and 40 CFR 302. The discharge of hazardous substances in the storm water from a facility shall be minimized in accordance with the storm water pollution prevention plan for the facility, and in no case, during any 24-hour period, shall the discharge(s) contain a hazardous substance equal to or in excess of reporting quantities.
- C. **Storm Water Pollution Prevention Plans.** A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. The plan shall describe practices which will be used to reduce pollutants in storm water

(Date to be inserted at time of adopted rule.)

discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit.

1. The plan shall be signed in accordance with Iowa Administrative Code 567-64.3(8), and shall be retained on site in accordance with Part V.D. of this permit. Except for construction activities, the plan shall be completed within 180 days of the discharge authorization date of this permit and updated as appropriate. Plans, other than for construction activities, shall provide for compliance with the terms of the plan within 365 days of the discharge authorization date of this permit. For construction activities, plans shall be completed prior to construction and shall provide for compliance with the plan at the time of construction. A facility with storm water discharges covered by this permit shall make plans available upon request of the department or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.
2. The department may review the plan at any time and may notify the permittee that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the department the permittee shall make changes to the plan and shall submit to the department a written certification that the requested changes have been made. Unless otherwise provided by the department, the permittee shall have 30 days after such notification to make the necessary changes.
3. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the State or if the storm water pollution prevention plan proves to be

ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by the department in the same manner as Part III.C.2 above.

4. Except for storm water discharges associated with construction activities which are subject to the requirements of Part III.C.5, the plan shall include, at a minimum, the following items:

a. Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include:

1. A site map showing an outline of the drainage area of each storm water outfall; each existing structural control measure to reduce pollutants in storm water runoff; and each surface water body;

2. A narrative description of known significant materials that have been treated, stored or disposed in a manner to allow exposure to storm water during the three years prior to the discharge authorization date of this permit; the method of on-site storage or disposal; materials management practices employed to minimize contact of these materials with storm water runoff; materials loading and access areas; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives;

3. A list of significant spills or leaks of toxic

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or hazardous pollutants that occurred at the facility that may contribute pollutants to stormwater.

4. For each area of the plant that discharges storm water associated with industrial activity that has a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an estimate of the types of pollutants which are likely to be present in storm water discharges; and

5. A summary of existing sampling data describing pollutants in storm water discharges.

b. Storm Water Management Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate to the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

Responsible Person - The plan shall identify a person or persons within the organization responsible for developing the storm water pollution prevention plan and assisting in its implementation, maintenance, and revision.

Risk Identification and Assessment/Material Inventory - The storm water pollution prevention plan shall assess the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity. The plan shall include an inventory of the types of materials handled. Facilities subject to SARA Title III, Section 313 shall include in the plan a description of releases to land or water of SARA Title III water priority chemicals that

have occurred during the three years prior to the discharge authorization date of this permit. Each of the following shall be evaluated for the reasonable potential for contributing pollutants to runoff:

- a. loading and unloading operations;
- b. outdoor storage activities;
- c. outdoor manufacturing or processing activities;
- d. significant dust or particulate generating processes;
- e. on-site waste disposal practices.

Factors to consider include the toxicity of chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants.

Preventive Maintenance - The plan shall describe a preventive maintenance program that involves inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

Good Housekeeping - Good housekeeping requires the maintenance of a clean, orderly facility. Housekeeping activities which contribute to storm water pollution prevention shall be described in the plan.

Spill Prevention and Response Procedures - Areas where potential spills can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures and storage requirements in the plan should be considered. Procedures for cleaning up spills

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shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up shall be available to personnel.

Storm Water Management - The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the source of pollutants). Based on an assessment of the potential of various sources at the plant to contribute pollutants to storm water discharges associated with industrial activity the plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained.

(7). **Sediment and Erosion Prevention** - The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion.

(8). **Employee Training** - Employee training programs shall inform personnel at all levels of responsibility for the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(9). **Visual Inspections** - The responsible person(s) identified in item #1 above shall inspect designated equipment and plant areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A tracking or followup procedure shall be used to ensure an appropriate response to each inspection. Records of inspections shall be maintained.

(10). **Recordkeeping and Internal Reporting Procedures** - Incidents such as

spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the records. Inspection and maintenance activities shall be documented and recorded:

(11). **Non-Storm Discharges** - The plan shall include a certification that the discharge has been tested for the presence of non-storm water discharges. The certification shall include a description of the results of any test for the presence of non-storm water discharges, the method used, the date of any testing, and the on-site drainage points that were directly observed during the test. This certification may not be feasible if the facility operating the storm water discharge does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible. A discharge that is unable to provide the certification required by this paragraph must notify in accordance with Part V.A of this permit.

c. **Site Inspection**. A site inspection shall be conducted at least annually by the responsible person(s) named in the storm water pollution prevention plan to verify that the description of potential pollutant sources required under Part III.C.4.a is accurate, the drainage map has been updated or otherwise modified to reflect current conditions; and the controls to reduce pollutants in storm water discharges associated with industrial activity identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the storm water pollution prevention plan for the duration of this permit.

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d. Special requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more

Facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge from the municipal separate storm sewer provided the discharger has been notified of such conditions.

e. Consistency with other plans. Storm water management programs may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit and may incorporate these by reference.

f. Additional requirements for storm water discharges associated with industrial activity from facilities subject to SARA Title III, section 313 requirements. Storm water pollution prevention plans for facilities subject to reporting requirements under SARA Title III, Section 313 for chemicals which are classified as Section 313 water priority chemicals in accordance with the definition in Part VII of this permit are required to include, in addition to the information listed above, a discussion of the facility's conformance with the appropriate guidelines listed below:

(1). In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the

following preventive systems or its equivalent shall be used:

(a) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(b) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water, and wind blowing.

(2) If the installation of structures or equipment listed in Parts III.C.4.f.(3).(a).(ii), or III.C.4.f.(3).(c) of this permit is not economically achievable at a given facility, the facility shall develop and implement a spill contingency and integrity testing plan which provides a description of measures that ensure spills or other releases of toxic amounts of Section 313 water priority chemicals do not occur. A spill contingency and integrity plan developed under this paragraph shall comply with the minimum requirements listed in Parts III.C.4.f.(2).(a) through (d).

(a) The plan shall include a detailed description which demonstrates that the requirements of Parts III.C.4.f.(3).(a).(ii) and III.C.4.f.(3).(c) of this permit are not economically achievable;

(b) A spill contingency plan must include, at a minimum:

1. a description of response plans, personnel needs, and methods of mechanical containment;
2. steps to be taken for removal of spilled Section 313 water priority chemicals;
3. access to and availability of

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4. sorbents and other equipment;
and such other information as
required by the Department;

(c) The testing component of the alternative plan must provide for conducting integrity testing of storage tanks at least once every five years, and conducting integrity and leak testing of valves and piping a minimum of every year; and

(d) A written and actual commitment of manpower, equipment and materials required to comply with the provisions of Part III.C.4.f.(2).(b) and (c) of this permit and to expeditiously control and remove quantities of Section 313 water priority chemicals that may result in a toxic discharge.

(3) In addition to the minimum standards listed under Part III.C.4.f.(1) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines:

(a) Liquid storage areas where storm water comes into contact with equipment or a tank, container, or other vessel used for Section 313 water priority chemicals.

(i) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) Secondary containment shall be provided, sufficient to contain the capacity of the largest single container or tank in a drainage system where Section 313 water priority chemicals are stored. If the secondary containment area and its upstream drainage system are subject to precipitation, an allowance for drainage from a 25-year,

24-hour precipitation event shall be provided over and above the volume necessary to contain the largest single tank or container. Secondary containment systems shall be sufficiently impervious to contain spilled Section 313 water priority chemicals until they can be removed or treated. The plant treatment system may be used to provide secondary containment, provided it has sufficient excess holding capacity always available to hold the contents of the largest container in the drainage area plus an allowance for drainage from a 25-year, 24-hour precipitation event.

(b) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids, which are subject to runoff, leaching, or wind blowing, shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals. Drainage control shall minimize storm water contact with Section 313 water priority chemicals.

(c) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be provided with sufficient secondary containment or treatment capacity to hold or treat the largest tank truck or rail car, or the largest compartment of a tank truck or rail car if the tanks are compartmented, which is loaded or unloaded at the facility. If secondary containment is provided in the treatment system, it must be designed so that adequate hydraulic capacity always exists to contain a spill of the largest container from the loading and unloading areas, including an allowance for drainage from a 25-year, 24-hour

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precipitation event.

(d) In plant areas where Section 313 water priority chemicals are transferred, processed or otherwise handled. Piping, processing equipment and materials handling equipment shall be designed and operated so as to prevent discharges of Section 313 chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall be designed as described in paragraphs (a), (b) and (c) of this section. Additional protection, such as covers or guards to prevent wind blowing, spraying or releases from pressure relief vents shall be provided as appropriate to prevent discharge of Section 313 water priority chemicals.

(e) Discharges from areas covered by paragraphs (a), (b), (c) or (d).

(i) Drainage from areas covered by paragraphs (a), (b), (c) or (d) of this part shall be restrained by valves or other positive means to prevent a spill or leakage of Section 313 water priority chemicals into the drainage system. Containment areas may be emptied by pumps or ejectors; however, these shall be manually activated.

(ii) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas shall, as far as is practical, be of manual, open-and-closed design.

(iii) If plant drainage is not engineered as above, the final discharge of all in-plant storm sewers must be equipped with a system that could return the spilled material to the facility in the event of an uncontrolled spill of Section 313 water priority chemicals,

(iv) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(f) Plant site runoff other than from areas covered by (a), (b), (c) or (d). Other areas of the facility (those not addressed in paragraphs (a), (b), (c) or (d)), from which runoff which may contain Section 313 water priority chemicals shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(g) Preventive maintenance and housekeeping. All areas of the facility shall be inspected for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, plant piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspections shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to the drainage system, corrective action shall be immediately taken or the unit or process shut down until corrective action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and

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disposed in accordance with Federal and State requirements and as described in the plan.

(b) **Facility security.** Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(i) **Training.** Facility employees and contractor personnel using the facility shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of plant operation and design features in order to prevent discharges or spills from occurring.

g. **Salt Storage.** Storage piles of salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation.

5. **Alternative requirements for Construction Activities.** Operations that discharge storm water associated with industrial activity from construction activities are not subject to the requirements of Part

III.C.4 of this permit, but are instead subject to the following requirements. The storm water pollution prevention plan shall include the following items:

a. **Site Description.** Each plan shall include the following:

- (1). A description of the construction activity;
- (2). An estimate of the total area of the site and the area of the site that is expected to undergo excavation or grading;
- (3). An estimate of the runoff coefficient of the site and existing data describing the soil or the quality of any discharges from the site;
- (4). A site map showing drainage patterns and approximate slopes anticipated after major grading activities, the location of major control structures identified in the plan, and surface waters; and
- (5). The name of the receiving water(s) and the ultimate receiving stream(s).

b. **Controls.** Each construction operation covered by this permit shall develop and implement controls appropriate for the facility. The plan shall describe these controls and shall address the following minimum components:

(1). **Erosion and Sediment Controls.**

(a). **Vegetative Practices.** A description of vegetative practices designed to preserve existing vegetation where possible and revegetate open areas as soon as practicable after grading or construction. These practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees. The operator shall initiate appropriate vegetative practices on all disturbed areas as soon as practicable after grading or construction is completed.

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(b). **Structural Practices.** A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site to the degree attainable. These practices may include straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders storm drain inlet protection, rock outlet protection, sediment traps, and temporary sediment basins.

(i) For sites with more than 10 disturbed acres at one time and which are served by a common drainage location, a detention basin shall be provided where possible. The detention basin shall provide storage or equivalent controls for runoff from disturbed areas from a 10 year, 24-hour storm. For drainage locations with more than 10 disturbed acres at one time and which are served by a common drainage location where a detention basin providing storage or equivalent controls for runoff from disturbed areas from a 10 year, 24-hour storm is not possible, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(ii) For drainage locations serving 10 or less disturbed acres, silt fences, straw bale dikes, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area or a detention basin providing storage for runoff from disturbed areas from a 10 year, 24-hour storm shall be provided.

(2). **Storm Water Management.** A description of measures to control pollutants in storm water discharges that will occur after construction operations have been completed. These practices may include: infiltration of runoff onsite; flow attenuation by use of open

vegetated swales and natural depressions; storm water retention structures and storm water detention structures. Where such controls are needed to prevent or minimize erosion, velocity dissipation devices shall be placed at the outfall of all detention or retention structures and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course.

(3). **Other Controls.**

(a). **Waste Disposal.** No solid waste, including building materials, shall be discharged.

(b) Off-site vehicle tracking of sediments shall be minimized.

(c). The plan shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.

(4). **State or Local Plans.** Facilities that discharge storm water associated with construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or storm water management plans required by State, county or local rules, regulations or ordinances. Applicable requirements specified in sediment and erosion plans or storm water management plans are incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit.

(5). **Maintenance.** A description of procedures to maintain in good and effective operating condition vegetation, erosion and sediment control measures and other

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protective measures identified in the storm water management plan. Procedures in a plan shall provide that all erosion controls on the site are inspected at regular intervals as described in the plan.

6. All storm water pollution prevention plans required under this permit are considered reports that shall be available to the public under Section 308(b) of the Clean Water Act and Chapter 22 of the Code of Iowa. The permittee shall make plans available to members of the public upon request by the public. However, the permittee may claim any portion of a storm water management plan as confidential in accordance with Code of Iowa Chapter 22 and Iowa Administrative Code 561-2.5.
7. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

Part IV. NUMERIC EFFLUENT LIMITATIONS

- A. **Coal Pile Runoff.** Any stormwater composed in part or in whole of coal pile runoff shall not exceed a maximum concentration at any time of 50 mg/l total suspended solids. The pH of these discharges shall be within the range of 6.0-9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 25 year, 24 hour rainfall event shall not be subject to the limitations of this part.

Part V. MONITORING AND REPORTING REQUIREMENTS

- A. **Failure to Certify.** Any facility that is unable to provide the certification required under paragraph III.C.4.b.(11) (testing for illicit connections), must prepare a written

description of the procedures used in any test conducted for the presence of non-storm water discharges; the results of the test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. This description must be kept on-site and be made available to the department upon request.

B. Monitoring Requirements.

1. **Section 313 or SARA Title III Facilities.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, facilities subject to requirements to report releases into the environment under Section 313 of SARA Title III for chemicals which are classified as Section 313 water priority chemicals are subject to the following monitoring requirements for storm water discharges associated with industrial activity that are discharged from any containment area:

a. **Parameters.** The parameters to be measured include:

- oil and grease;
- five day biochemical oxygen demand (BOD₅);
- chemical oxygen demand (COD);
- total suspended solids;
- total Kjeldahl nitrogen (TKN);
- total phosphorus;
- pH;
- any Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of the Emergency Planning and Community Right to Know Act of 1986;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which

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- generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the total volume (in gallons) of the discharge sampled.

b. **Frequency of Monitoring.** Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

2. **Primary Metal Industries.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, facilities classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry) are subject to the following monitoring requirements for storm water discharges associated with industrial activity that are discharged from the facility:

a. **Parameters.** The parameters to be measured include:

- oil and grease;
- five day biochemical oxygen demand (BOD₅);
- chemical oxygen demand (COD);
- total suspended solids (TSS);
- total Kjeldahl nitrogen (TKN);
- nitrate plus nitrite nitrogen;
- total phosphorus;
- pH;
- total lead (Pb);
- total cadmium (Cd);
- total copper (Cu);
- total arsenic (As);
- total chromium (Cr);
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates

- (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%));

b. **Frequency of Monitoring.** Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

3. **Land Disposal Units.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from any active or inactive landfill, land application site, or open dump that received any industrial wastes are subject to the following monitoring requirements:

a. **Parameters.** The parameters to be measured include:

- ammonia;
- bicarbonate;
- calcium;
- chloride;
- total iron;
- magnesium (total);
- magnesium (dissolved);
- nitrate plus nitrite nitrogen;
- potassium;
- sodium;
- sulfate;
- chemical oxygen demand (COD);
- total dissolved solids (TDS);
- total organic carbon (TOC);

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- oil and grease;
- pH;
- total arsenic;
- total barium;
- total cadmium;
- total chromium;
- total cyanide;
- total lead;
- total mercury;
- total selenium;
- total silver;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;

- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the total volume (in gallons) of the discharge sampled.

b. Frequency of Monitoring. Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

4. Wood Treatment (chlorophenolic/creosote formulations). During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities that currently use chlorophenolic formulations and/or creosote formulation are subject to the following monitoring requirements:

a. Parameters. The parameters to be

measured include:

- oil and grease;
- pH;
- five day biochemical oxygen demand;
- chemical oxygen demand;
- total suspended solids;
- total phosphorus;
- total Kjeldahl nitrogen;
- nitrate plus nitrite nitrogen;
- pentachlorophenol;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)).

b. Frequency of Monitoring. Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

5. Wood Treatment (arsenic or chromium preservatives). During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from areas that are used for wood treatment or storage of treated wood at any wood preserving facilities that currently use inorganic preservatives containing arsenic or chromium are subject to the following monitoring requirements:

a. Parameters. The parameters to be

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measured include:

- oil and grease;
- pH;
- five day biochemical oxygen demand;
- chemical oxygen demand;
- total suspended solids;
- total phosphorus;
- total Kjeldahl nitrogen;
- nitrate plus nitrite nitrogen;
- total arsenic;
- total chromium;
- total copper;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)).

b. **Frequency of Monitoring.** Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

6. **Coal Pile Runoff.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from coal pile runoff are subject to the following monitoring requirements:

a. **Parameters.** The parameters to be measured include:

- oil and grease;

- pH;
- total suspended solids;
- total copper;
- total nickel;
- total zinc;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)).

b. **Frequency of Monitoring.** Sampling shall be conducted at least semi-annually (2 times per year) except as provided by Part V.B.11 or V.B.12;

7. **Oil and Gas Exploration or Production Operations.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity from oil and gas exploration or production operations are subject to the following monitoring requirements:

a. **Parameters.** The parameters to be measured include:

- oil and grease;
- pH;
- five day biochemical oxygen demand;
- chemical oxygen demand;
- total suspended solids;
- total phosphorus;

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- total Kjeldahl nitrogen;
- nitrate plus nitrite nitrogen;
- any pollutant limited in an effluent guideline to which the facility is subject;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,
- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%));

b. **Frequency of Monitoring.** Sampling shall be conducted at least annually (1 times per year) except as provided by Part V.B.11 or V.B.12;

8. **Construction Activities.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with construction activity are subject to the following monitoring requirements:

a. **Parameters.** The parameters to be measured include:

- oil and grease;
- pH;
- total suspended solids (mg/l);
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm

event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and,

- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)).

b. **Frequency of Monitoring.** Sampling shall be conducted at least annually (1 times per year) except as provided by Part V.B.11 or V.B.12.

9. **Other Facilities.** During the period beginning on the discharge authorization date and lasting through the expiration date of this permit, storm water discharges associated with industrial activity which are covered by this permit, but are not subject to sampling requirements under Parts V.B.1 through V.B.8 are subject to the following monitoring requirements:

a. **Parameters.** The parameters to be measured include:

- oil and grease;
- pH;
- biochemical oxygen demand;
- chemical oxygen demand;
- total suspended solids;
- total phosphorus;
- total Kjeldahl nitrogen;
- nitrate plus nitrite nitrogen;
- any pollutant limited in an effluent guideline to which the facility is subject;
- the date and duration (in hours) of the storm event(s) sampled;
- rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff;
- the duration between the storm event sampled and the end of the

(Date to be inserted at time of adopted rule.)

previous measurable (greater than 0.1 inch rainfall) storm event; and,

- an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)).

- b. Frequency of Monitoring. Sampling shall be conducted at least annually (1 times per year) except as provided by Part V.B.11 or V.B.12.
10. Sample Type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All samples shall be collected from a discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes. Only grab samples may be collected and analyzed for the determination of pH, cyanide, and oil and grease.
11. Sampling Waiver. When a discharger is

unable to collect samples due to adverse climatic conditions, the discharger must explain, in writing, why samples could not be collected, including available documentation of the event, and retain a copy of the explanation in accordance with Part V.C. of this permit. Adverse climatic conditions which may prohibit the collection of samples include weather that creates dangerous conditions for personnel (such as local flooding, high winds, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

12. Representative Discharge. When a facility has two or more outfalls that the permittee reasonably believes discharge substantially identical effluents, based on a consideration of features and activities within the area drained by the outfall, the permittee may test the effluent of one of these outfalls and report that the quantitative data also applies to the substantially identical outfalls. An estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided for each outfall.

C. Reporting.

Permittees subject to sampling requirements pursuant to Parts V.B.1 through V.B.9 are not required to submit monitoring results. However, monitoring results must be retained in accordance with Part V.D. and be available to the department and the public upon request.

D. Retention of Records.

1. The permittee shall retain a copy of the storm water pollution prevention plan, records of all monitoring information, copies of all reports

(Date to be inserted at time of adopted rule.)

required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit for the duration of the permit.

2. Permittees must submit monitoring results to the department upon the request of the department, and submit a summary of monitoring results as part of renotification requirements in accordance with Part II.F.

Part VI. STANDARD PERMIT CONDITIONS

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Code of Iowa and is grounds for enforcement action; for termination of coverage under this general permit; or for denial of a request for coverage under a reissued general permit.

1. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants, within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Penalties for Violations of Permit Conditions

Section 309 of the CWA provides significant penalties for any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any such sections in a permit issued under section 402. Any person who violates any permit condition of this permit is

subject to a civil penalty not to exceed \$25,000 per day of such violation, as well as any other appropriate sanction provided by section 309 of the CWA.

B. Continuation of the Expired General Permit

An expired general permit shall continue in until the general permit is reissued. Only those facilities authorized to discharge under the expiring general permit are covered by the continued permit.

C. Need to halt or reduce activity not a defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the department, within a reasonable time, any information which the department may request to determine compliance with this permit. The permittee shall also furnish to the Ddepartment upon request copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts, or

(Date to be inserted at time of adopted rule.)

submitted incorrect information in the Notice of Intent or in any other report to the department, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Department or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed in accordance with rule 567-64.3(8) of the Iowa Administrative Code.

H. Certification

Any person signing documents required by this permit shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

J. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. Transfers

This permit is not transferable to any person except after notice to the department. The department may require the operator to apply for and obtain an individual NPDES permit as stated in Part I.C.

M. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution

(Date to be inserted at time of adopted rule.)

prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

N. Monitoring and Records

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit for the duration of this permit.

3. Records Contents. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of the analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Monitoring must be conducted according to test procedures specified in Iowa Administrative Code 455B Chapter 63 unless other test procedures have been specified in this permit.

5. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years per violation, or by both.

O. Bypass of Treatment Facilities

1. Notice:

a. **Anticipated bypass.** If the permittee knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

b. **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee become aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass, including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or

(Date to be inserted at time of adopted rule.)

planned to reduce, eliminate, and prevent reoccurrence of the bypass.

2. Prohibition of bypass:

a. Bypass is prohibited and the department may take enforcement action against a permittee for a bypass unless:

(1). The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2). There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgement, have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3). The permittee submitted notices as required under Part O.1 of this section.

b. The Department may approve an anticipated bypass after considering its adverse effects, if the Department determines that it will meet the three conditions listed in Part VI.O.2.a. of this section.

P. Upset Conditions

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit limitations if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset; and,

d. The permittee complied with any remedial measures required under III.C.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Q. Inspection and Entry

The permittee shall allow the Department or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit; .

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

(Date to be inserted at time of adopted rule.)

R. **Permit Actions**

Coverage under this permit may be terminated for cause. The filing of a request by the permittee for a permit discontinuance, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Part VII. REOPENER CLAUSE

If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the permittee may be required to obtain an individual permit in accordance with Part I.C. of this permit.

Part VIII. DEFINITIONS

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Flow-weighted composite sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Landfill" means an area of land or an

excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Large and Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

- (i) located in an incorporated place with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census; or
- (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
- (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Department as part of the large or medium municipal separate storm sewer system.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemical" means a chemical or chemical categories which are:

- 1) Listed at 40 CFR 372.65 pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also titled the Emergency Planning and Community Right-to-Know Act of 1986;
- 2) Present at or above threshold levels

(Date to be inserted at time of adopted rule.)

at a facility subject to SARA Title III, Section 313 reporting requirements; and

3) Meet at least one of the following criteria:

(i) are listed in Appendix D of 40 CFR 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances);

(ii) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or

(iii) are pollutants for which EPA has published acute or chronic water quality criteria.

"Severe Property Damage" means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and

waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Significant spills" includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or section 102 of CERCLA (see 40 CFR 302.4).

"Storm Water Associated with Industrial Activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in subparagraphs (i) through (x) of this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed

(Date to be inserted at time of adopted rule.)

in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)-(xi)) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this paragraph);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28, 29, 30, 311, 32, 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations meeting the definition of a

reclamation area under 40 CFR 434.11(1)) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under Interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42, 44, and 45 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance. (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or

(Date to be inserted at time of adopted rule.)

which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbances of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 31 (except 311), 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-24, (and which are not otherwise included within categories (i)-(x));

"Time-weighted composite" means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

"25-year, 24-hour precipitation event" means the maximum 24-hour precipitation event with a probable reoccurrence interval of once in 25 years. This information is available in

"Weather Bureau Technical Paper No. 40," May 1961 and may be obtained from the National Climatic Center of the Environmental Data Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

AUG 4 1992

OFFICE OF
THE REGIONAL ADMINISTRATOR

Larry Wilson, Director
Iowa Department of Natural Resources
Henry A. Wallace Building
900 E. Grand
Des Moines, IA 50319

Dear Mr. Wilson:

It is with great pleasure that I am today approving the State of Iowa's National Pollutant Discharge Elimination System (NPDES) General Permit Program in accordance with 40 C.F.R. Part 123. This approval is effective August 12, 1992 when Iowa's general permit program regulations become effective.

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

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

Sincerely,

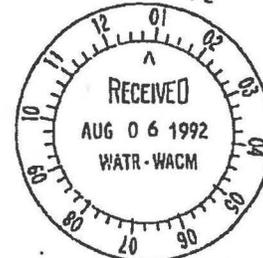

Morris Kay
Regional Administrator

RECYCLE ♻️



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Ritter
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RS



JUL 31 1992

MEMORANDUM

SUBJECT: Concurrence on Iowa's Application to Modify its NPDES Authorization to Include the General Permits Program

FROM: Michael B. Cook, Director *Michael Cook*
Office of Wastewater Enforcement and Compliance (WH-546)

Susan G. Lepore *SGL*
Associate General Counsel for Water (LE-132W)

TO: Ronald R. Ritter, Acting Director
Water Management Division, Region VII

The purpose of this memo is to provide Headquarters' concurrence on approval of the Iowa general permit program submission which was submitted by the State on June 30, 1992. The overall package (which contains statutory authority, general permit regulations, signed Attorney General Statement, signed Memorandum of Agreement, Program Description, and letter of transmittal) meets the requirements for State general permit program modifications. It is our understanding that the Region believes this program modification to be non-substantial as the State regulations have already been subject to public notice by the State. We also concur on the Region's determination that the State NPDES program change for general permits is non-substantial.

We note that while Iowa's general permitting scheme is restricted by statute to storm water discharges, such a restriction is not inconsistent with Federal requirements.

Iowa's regulatory provisions which implement the general permits program are effective on August 12, 1992. Therefore, if the Region approves this modification before the effective date of these regulations, we ask that the effective date be specified as August 12, 1992.

We are pleased to be able to concur on Iowa's State NPDES program modification for general permit authorization. Our staffs are available to work with your staff on any additional tasks necessary to finalize approval of the Iowa general permits

modification. If you have any questions, please call either of us or have your staff contact Tom Charlton (202 260-6960) of OWEC or Steve Neugeboren (202 260-6464) of OGC.

cc: Martha R. Steincamp, Regional Counsel, Region VII

**AMENDMENT
TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE
IOWA DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION VII**

The Memorandum of Agreement between the United States Environmental Protection Agency, Region VII (hereinafter EPA) and the Iowa Department of Natural Resources (hereinafter DNR) is hereby amended to include DNR and EPA responsibilities for the development, issuance and enforcement of National Pollutant Discharge Elimination System (hereinafter NPDES) general permits as follows:

The DNR has the responsibility for developing and issuing NPDES general permits for storm water pursuant to 1991 Iowa Acts, chapter 121.

Each draft general permit will be accompanied by a fact sheet setting forth the principal facts and methodologies considered during permit development and will be transmitted to the following EPA offices:

Water Management Division Director
U.S. EPA, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Director, Office of Water Enforcement and Compliance
U.S. EPA (EN-4500)
401 M. Street, SW
Washington, D.C. 20406

The general permit will be publicly noticed in accordance with the provisions of Chapter 17A of the Iowa Code as a rule of the department pursuant to 455B.103A(1)(a) of the Iowa Code and 40 CFR 124.10, including publication in a daily or weekly newspaper circulated in the area to be covered by the permit. EPA will have up to ninety (90) days to review the proposed general permit and provide comments, recommendations and objections to the DNR. Because DNR's general permits for storm water are adopted through Iowa administrative rule making, EPA's comments on the proposed general permit must be submitted to the DNR within the ninety (90) day so that the DNR can proceed with rule making. The sequencing of events between EPA's review process with DNR's rule making process are depicted in Appendix A, attached to this Memorandum of Agreement.

In the event EPA does object to the general permit EPA will provide, in writing, the reasons for its objection and the actions necessary to eliminate the objection. The State has the right to a public hearing on the objection in accordance with 40 CFR 123.44(e) and Part III of the Memorandum of Agreement. Upon receipt of EPA's objection, the

State may request a public hearing. If no public hearing is held under 40 CFR 123.44(e) and the DNR does not resubmit a permit revised to meet EPA's objection within 90 days of receipt of the objection, exclusive authority to issue the general permit passes to EPA.

If EPA raises no objections to the proposed general permit during the 90 day review period, the DNR will proceed with the adoption of the general permit as a final rule. EPA will be provided a copy of the general permit with an explanation of the substantive changes made to the general permit as presented in the Notice of Intended Action or a statement that the rules are identical to those published under the Notice of Intended Action. The general permit will be provided to the EPA Regional Office no less than ten (10) days before the DNR requests approval from Iowa's Environmental Protection Commission to file and adopt the rules. Upon approval from the Environmental Protection Commission, the rules will be adopted and filed with the Administrative Rules Coordinator. DNR will issue and administer NPDES general permits in accordance with (567) Chapter 64 of the Iowa Administrative Code and 40 CFR 122.28.

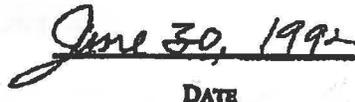
The DNR also has the primary responsibility for conducting compliance monitoring activities and enforcing conditions and requirements of general permits.

All specific State commitments regarding the issuance and enforcement of general permits will be determined through the annual 106 workplan/State-EPA Agreement process.

This Amendment to the Memorandum of Agreement will be effective upon approval of the DNR's general permit program application by the Regional Administrator of EPA Region VII.

FOR THE IOWA DEPARTMENT OF NATURAL RESOURCES:


DIRECTOR


DATE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

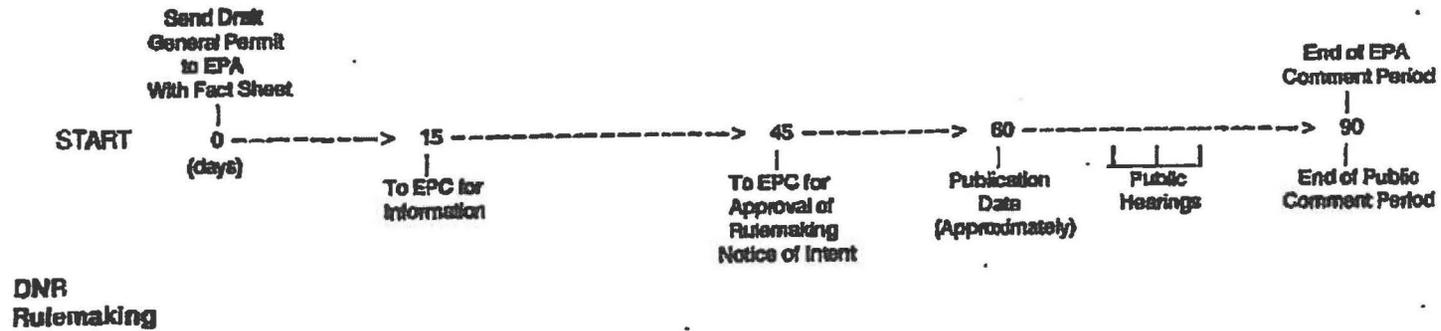
REGIONAL ADMINISTRATOR
U.S. EPA, REGION VII

DATE

6639-01

**APPENDIX A EPA General Permit Review Time Scale
Relative to DNR Rule Making Process**

**EPA General
Permit Review**



C-63

EPC = Environmental Protection Commission

**PROGRAM DESCRIPTION
IOWA DEPARTMENT OF NATURAL RESOURCES
STORM WATER GENERAL PERMIT PROGRAM**

A. Introduction:

This program description is submitted in accordance with 40 CFR 123.21 *Elements of a Program Description* and 123.22 *Program Description*, in order to obtain approval by the U.S. Environmental Protection Agency (EPA) of the Iowa Department of Natural Resources (DNR) administration of the General Permit Program for storm water discharges pursuant to 1991 Iowa Acts, chapter 121. This program description supplements the description contained in the original application for delegation of the NPDES Program, dated March 9, 1978. The General Permit Program for storm water discharges will be a subpart of the NPDES Program, currently administered by the DNR.

The DNR was delegated the NPDES Program on August 10, 1978. Iowa received authority to administer the NPDES Program for federal facilities on August 10, 1978, and subsequently received authority to administer the pretreatment program on June 3, 1981.

The storm water discharge General Permit Program will be designed to provide NPDES permit coverage to eligible storm water point source discharges which are required to have an NPDES permit. The use of general permits for storm water discharges will streamline the NPDES permitting process so that those required to obtain the necessary permit may do so in a timely manner. Incorporating general permits into DNR's NPDES permit program for storm water discharges will improve the administrative efficiency of the NPDES program.

06-18-81

General permits will be issued for a class of storm water dischargers where individual permits for such a class would be substantially similar. Dischargers intended to be covered through the general permits are limited by statute to storm water discharges pursuant to 1991 Iowa Acts, chapter 121. The types of facilities that would be considered for general permits would correspond with those storm water discharges identified in Section 402(p) of the Clean Water Act as amended in 1987 and specified in 40 CFR Parts 122, 123 and 124 as needing a NPDES permit for storm water.

B. Administration:

The General Permit Program will be administered for permit issuances and compliance and enforcement activities by the Surface and Groundwater Protection Bureau and the Field Evaluation and Emergency Response Bureau in DNR's Environmental Protection Division. A current organizational chart is attached.

C. Legal Basis:

The statement of the Iowa Attorney General is attached confirming that the Department of Natural Resources has adequate statutory and regulatory authority to operate the General Permit Program for storm water discharges.

D. Special Procedures and Requirements for the Issuance and Enforcement of General Permits:

1. Applications

Applications for coverage under a general permit will be required from dischargers. The general permit application form to be used, referred to as a "Notice of Intent", will be identified in 567-60.3(2) of the Iowa Administrative Code. The submission of the completed application will be required before a discharger will be considered to be covered by the general permit.

64-19-01

All application requirements for coverage under a general permit for storm water discharge will be identified in the respective general permit and in subrules contained in 567--64.6(1) of the Iowa Administrative Code. For General Permit No. 1 and General Permit No. 2, the submission of the "Notice of Intent" form (DNR Form 542-1415) is one of three requirements identified in 567--64.6(1). In addition to the "Notice of Intent" form, the following is also required to complete the application process:

- the appropriate fee as described in 64.6(1)"b", and,
- proof of public notification delineated in 64.6(1)"c".

Application deadlines are identified in 567--64.3(4) of the Iowa Administrative Code. Restrictions on the coverage of the general permit will be contained in the general permit. (Note: General Permits and Notice of Intent, Form 542-1415, attached).

2. General Permit Development

General permits will be developed and issued through Iowa's Administrative Procedure Act for rule making, Chapter 17A of the Code of Iowa. As a rule making activity, Iowa's Environmental Protection Commission approves the filing of a "Notice of Intended Action" of the proposed rules with the Administrative Rules Coordinator. The "Notice of Intended Action" is published in the Iowa Administrative Bulletin (IAB). After publication in the IAB, a minimum of 30 days will be allowed for comment, including setting written comment deadlines and hearing dates. Following the comment period, comments which were received are summarized for the Environmental Protection Commission (EPC) and the proposed rules are revised as

04-29-91

appropriately based on the comments received. For the rules to become effective, the EPC must approve the adoption and filing of the final rules. A rule which has been adopted and filed generally becomes effective 35 days after its publication in the Iowa Administrative Bulletin unless a later day is specified in the rule.

In addition to the public notification that results from the rule making process, a statewide press release will be issued on the rulemaking activities for the general permit and scheduled public hearing dates.

General permits will be developed using Iowa Water Quality Standards, any applicable USEPA effluent guidelines, and applicable USEPA guidance material. General permits will be issued for a term no longer than five (5) years. In accordance with the Iowa/EPA Memorandum of Agreement, general permits will be sent to EPA for review prior to adoption by rule and will not be adopted over the specific written objection of the EPA.

3. Public Notice

All general permits will be accompanied by a Fact Sheet outlining the derivation of the permit limits. General permits will be public noticed in accordance with USEPA regulations and Chapter 17A of the Code of Iowa pursuant to 455B.103A(1)(b) which requires general permit adoption to be undertaken as a rule making activity. The public notice will be published in the Iowa Administrative Bulletin.

In addition to the public notification requirements of the general permit, Iowa law requires public notification for those applying for coverage under an

06-20-01

adopted general permit. These additional notification requirements are specified in 455B.103A(1)(b) in the Iowa Code and detailed in 567-64.6(1)"c" of the Iowa Administrative Code.

4. Compliance/Enforcement

Pursuant to 455B.103A(1)"f" and "g", the DNR will perform on-site inspections and review monitoring data to assess the effectiveness of general permits for storm water discharges. The DNR will also establish a procedure for the filing of complaints by persons believing themselves to be adversely affected by the environmental impacts of the discharge of a facility operating under a general permit for storm water discharge.

Dischargers will be inspected if there is a complaint or an indication of non-compliance on the part of the permittee. Random inspections may be made if staff resources allow to determine how the general permit is being implemented. Enforcement actions will be taken as appropriate for the discharge and in accordance with the DNR's current enforcement strategy.

5. Coverage Under an Individual Permit

If a particular discharger is designated for coverage under a general permit and requests the issuance of an individual permit, the application must be submitted in accordance with Chapter 64 (567) Iowa Administrative Code, paragraph 64.3(4)"a" which describes the individual permit application procedures. If a discharge that is currently permitted with an individual permit requests coverage under a general permit, coverage under the general permit will not be allowed until the individual permit expires. This provision is more stringent than federal

05-28-01

requirements but is required under Iowa law, 1991 Iowa Acts, chapter 121 which states:

"A person holding an existing permit is subject to the terms of the existing permit until it expires. If the person holding an existing permit continues the activity beyond the expiration date of the existing permit, an applicable approved general permit shall become effective." [455B.103A(1)"d"]

In compliance with the above paragraph, discharges permitted under an individual permit will not be eligible for coverage under the general permit until the individual permit expires. Aggrieved parties, including permittees, may seek review of a general permit's requirements by filing a complaint in the proper state court.

6. General Permit Modification, Revocation or Termination

Modification - General permits are issued as a rule by the DNR through the Environmental Protection Commission. According to 455B.103A(1)"a" *".....the terms, conditions, and limitations of the permit shall be drafted into a notice of intended action and adopted in accordance with the provisions of chapter 17A as a rule of the department. The same process of adoption shall be used for modification of a general permit."* Being consistent with this provision, each general permit is adopted as a rule. As such, the general permits may only be altered through the process of revising an existing administrative rule. "Interested persons" or any member of the public may comment during the rule making process on the terms and conditions of the general permit including those who may be eligible to be covered under the general permit.

96-20-01

Revocation or Termination - After a storm water discharge has submitted a complete Notice of Intent with the DNR, the discharge is considered to be covered under the general permit. Coverage under the general permit may be suspended or revoked by the DNR for cause as listed under 567-64.3(11). Iowa law [455B.103A(1)(c)] provides that if a proposed activity is not covered by a general permit, the DNR shall notify the discharger and request an individual permit application. The general permit itself allows the DNR to require any person authorized to discharge under the general to apply for and obtain an individual NPDES permit. General Permits No. 1 and No. 2 also provide that coverage under the general permit automatically terminate on the issuance date of the individual permit.

Provisions in the Iowa law require the DNR to establish a system for the filing of complaints by persons believing themselves to be adversely affected by the environmental impact of the discharge of a facility operating under general permit. Complaints received by the DNR from the public will be investigated to determine if the storm water discharge is meeting the terms and conditions of the general permit. In addition, the DNR may perform on-site inspections and review monitoring data to assess the effectiveness of the general permits.

The general permit can be suspended or revoked for any of the causes listed in 567-64.3(11). Suspension or revocation of coverage under the general permit will also be applied if the discharge does not comply with Iowa's water quality standards pursuant to 567-Chapter 61 (including general water quality criteria provisions) or that the terms and conditions of the general permit are not met.

06-29-02

E. Staffing and Resources:

Priority for issuing general permits will be established through the annual Iowa/EPA Agreement. General permits will be developed for storm water discharges on an as needed basis, using the present staffing. It is anticipated that the storm water General Permit Program will require approximately 2.83 FTE's per year (over a five year period) in technical and administrative support and will cost approximately \$1,150,125 over a five-year period. It is anticipated that the General Permit Program will result in a significant reduction in cost because technical review of the general permit applications will be minimal. The DNR believes that it has adequate funding under current state and federal funding levels to issue and administer the General Permit Program for storm water discharges. The funding source to operate and maintain the storm water general NPDES permit program is to be derived from fees assessed on those applying for general permit coverage. According to Iowa Code 455B.103A(4), applicants shall pay a fee which is sufficient to defray the costs of the permit program. The fees to be assessed are described in 567--64.16(455B) in the Iowa Administrative Code.



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ENVIRONMENTAL QUALITY

Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
STATE CAPITOL BUILDING
DES MOINES, IOWA 50319

June 12, 1979

Larry E. Crane
Executive Director
Iowa Department of Environmental Quality
Henry A. Wallace Building
Des Moines, Iowa 50319
L O C A L

Dear Mr. Crane:

On May 9, 1979, you requested our opinion regarding the legal authority of the State of Iowa to carry out a wastewater pretreatment program pursuant to 40 CFR 403.10 and the Federal Clean Water Act, sections 307(b) and 402(b)(8) and (9), 33 U.S.C. §§ 1317(b), 1342(b).

Your opinion request seeks clarification of three points in this office's previous opinion of October 6, 1978 (Davis to Crane), in light of the comments of the Regional Administrator of the United States Environmental Protection Agency, Region VII.

Item 5 of the previous opinion concluded that the State probably did not have the necessary authority to make determinations on categorization of industrial users and requests for variances. Item 9 noted that the State did not have authority to enforce permit requirements on industrial users discharging into publicly-owned treatment works. These conclusions were based on section 455B.45, Iowa Code, 1979, which provides in relevant part:

It shall be unlawful to carry on any of the following activities without first securing a written permit . . .

* * *

3. The operation of any waste disposal system or water supply distribution system or any part of or extension or addition to

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Page Two

such system. This provision shall not apply to any pretreatment system the effluent of which is to be discharged directly to another disposal system for final treatment and disposal.

Since the pretreatment program in question regulates industrial users who discharge into publicly-owned treatment works, section 455B.45(3) renders such industrial users exempt from any permit requirement. However, section 455B.45(3) is consistent with the federal pretreatment program which imposes pretreatment standards, but not permit requirements, on industrial users. Clean Water Act, sections 402(b)(8), 307(b)(1), 33 U.S.C. 1342(b)(8), 1317(b)(1). Under both state and federal law, permits are issued to the publicly owned treatment works (hereafter POTW) which must require any industrial user to comply with pretreatment standards. Clean Water Act, section 402(b)(8), (9), 33 U.S.C. 1342(b)(8), (9); Rule 400--19.3(5), IAC. The State is therefore not required to issue permits to such industrial users in order to have adequate authority to administer the pretreatment program. 40 CFR 403.10(f). Nor can section 455B.45(3) be construed to restrict the Department's authority to enforce pretreatment standards since such power is expressly granted by sections 455B.32(2), (3), (9), and 455B.49(2).

Item 5 of the previous opinion concerned whether State law provides authority to:

- a. Make a determination as to whether or not an industrial user falls within a particular industrial subcategory in accordance with the requirements of 40 CFR §403.6; and
- b. Deny and/or recommend approval of requests for Fundamentally Different Factors variances for industrial users as required by 40 CFR §§403.10(f)(1) and 403.13.

[Federal Authority: CWA sections 402(b)(1)(A), 402(b)(8), 510; 40 CFR §§403.6, 403.10, 403.13]

In our opinion Iowa law provides authority to determine whether an industrial user falls within a particular industrial subcategory to which national pretreatment standards apply. 40 CFR 403.6. Section 455B.32(2) authorizes the Commission to

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establish pretreatment standards, which have been adopted as Rule 400--17.4 (455B), IAC. Given the express authority to establish pretreatment standards, the Commission must also have authority to determine whether a particular user fits within the category of users subject to the standard. Violations of pretreatment standards are punishable by \$10,000 per day fines and may be enjoined. Section 455B.49(2), (4), Iowa Code, 1979. The Director is authorized by section 455B.33(3) to:

Take any action or actions allowed by law which, in the executive director's judgment, are necessary to enforce or secure compliance with the provisions of [Part 1, Division III, Chapter 455B] or of any rule or standard established or permit issued pursuant thereto.

Surely then the Director can determine which pretreatment standard will apply to a user; otherwise, users would be subject to serious sanctions without opportunity for notice of applicable requirements. Additionally, section 17A.9, Iowa Code, 1979, authorizes declaratory rulings as to the applicability of any rule of the agency. We therefore conclude that the Director has the necessary authority questioned in Item 5(a).

The authority to deny and/or recommend approval of a variance of a pretreatment standard if the user can establish that the factors relating to it are fundamentally different from those used to create the categorical pretreatment standard is provided by Rule 400--17.7 (455B), IAC. The statutory basis for this rule is again section 455B.32(2), authorizing the establishment of pretreatment standards. While the Code does not directly authorize the Director to recommend variances from pretreatment standards, section 455B.32(3) prohibits the Commission from adopting a more stringent pretreatment standard than that required by EPA. Since the federal variance provision allows less stringent standards to be applied to a particular user, the legislative intent of section 455B.32(3) would mandate that such variances also be available in the Commission's pretreatment rules. Such determination is also consistent with the legislative statement of policy to authorize the State to implement the provisions of the federal Water Pollution Control Act. We therefore conclude that the Commission has the authority to provide by rule for such variances.

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Item 9 concerned state authority to enforce against violations of pretreatment standards and requirements. The previous opinion stated:

Authority does not exist to enforce violations by industrial users of permit requirements since there is a statutory prohibition against such permits in §455B.45(3).

Authority does exist to enforce other requirements, assuming adoption of the federal standards pursuant to Rule 17.2 of Title 400, I.A.C., under §§455B.34 and 455B.49.

The executive director has authority to issue administrative compliance orders under §455B.43.¹ His inspection authority under §§455B.3(8) and 455B.33(2) also bears upon the enforcement ability of the department.

As your letter notes, this opinion is correct. However, the Regional Administrator of EPA has construed this response to indicate that the Attorney General concluded that the State did not have the requisite authority to enforce pretreatment requirements. We will therefore clarify our position on this issue.

Federal regulations require that requests for State Pretreatment Program Approval include legal authority to seek penalties and injunctive relief for "noncompliance by the POTW with pretreatment conditions imposed into the POTW permit and for noncompliance with Pretreatment Standards by Industrial Users as set forth in §403.8(f)(1)(vi)." 40 CFR 403.10(f)(1)(iv). Authority to enforce such permit requirements on POTW's is found in sections 455B.33(4), 455B.34, 455B.45, and 455B.49. Authority to enforce pretreatment standards on industrial users is found in sections 455B.32(2) and (9), 455B.33(3), 455B.34, and 455B.49(2) and (4). Additionally the previous opinion noted that the POTW can require compliance with the various conditions of 40 CFR 403.8(f)(1) by contract with the industrial users. Rule 400--19.3(5), IAC. The fact that the state may not require permits from such industrial users does not preclude enforcement of pretreatment standards. Therefore the State has the requisite legal authority to enforce both the POTW permit conditions and the industrial user pretreatment standards.

¹ The correct citation is §455B.34.

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Page Five

Item 6(a), regarding state authority to apply recording, reporting and monitoring requirements, involves somewhat related issues. You had asked whether the State has authority to:

- a. Require any industrial user or a publicly owned treatment works to:
 - (1) Submit the report required by 40 CFR 403.12(b) which:
 - (a) Sets forth basic information about the industrial user, (e.g., process, flow);
 - (b) Identifies the characteristics and amount of wastes discharged by the industrial user to the POTW; and
 - (c) Proposes a schedule by which any technology and/or operation and maintenance practices required to meet pretreatment standards will be installed;
 - (2) Submit the reports required by 40 CFR §403.12(c) which account for the industrial user's progress in installing any required pretreatment or operation and maintenance practices;
 - (3) Submit the report required by 40 CFR §403.12(d) following the final compliance date for the applicable pretreatment standard; and
 - (4) Submit periodic reporting on continued compliance with applicable pretreatment standards as required by 40 CFR §403.12(e);

Mr. Davis' opinion of October 6, 1978, concluded:

Authority does not exist for the Iowa Department of Environmental Quality to require any industrial user of a POTW to do anything except comply with pretreatment standards and report on such compliance. Compliance with question a(1)(a) and (b) and a(4) may be required under §455B.32(9).

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Authority does exist for the Iowa Department of Environmental Quality to require POTW's and industrial users to make such reports as are necessary under b and c of this question under §§455B.32(9), 455B.33(4) and 455B.45(3), and Chapter 18 of Title 400, Iowa Administrative Code and Rule 19.3(5) and 19.6(5)d.

A POTW could require compliance with the requirements questioned herein, in its contract with an industrial user and the Iowa Department of Environmental Quality has authority to proceed in enforcement actions under §455B.49.

We now conclude, in agreement with the Regional Administrator of EPA, that the State has the authority to require submission of proposed compliance schedules and reports accounting for progress toward, and compliance with, the progress schedule agreed upon.

Section 455B.32(9) grants the Commission authority to:

Establish, modify or repeal rules relating to inspection, monitoring, record keeping and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

Additionally section 455B.33(3) authorizes the Director to:

Take any action or actions allowed by law which, in the executive director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or of any rule or standard established or permit issued pursuant thereto.

The Director has express authority to order any person to take corrective action to cease violations of any rule issued pursuant to Part I, Division III, Chapter 455B, under section 455B.34, and rules establishing pretreatment standards have been promulgated pursuant to that part, section 455B.32(2).

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Page Seven

Compliance schedules are authorized by federal regulation, 40 CFR 403.12, and Rule 400--19.3(a), IAC, and are not precluded by statute. It therefore appears that the Director has the authority to require the reports described in Item 5(a)(1)(c), (2), and (3).

In our view the previous opinion misconstrued the effect of section 455B.45(3), prohibiting permits for users discharging into another system. Based on other provisions of Chapter 455B as set out above, we now conclude that the State has the requisite authority as to the items questioned. We therefore withdraw the previous opinion to the extent it is inconsistent with this opinion.

Sincerely,



ELIZABETH OSENBAUGH
Assistant Attorney General
Environmental Protection Division



EMO/bje

Department of Justice

DEPARTMENT OF JUSTICE
ATTORNEY GENERAL
CLOTTED PILLERON
JAMES DAVIS
ASSISTANT ATTORNEY GENERAL
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ASSISTANT ATTORNEY GENERAL

ENVIRONMENTAL QUALITY DIVISION
1751 EAST BROADWAY
WASHINGTON, D.C. 20540

October 6, 1978

Mr. James W. Crane, Director
Iowa Department of Environmental Quality
I. D. C. A.

Dear Mr. Crane:

In response to your request for an opinion of the Attorney General and the detailed questions posed by the Environmental Protection Agency, we have reviewed the laws of Iowa and hereby issue the following:

ATTORNEY GENERAL'S PRETREATMENT STATEMENT

I hereby certify that in my opinion the laws of the State of Iowa provide adequate authority to carry out those aspects of a State pretreatment program, as required by 40 CFR 403, indicated below. I have noted those authorities which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this statement. I have also noted those authorities which the State currently is not capable of implementing. All statutory references, unless otherwise specified, are to the 1977 Code of Iowa and all rule references are to Title 400 of the Iowa Administrative Code. CWA refers to the federal Clean Water Act.

1. Authority to apply Categorical Pretreatment Standards for

Industrial Users

State law provides authority to apply to industrial users of Publicly Owned Treatment Works pretreatment effluent standards and limitations promulgated under section 307(b) and (c) of the CWA as amended including prohibitive discharge standards developed pursuant to 40 CFR 5403.5 (general pretreatment regulation).

[Federal Authority CWA sections 307, 510 and 40 CFR §§403.5, 403.8, 403.10.]

Remarks of the Attorney General:

Authority does exist under §455b.32(2) and the department has adopted rule 17.2 to facilitate adoption of federal pretreatment standards and has already adopted certain pretreatment standards in rules 17.1(G), 17.1(7), 17.4(2) and 17.6(4).

Authority to Apply Pretreatment Requirements in Permits for Publicly Owned Treatment Works (POTW)

State law provides authority to apply in terms and conditions of permits issued to Publicly Owned Treatment Works the applicable requirements of section 402(b)(8) of the CWA as amended and 40 CFR part 403 including:

- (a) A compliance schedule for the development of a POTW pretreatment program as required by 40 CFR 5403.8(d);
- (b) The elements of an approved POTW pretreatment program as required by 40 CFR 5403.8(e);
- (c) A modification clause requiring that the Publicly Owned Treatment Work's permit be modified or alternatively revoked and reissued after the effective date for approval of the State pretreatment program to incorporate into the Publicly Owned Treatment Works' permit an approved POTW pretreatment program or a compliance schedule for developing a POTW pretreatment program in accordance with the requirements of 40 CFR 5403.10(d);
- (d) Prohibitive Discharge limitations applicable to industrial users as required by 40 CFR 5403.5; and

- (c) Demonstrated percentages of removal for those pollutants for which a removal allowance was requested in accordance with the requirements of 40 CFR §403.7;

[Federal Authority: CWA sections 402(b)(1)(A), 402(b)(1)(C), 510; 40 CFR §§124.45, 403.8, 403.10]

Remarks of the Attorney General:

Authority does exist under §§455B.32(2) and (3), 455B.33(4) and 455B.45, and in Chapter 17 of Title 400 Iowa Administrative Code, Rule 19.6(5)d. and 19.3(5)

Authority to require information regarding the introduction of pollutants into publicly owned treatment works

State law provides authority to require in permits issued to publicly owned treatment works conditions requiring the permittee to:

- a. Give notice to the State permitting agency of new introductions into such works of pollutants from any source which would be a new source as defined in section 306 of the CWA if such source were discharging pollutants directly to State waters;
- b. Give the State notice of new introductions of pollutants into such works from a source which would be a point source subject to section 301 if it were discharging such pollutants directly to State waters;
- c. Give the State notice of a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit; and
- d. Identify in terms of character and volume of pollutants any significant source introducing pollutants subject to pretreatment standards under section 307(h) of the CWA as amended.

[Federal Authority: CWA sections 402(b)(8); 40 CFR §§124.45(d), 403.8, 403.10]

Remarks of the Attorney General:

Authority does exist under §§455B.32(J) and (9), 455B.33(4) and 455B.45 and Chapter 18 of Title 400 Rule 19.3(5), 19.6(5)d.

4. Authority to Make Determinations on Requests for Pretreatment Program Approval and Removal Allowances

State law provides authority to approve and deny:

a. Requests for POPW pretreatment program approval in accordance with the requirements of 40 CFR §§403.8(f) and 403.11; and

b. Requests for authority to reflect removals achieved by the Publicly Owned Treatment Works in accordance with the requirements of 40 CFR §§403.7, 403.10(f)(1) and 403.11.

{Federal Authority: CWA sections 307(b), 402(b)(8); 40 CFR §§403.7, 403.8, 403.10, 403.11}

Remarks of the Attorney General:

Authority does exist under §§455B.32(2), 455B.33(4) and 455B.45, and Rule 17.6(4)a.

These are not direct authority, but any program adopted for permittees is authorized. Direct legislation in this area would resolve any ambiguities.

5. Authority to Make Determinations on Categorization of Industrial Users and Requests for Fundamentally Different Factors Variances

State law provides authority to:

a. Make a determination as to whether or not an industrial user falls within a particular industrial subcategory in accordance with the requirements of 40 CFR §401.6; and

b. Deny and/or recommend approval of requests for Fundamentally Different Factors variances for industrial users as

required by 40 CFR §§403.10(f)(1) and 403.17.

[Federal Authority: CWA sections 402(b)(1)(A), 402(b)(8), 510; 40 CFR §§403.6, 403.10, 403.13]

Remarks of the Attorney General:

Authority probably does not exist due to industrial user permit prohibition in §455n.45 although language could be extended to make the program possible.

The following statutory/regulatory changes need to be made:

I recommend the repeal or modification of the second sentence of §455n.45(3).

The Commission or Director could probably make a determination pursuant to question 5a above on application of a permit, but has no direct authority over pre-treatment operators other than establishing pre-treatment standards under §455n.32(2) and inspection, monitoring, record keeping and reporting under §455n.32(9) and Rule 17.7 and 17.8 and Rule Chapter 54.

G. Authority to Apply Recording, Reporting and Monitoring Requirements

State law provides authority to:

a. Require any industrial user of a publicly owned treatment works to:

(1) Submit the report required by 40 CFR 403.12(b) which:

(a) Sets forth basic information about the industrial user, (e.g., process, flow);

(b) Identifies the characteristics and amount of the wastes discharged by the industrial user to the POTW; and

(c) Proposes a schedule by which any technology and/or operation and maintenance practices required

to meet pretreatment standards will be installed.

- (2) Submit the reports required by 40 CFR 403.12(c) which account for the industrial user's progress in installing any required pretreatment or operation and maintenance practices;
- (3) Submit the report required by 40 CFR 403.12(d) following the final compliance date for the applicable pretreatment standard; and
- (4) Submit periodic reporting on continued compliance with applicable pretreatment standards as required by 40 CFR 403.12(e);

b. Require POTWs subject to the requirements of 40 CFR 403.8(a) to:

- (1) report on progress in developing an approved pretreatment program as required by 40 CFR 403.12(i) and (j);
- (2) report on continued compliance with any authorized modifications of categorical pretreatment standards as required by 40 CFR 403.7, 403.12(i) and (j);

c. Require POTWs subject to the requirements of 40 CFR 403.8(a) and all industrial users subject to pretreatment standards to:

- (1) Establish and maintain records as required by 40 CFR 403.12(n);
- (2) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods) necessary to determine continued compliance with pretreatment standards and requirements;
- (3) Take samples of effluents (in accordance with specified methods at such locations, at such intervals, and in such manner as may be prescribed); and
- (4) Provide other information as may reasonably be required.

Larry P. Crane, Director

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(Federal Authority: CWA section 308(a) and (b), 402(b)(2), 402(b)(9); 40 CFR §§124.45(c), 124.61-63, 124.73(d), 403.7, 403.8, 403.10, 403.12)

Remarks of the Attorney General:

Authority does not exist for the Iowa Department of Environmental Quality to require any industrial user of a POTW to do anything except comply with pretreatment standards and report on such compliance. Compliance with question a(1)(a) and (b) and a(4) may be required under §455B.32(9).

Authority does exist for the Iowa Department of Environmental Quality to require POTW's and industrial users to make such reports as are necessary under b and c of this question under §§455B.32(9), 455B.33(7), and 455B.45(1) and Chapter 19 of Title 400, Iowa Administrative Code (and Rules 9.3(5) and 19.6(5)).

A POTW could require compliance with the requirements questioned herein in its contract with an industrial user and the Iowa Department of Environmental Quality has authority to proceed in enforcement actions under §455B.49.

Authority to apply Entry, Inspection and Sampling Requirements.

State law provides authority to enable authorized representatives of the State, and POTW's with approved pretreatment programs, upon presentation of such credentials as are necessary to:

- (1) have a right of entry to, upon, or through any premises of a POTW or of an industrial user of a POTW in which premises an effluent source is located or in which any records are required to be maintained;
- (2) at reasonable times have access to and copy any records required to be maintained;
- (3) inspect any monitoring equipment or method which is required; and

(4) have access to and sample any discharge of pollutants to State waters or to a POTW resulting from the activities or operation of the POTW or industrial user.

Federal Authority: CWA section 308(a) and (b), 402(b)(2), 402(b)(9); 40 CFR §§124.45(c), 124.61-63, 124.73(d), 403.7, 403.8, 403.10, 403.12

Remarks of the Attorney General

Authority does exist for entry, inspection and monitoring of a POTW under §§455.32(8), 455.32(5), (6) and (9), and 455.33(2).

Rules for inspection, monitoring, record keeping and reporting from industrial users of a POTW may be established under § 455.32(9).

Authority to issue Notices, Transmit Data, and Provide Opportunity for Public Hearings and Public Access to Information

State law provides authority to comply with requirements of 40 CFR § 403.11 to:

a. Notify the public, affected States and appropriate governmental agencies of:

- (1) requests for POTW pretreatment program approval; and
- (2) approval of POTW pretreatment programs;

b. Transmit such documents and data to and from the United States Environmental Protection Agency and to other appropriate governmental agencies as may be necessary;

c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for POTW pretreatment program approval; and

d. Ensure that requests for POTW pretreatment program approval and all comments received pertaining to these requests for program approval are available to the public for inspection and copying.

[Federal Authority: 40 CFR §403.11]

Remarks of the Attorney General:

Authority does exist under §§455b.32(5) and (6) and 455b.36 and Chapter 58A.

Notice, public participation and access provisions for NPDES modifications would seem to apply and are covered in Rule 49.5 and Rule 51.1.

Authority to Enforce Against Violations of Pretreatment Standards and Requirements

State law provides authority to:

enforce against violations by industrial users and points

- (1) Permit Requirements;
- (2) National categorical pretreatment standards;
- (3) Prohibitive discharge limitations developed in accordance with 40 CFR §403.5;
- (4) Requirements for recording, reporting, monitoring, entry, inspection and sampling;

b. Enforce against violations described in paragraph (a) above using enforcement mechanisms which include the following:

- (1) Injunctive relief;
- (2) Civil and criminal penalties and fines which are comparable to the maximum penalties and amounts recoverable under section 309 of the CWA or which represent an actual and substantial economic deterrent to the actions for which they are assessed or levied.

[Federal Authority: CWA section 309, 402(b)(7), 402(h); 40 CFR §§403.9, 403.10]

Larry E. Crane, Director

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Remarks of the Attorney General:

Authority does not exist to enforce violations by industrial users of permit requirements since there is a statutory prohibition against such permits in §455B.43(3).

Authority does exist to enforce other requirements assuming adoption of the federal standards pursuant to Rule 17.2 of Title 400, I.A.C. under §§455B.34 and 455B.49.

The executive director has authority to issue administrative compliance orders under §455B.43. His inspection authority under §§455B.3(B) and 455B.3(2) also bears upon the enforcement ability of the Department.

Respectfully submitted,

RICHARD C. TURNER,
Attorney General of Iowa

James C. Davis
JAMES C. DAVIS
Assistant Attorney General
State Capitol
Des Moines, Iowa 50319
(515) 281-5351

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT

BETWEEN

THE REGIONAL ADMINISTRATOR

AND

THE EXECUTIVE DIRECTOR

Article I. Definitions.

As used in this agreement:

- 1.1 "Act" means the Clean Water Act, as amended, 33 U.S.C. sections 1251 et seq.
- 1.2 "EPA" means the United States Environmental Protection Agency
- 1.3 "Administrator" means the Administrator of EPA.
- 1.4 "Regional Administrator" means the Regional Administrator of EPA, Region VII.
- 1.5 "Department" means the Iowa Department of Environmental Quality.
- 1.6 "Executive Director" means the Executive Director of the Department.
- 1.7 "Executive Committee" means the Executive Committee of the Department.
- 1.8 "Commission" means the Water Quality Commission of the Department.
- 1.9 "NPDES" (National Pollutant Discharge Elimination System) means the national system for the issuance of permits under section 402 of the Act.

1.10 "Date of approval" means the date on which the Administrator approves the Iowa NPDES program.

1.11 "Iowa NPDES program" means the full and complete description of the permit program for discharges into navigable waters within the jurisdiction of Iowa that has been established under Iowa law and that was submitted by the State of Iowa to the Administrator for the Administrator's approval, as provided in section 402(b) of the Act. The term includes the description submitted by Larry E. Crane, Executive Director, under letter dated August 31, 1977, and any other submittals that may be submitted from time to time.

Article II. Parties.

This agreement is between the Iowa Department of Environmental Quality's Executive Director and the United States Environmental Protection Agency's Regional Administrator and is binding on their successors until it is modified in accordance with Article V or it expires in accordance with Article VII. This agreement is written in accordance with the provisions of Chapter 28E of the Iowa Code, section 402(b) of the Act, and 40 CFR Parts 124 and 403.

Article III. Statement of purpose.

Section 402(b) of the Act provides a mechanism whereby a state may issue NPDES permits. Iowa has submitted its NPDES program to the Administrator for the Administrator's approval. This agreement delineates the responsibilities of the parties, arising out of section 402 of the Act, upon the Administrator's approval of the Iowa NPDES program.

Article IV. Statement of Agreement.

4.1 Applicable law.

The parties agree to follow the applicable provisions of the Act and the provisions and procedures specified in 40 CFR Parts 124 and 403 (as embodied in the rules of the Department). Where applicable, the Department shall follow the provisions of chapters 17A and 455B of the Iowa Code and the rules adopted thereunder.

The provisions of this agreement are deemed by the parties to be consistent with these authorities. It is agreed and understood that nothing in this agreement shall subject EPA to the jurisdiction of any state court either as to interpretation of this agreement or as to enforcement of any provision thereof.

4.2 Federal enforcement and State responsibility preserved.

The parties recognize that, under section 402(i) of the Act, neither the Administrator's approval of the Iowa NPDES program and the subsequent issuance of NPDES permits by the Executive Director nor any term of this agreement shall be construed to limit the authority of the Administrator to take actions authorized by section 309 of the Act. However, such actions shall be coordinated to the extent possible with Iowa enforcement actions. The Executive Director may request that the Regional Administrator will honor such requests to the extent possible with available resources and will attempt to pursue such enforcement actions in the order of priority established by the Executive Director and the Regional Administrator. Where a violation will be adequately remedied

by State action, the Executive Director may request that the Regional Administrator take no action pending the completion of the State action. The Executive Director will to the extent possible follow the civil penalty policy established in the memoranda of the EPA Assistant Administrator for Enforcement, dated April 11, 1978. When the maximum civil penalty computed under the April 11, 1978, penalty policy exceeds the maximum civil penalty authorized under Iowa law, both parties agree that the action may be brought in the Federal district court for the full amount prior to action in State court.

The parties also recognize that the State, under section 101(b) of the Act, has primary responsibility and the right to prevent, reduce and eliminate water pollution. To that end EPA shall refrain from reaching agreement with a permittee specifying effluent limitations, compliance schedules, monitoring requirements or other conditions to be contained in a State-issued NPDES permit.

The parties recognize that the Executive Director will make interpretations in applying Federal statutes and regulations. The Executive Director will utilize national program guidance and policy memoranda for interpretations of the Act and regulations. If the Regional Administrator concludes that the proposed State NPDES permit is not in compliance with the Act or regulations thereunder, the Regional Administrator may exercise any rights under section 402 of the Act to object to the proposed State permit. The Regional Administrator, should if possible, notify the Executive Director of findings of violation and contemplated actions under section 309(a)(1) of the Act prior to giving formal notice

to the State and the person in alleged violation or taking action under section 309(a)(3) of the Act so that the Department shall have the opportunity to enforce the provisions of the Act.

4.3 Conversion of existing and potential Federal NPDES permits to State NPDES permits.

The parties recognize that the Department does not have the resources and does not intend to immediately convert all existing and potential Federal NPDES permits to State NPDES permits. Rather, the parties have agreed that the procedures of paragraphs "a" and "b" represent a reasonable program for conversion of existing and potential Federal NPDES permits to State NPDES permits.

a. Applications pending on date of approval.

Any application for a State operation permit or for renewal of a State operation permit that would authorize a discharge to a navigable water in Iowa, and that has not been finally acted upon (i.e., issued or denied by the Executive Director, or if appealed, by the commission) on the date of approval shall be treated as an application for a State NPDES permit and shall be subject to the Iowa regulations on NPDES permits.

Any application for a Federal NPDES permit or for renewal of a Federal NPDES permit that has not been finally acted upon (i.e., issued or denied by the Regional Administrator) on the date of approval shall be transmitted to the Department. If there is currently pending an application for a State operation permit or for renewal of a State operation permit, or if a State operation permit is required, but has not been applied for, then the application for the Federal NPDES

permit or for renewal of the Federal NPDES permit shall be treated as an application for a State NPDES permit and shall be subject to the Iowa regulations on NPDES permit.

b. Applications received after the date of approval.

Any application for a State operation permit or for renewal of a State operation permit that would authorize a discharge to a navigable water in Iowa received after the date of approval shall be treated as an application for a State NPDES permit and shall be subject to the Iowa regulations on NPDES permits.

Any application for a Federal NPDES permit or for renewal of a Federal NPDES permit received after the date of approval shall be transmitted to the Department.

If there is currently pending an application for State operation permit or for renewal of a State operation permit or if a State operation permit is required but has not been applied for, then the application for the Federal NPDES permit shall be treated as an application for a State NPDES permit and shall be subject to the Iowa regulations on NPDES permits.

c. Adjudicatory hearing request pending on date of approval.

All adjudicatory hearing requests properly filed in accordance with 40 CFR 125.36 before the date of approval by permittees with EPA issued NPDES permits shall remain the responsibility of EPA. EPA shall be responsible for resolving issues raised by these hearings and Iowa shall retain its rights under section 401 of the Act to certify to any changes in the EPA-issued NPDES permits which result from resolution of adjudicatory hearings subject to this section.

4.4 Revocation of Federal NPDES permits.

If there is an existing Federal NPDES permit for a source that will be issued an NPDES permit under paragraph "a" or "b" of 4.3 of this agreement, notice of the Regional Administrator's intent to revoke the NPDES permit effective upon the effectiveness of all portions of the State NPDES permit shall be made jointly with the public notice of the proposed State NPDES permit. Upon receipt of notice that all portions of the State NPDES permit are in effect, the Regional Administrator shall revoke the Federal NPDES permit.

4.5 Enforcement of the Act against existing sources.

The Executive Director shall not issue or reissue a State NPDES permit to an existing source that is not in compliance with applicable requirements of the Act. Rather, the Executive Director shall issue an order or take other appropriate enforcement action pursuant to section 455B.34 of the Iowa Code. Upon proper application and compliance with the order and with the applicable requirements of the Act, the Executive Director may issue a State NPDES permit in accordance with the Iowa regulations on NPDES permits.

If an existing source is required or authorized under the Act to meet an applicable requirement of section 301(b) at a future date, the Executive Director shall issue a State NPDES permit, in accordance with the Iowa regulations on NPDES permits, that contains final effluent limitations based on the applicable statutory or regulatory requirements, interim effluent limitations and a reasonable compliance schedule.

If a permittee violates the terms of the permit, the Executive Director shall exercise his powers under section 455B.34 of the Iowa Code.

4.6 Federal assistance to the State.

The Regional Administrator shall keep the Executive Director apprised of the meaning and content of Federal effluent guidelines, effluent standards, regulations, policy decisions, directives and any other factors which affect the NPDES program. In addition, general technical assistance in processing NPDES applications will be made available to the Executive Director by the Regional Administrator. Both parties recognize that Iowa has primary responsibility for compliance monitoring, but EPA Region VII will assist with compliance monitoring when necessary. To assist the Regional Administrator in fulfilling the State's needs, the Executive Director will present in each year's State program plan a projection of the areas and extent of technical assistance required by the State. This might include, for example, types of chemical analyses the State is not equipped to perform, but for which there is need in the compliance monitoring phase of the program. Assistance will be provided where technical expertise or resources are not available to the State.

4.7 Transmittal of Federal data and policies to the State.

All relevant data and information compiled by the Regional Administrator including but not limited to: (a) any Refuse Act applications and pertinent correspondence, (b) any NPDES applications and pertinent correspondence and (c) any other relevant data collected by the Regional Administrator which would be of assistance and which is not already in possession of the Department will be transmitted to the Executive Director upon request. If the Regional Administrator has granted confidential status to information so transmitted, the Regional Administrator shall so notify the Executive Director and the Executive Director will hold such information

confidential. If the Regional Administrator has identified any application so transmitted as incomplete or otherwise deficient under the Act, the Executive Director agrees not to issue the permit until the Executive Director receives information sufficient to correct the deficiency identified by the Regional Administrator.

The Regional Administrator will transmit to the Executive Director any policies, technical information or requirements specified by the Administrator in regulations issued pursuant to the Act or in directives issued to EPA regional offices.

4.8 Notice and public participation.

The Department shall prepare draft permits and fact sheets, provide notice to the public and to other government agencies, and provide public access to information as required by subpart D of 40 CFR 124 and in accordance with the requirement of 400--19.5 (455B) Iowa Administrative Code.

4.9 Confidential information in NPDES forms.

Any request by an applicant for confidential treatment of information contained in any NPDES form shall be forwarded to the Regional Administrator for the Regional Administrator's concurrence in accordance with 40 CFR 124.35(b). As provided in 400--52.3 (455B) Iowa Administrative Code, all claimed confidential information in NPDES forms shall be treated as confidential until the Regional Administrator informs the Department that the information is not entitled to confidential treatment. In the event the Regional Administrator advises the Executive Director that such information shall be released, such

information shall be held confidential for sufficient time (normally 30 days) to allow the applicant to institute the necessary judicial proceedings to sustain the confidentiality claim.

4.10 Transmittal of data to the Regional Administrator.

Except as provided in section 4.11 of this agreement, the Executive Director shall, 90 days prior to the proposed date of issuance of a permit, provide the Regional Administrator with a copy of each application and proposed permit (including all terms, conditions, requirements, or documents that are a part of any proposed permit or which affect the authorization of the discharge of pollutants).

The Director shall send the Regional Administrator a copy of all notices of public hearings, public notices of permit applications, fact sheets if required, copies of any significant comments presented in writing pursuant to the public notice and a summary of any significant comments presented at any hearing (if this information is requested by the Regional Administrator), and a copy of each permit as issued.

4.11 Waiver of the right of the Regional Administrator to review State-issued permits.

Except as hereafter expressly provided, the Regional Administrator waives the right to comment on or object to the sufficiency of permit applications, proposed draft permits and final adopted permits for discharges or proposed discharges from: (1) publicly-owned treatment works with a daily average discharge of 0.5 MGD or less; (2) other discharges with a daily average discharge of 0.1 MGD or less; and (3) discharges of uncontaminated cooling water with a daily average discharge of 1.0 MGD or less, provided, however, that the above listed waivers

shall not apply to any of the following discharges, regardless of size: (1) discharges which affect the waters of any other State; or (2) discharges which contain toxic pollutants, including discharges from industrial point source categories listed in Appendix D to 40 CFR 124.

The foregoing does not include waiver of receipt of complete copies of NPDES applications, public notices of permit applications, public notices of public hearings, and copies of all final NPDES permits issued. The Regional Administrator does not waive the right to request any information necessary to audit the performance of the State program. In addition, the foregoing does not include a waiver of the obligation to transmit complete copies of NPDES applications and of NPDES reporting forms to the national data bank, nor the right to receive copies of notices to the Department from any publicly-owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

The Regional Administrator reserves the right to terminate the foregoing waiver, in whole or in part or with respect to any specific discharger, at any time. Any such termination shall be accomplished by the Regional Administrator, in writing, and a copy of such written termination shall be delivered to the Department.

4.12 Right of the Regional Administrator to affect proposed permits.

Except as provided in section 4.11, the Regional Administrator shall have 90 days after receipt of the proposed permit to notify the Director of any objection to the issuance of the proposed permit. If the Regional Administrator notifies the Executive Director in writing, a particular permit may be issued prior to the end of the 90-day period. The procedure that will be utilized in the exercise and resolution of any objection

by the Regional Administrator to a proposed permit is that specified in 40 CFR 124.48.

The Regional Administrator shall have 30 days after the receipt of the proposed permit to declare in writing that the information provided is inadequate to determine whether the proposed permit meets the requirements of the Act, and to request the Executive Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State or any portion of the record that the Regional Administrator determines is necessary for review. This request shall constitute an interim objection to the issuance of the permit and the full 90 days for the Regional Administrator's review shall start over when the Regional Administrator has received such record or portion thereof.

4.13 Submission of information on changes in industrial loads to publicly-owned treatment works.

Information on industrial discharges into a municipal sanitary system as required by section 402(b)(8) of the Act, 40 CFR 124.45(d) and (e) and by 400--19.6(5) of the Iowa Administrative Code, need not be submitted routinely unless requested by the Regional Administrator. This information, however, shall be provided to EPA at the time the municipality applies for a construction grant.

4.14 Input to national data bank

The State presently has computer programs (known collectively as MONITER) capable of providing data and information for the permit program of the Department. The Executive Director intends to continue to operate and maintain such programs as the Department's primary computer data base. The Executive Director shall work closely with EPA in the development of data conversion programs to insure that all required data may be entered

into EPA's permit compliance system (PCS).

EPA will continue the technical editing and inputting of the effluent parameters and technical information required by the inventory portion of the national data system (RAPP).

4.15 Renewal or revision of NPDES permits.

The procedures and working agreements set forth in this document apply not only to the issuance of NPDES permits by the State of Iowa, but also to the renewal or revision of such NPDES permits.

The Regional Administrator at any time during the period of a State-issued NPDES permit can request in writing, for cause, a change in the self-monitoring requirements contained in a State-issued NPDES permit. The Executive Director shall act upon said request for modification within 30 days and shall notify the Regional Administrator of concurrence or nonconcurrence with the requested modification.

4.16 Compliance with sections 208 and 303(e) of the Act

The Executive Director shall insure that all NPDES permits issued by the Department conform with the plans approved pursuant to sections 208 and 303(e) of the Act and with applicable requirements of sections 301, 302, 306, and 307 of the Act.

The Executive Director shall develop schedules of compliance for incorporation in NPDES permits issued to municipalities to coordinate the dates thereby established with the availability of Federal construction grant funds so far as possible without violating the goals, objectives and provisions of the Act.

4.17 Transmission of information on violations.

On the last day of the months of February, May, August, and

November, the Executive Director shall transmit to the Regional Administrator information, as of 30 days prior to the date of such report, on the failure of a permittee or discharger to comply with an interim or final requirement of a schedule of compliance or to notify the Executive Director of compliance or noncompliance with each interim or final requirement. Such information shall be available to the public for inspection and copying.

The Department shall transmit the following MONITOR printouts: Facility list, alphabetical and numerical; effluent limitation violation report; and compliance schedule violation report. In addition, the Department shall forward to the Regional Administrator a copy of all notices of violation, letters of referral to the Attorney General, and executive or court orders.

If, as a result of the evaluation of a notice relating to new introductions or changes in the volume or character of pollutants introduced into publicly owned treatment works (submitted pursuant to 40 CFR 124.45(3) and 402(b)(8) of the Act and 400--19.6(5) "d" I.A.C.), the Executive Director determines that any condition of the permit is or may be violated, the Executive Director shall notify the Regional Administrator and consider taking action under section 402(h) of the Act (relating to proceedings to restrict or prohibit the introduction of pollutants into treatment works).

Article V. Modifications.

In order to be valid, any amendment of this memorandum of agreement must be in writing and signed by the Regional Administrator and the Executive Director, and approved by the Administrator and the Iowa Attorney General.

This memorandum shall be reviewed annually.

Approximately 90 days prior to each anniversary of the approval, the parties or the persons designated to negotiate changes shall have the responsibility to exchange letters identifying areas of concern and potential negotiation and to arrange for negotiation sessions.

New guidelines governing State NPDES programs are scheduled to be promulgated in the near future. The parties recognize that this agreement and some Iowa rules may need to be modified in light of the new Federal regulations. The Executive Director agrees to notify the Regional Administrator of the intent to modify the State program to conform to any new regulations or statutory requirements affecting State operation of the NPDES program.

Article VI U.S. Army Corps of Engineers.

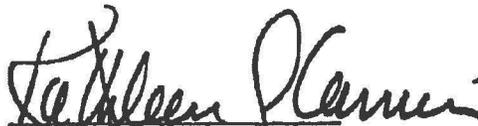
The parties recognize the rights of the U.S. Army Corps of Engineers under the Clean Water Act.

Article VII. Term.

This agreement shall be effective for 5 years from its effective date. The Executive Director or the Regional Administrator may terminate this agreement at any time with 180 days written notice by either party to the other.

The undersigned hereby certify that they have the authority to enter into such an agreement and to direct its implementation.

8-1-78
Date


Kathleen V. Camin, Ph.D.
Regional Administrator

8/1/78
Date


Perry E. Crane
Executive Director

This agreement was approved, as required by section 455B.7(5) of the Code of Iowa, by the Executive Committee of the Department of Environmental Quality on July 27, 1978.

Pursuant to Chapter 28E of the Iowa Code, this agreement is approved by the Attorney General of Iowa, Richard C. Turner.

Richard C. Turner
Attorney General of Iowa

Aug. 1, 1978
Date

Michael Paul Valdes
for Assistant Attorney General
James C. Davis
Assistant Attorney General

Approved:

August 10, 1978
Date

Douglas M. Costle
Douglas M. Costle
Administrator

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION VII

and the

STATE OF IOWA

ENFORCEMENT AGREEMENT

(Attachment to State/EPA Agreement)

I. INTRODUCTION

This Enforcement agreement is intended to implement the "State/Federal Enforcement Partnership" as contained in the Policy Framework for State Enforcement Agreements. This agreement is intended to facilitate a better understanding and coordination of the respective efforts of the EPA and the State in day-to-day compliance operations designed to promote the protection and preservation of the environment and furtherance of the objectives of State and federal statutes and regulations.

II. EFFECT, EXPIRATION, TERMINATION AND REVISIONS

This enforcement agreement becomes effective on the date of signature of the State/EPA Agreement by both EPA and the State. It will continue in effect unless terminated or revised by written agreement signed by EPA and the State. Appropriate signatory authorities will be the Administrator of the State Agency and the Regional Administrator of EPA.

III. DEFINITIONS

1. "Administrator"

The Chief Executive Officer of the environmental agency in the "State" listed in 2 below.

2. "State"

The State of Iowa - Iowa Department of Natural Resources, Environmental Protection Division.

3. "Regional Administrator"

The Chief Executive Officer of Region VII - U.S. Environmental Protection Agency.

4. "EPA"

The U.S. Environmental Protection Agency, in total.

5. "Director"

EPA Region VII Division Directors of Air and Toxics (ART), Waste Management (WSTM), Water Management (WATR), or Environmental Services (ESV).

6. "Appropriate Enforcement Action"

- a. An action by the State requiring a specific response from an individual designed to lead to compliance with applicable statutes or regulations.

- b. A formal action by the State which is enforceable and otherwise equivalent to EPA issuance of an Administrative Order or referral for litigation.

7. "Timely Enforcement Action"

An action by the State taken within and consistent with the timeframe of actions later specified herein.

8. "Oversight"

- a. The process wherein EPA reviews and evaluates the performance of the State in carrying out State responsibilities as set forth in Memoranda of Agreement/Understanding or other media specific agreements documenting delegation of authority from EPA to the State.
- b. The process wherein EPA reviews and evaluates the performance of the State in meeting goals and targets specified in the State/EPA Agreement.
- c. The process wherein EPA provides comments, written or oral, as to their findings relative to a & b above for consideration by the State, and action as deemed suitable by the State.

9. "Direct EPA Enforcement"

The direct intervention of EPA in requiring compliance with federally enforceable statutes or regulations through:

- a. Issuance of federal enforcement documents including but not limited to Notices of Violations, Administrative Orders, Court Orders/Injunctions, or Consent Agreements.
- b. The superseding or overriding of State discretion or responsibility, including direct mandate of State action.

IV. POLICY STATEMENT

The State has primary responsibility for enforcing environmental statutes, regulations, and policy, where recognized through approval of State regulations, acceptance of State programs or formal delegation of authority from the Environmental Protection Agency (EPA). Except where EPA has

primary responsibility for enforcing new or nondelegated federal requirements, EPA will act in an oversight capacity of periodically reviewing and evaluating the State's progress in implementing the provisions and requirements of Memoranda of Agreement/Understanding or other media specific agreements documenting delegation of responsibility from EPA to the State and the State/EPA Agreement. The EPA will refrain from exercising its authority where responsibility has been delegated to the State, except in those instances where the State specifically requests federal involvement or where EPA determines the State's enforcement response to be inappropriate or untimely.

V. EPA RESPONSIBILITIES

1. The EPA will be responsible for coordinating the discussion of compliance issues at the regularly scheduled Program Coordination meetings including:
 - a. Providing the State a list of sources and issues to be discussed at least 10 calendar days in advance of the meeting date.
 - b. Documenting, in writing, any decisions or agreements reached by EPA and/or the State, and forwarding same to the State for review and concurrence.
2. The EPA will routinely transfer EPA generated compliance information to the State including EPA inspection schedules and reports; copies of federal enforcement action or other compliance related correspondence stemming from direct EPA Enforcement Actions in the State.
3. The EPA will review updates of computer or manual record systems and other compliance/enforcement information submitted by the State to determine if the State is taking appropriate and timely response actions against violations noted.
4. The EPA will, as part of the review of information supplied by the State in conformance with item 3 above, evaluate State actions in response to violations noted. The EPA will provide comments and/or recommendations to the State regarding the findings and appropriateness of State actions taken consistent with this agreement. Based upon these comments and recommendations, and the States response thereto, the EPA may initiate direct EPA enforcement consistent with this agreement including the collection of penalties. For enforcement action against federal facilities, refer to Section IX of this agreement.

5. The EPA will conduct an annual (biennial for the Air Program) State Program Oversight Evaluation for each media which will include an audit of central office and/or regional offices (local programs). Audits may include detailed examinations of selected facility files and joint oversight inspections with State (local) personnel. The EPA will notify the State at least 15 calendar days in advance of the audit schedule and any joint oversight inspections contemplated. The EPA will forward to the State a written report of its evaluation, within 60 calendar days of completion of the audit, for State comment.
6. The EPA may develop a list of significant violators.
7. At the request of the Administrator; EPA will assist and coordinate with the State's Attorney General's Office and with the State agency concerning enforcement/compliance activities.

VI. STATE RESPONSIBILITY

1. The State will participate in discussion of compliance issues at the program coordination meetings. The State will respond to EPA's written documentation of decisions/agreements reached in these meetings within 15 calendar days of receipt of the document.
2. The State will submit compliance/enforcement information (computer or manual) data, and updates in accordance with procedures and schedules set forth in Memoranda of Agreement/Understanding, Compliance Protocols or other media specific agreements documenting delegation of authority from EPA to the State, and/or the State/EPA Agreement.
3. The State will routinely track, evaluate and document the compliance status of regulated facilities covered by State statute and regulations; identifying violations in accordance with State procedures; and initiating appropriate and timely enforcement action, and/or sanctions or penalties wherein such are deemed consistent with State policies and procedures.
4. The State will cooperate in the EPA annual State Program Oversight Evaluation, including detailed facility file examinations and joint oversight inspections when appropriately scheduled. The State will comment on EPA's written evaluation report within 30 calendar days of receipt of the document.

5. The State will provide updated information on facilities designated by EPA as significant violators at the monthly Program Coordination meetings.
6. Where appropriate, the State will coordinate enforcement activities with the State Attorney General for legal support and opinions.

VII. THE EPA OVERSIGHT OF STATE PROGRAMS

The EPA will evaluate State compliance and enforcement program for the various media areas based upon criteria established in:

1. Memorandum of Agreement/Understanding or other media specific agreements documenting delegation of responsibility from EPA to the State.
2. The State/EPA Agreement.

VIII. TIMELY AND APPROPRIATE RESPONSE

For the purpose of this enforcement agreement, timely and appropriate compliance/enforcement State response will be determined within the context of the following:

1. Within 30 days of the date a violation is noted (record review, inspection, etc.), all documentation is to be compiled.
2. Within 60 days of the date documentation is compiled (within 90 days of finding of violation), one of the following actions is to be taken by the State:
 - a. Issue a Letter of Warning.
 - b. Issue a Notice of Violation.
 - c. Issue an Administrative Order, may include penalties for significant violators.
 - d. Refer to the Attorney General, suggesting penalties for significant violators.
 - e. Refer to EPA for direct EPA enforcement.
3. Within 120 days of finding of violation, a consent decree or unilateral enforcement action containing schedules for achieving final compliance will be issued by the State if final compliance has not been achieved by that time.

Where individual circumstances are not covered by this agreement for the purpose of determining appropriate compliance/enforcement response, EPA will clearly state its position in writing and allow the State a reasonable opportunity to act prior to initiating federal enforcement action.

IX. FEDERAL FACILITIES

1. The enforcement approach for federal facilities will be consistent with the Draft Federal Facility Compliance Strategy. The EPA's actions against violations by federal facilities; will adhere to Chapter V of this Strategy; "Enforcement Response to Compliance Problems and Violations at Federal Facilities."
2. The EPA and the State will review the planned inspection schedules for the coming year for each program to ensure that federal facilities are inspected at required frequencies.
3. The EPA will respond to violations at federal facilities in accordance with agency policy entitled "Draft Federal Facilities Compliance Program: Resolution of Compliance Problems at Federal Facilities." Nothing in this agreement shall preclude the State from responding to violations by federal facilities in a manner consistent with their authorized program. Every effort will be made by the State and EPA to coordinate their response to violations by federal facilities so as to avoid to the extent possible contrary or inconsistent actions.
4. On State enforcement actions against federal facilities, the Region generally will receive the same information from the State on federal facilities enforcement actions as it receives for other sources.
5. The A-106 review process will be consistent with the Draft Federal Facilities Compliance Strategy Chapter 4, paragraph E.3.
6. The Region has established a Federal Facility Coordinator (FFC) position. The FFC will monitor and coordinate activities involving federal facility compliance for all media programs in the Regional Office. The State will identify/designate a State counterpart for federal facilities coordination as a joint effort to improve federal facilities compliance.

X. THE EPA/STATE CONTACTS**1. Program Coordination Meetings and Routine Compliance Activities**

EPA - Directors of EPA Media Divisions

State - Bureau Chiefs

2. Informal Consultation

Personnel listed in 1 above, will conduct informal (in person or by telephone) discussions regarding the compliance/enforcement actions of both EPA and the State on a monthly basis.

3. Coordination/Scheduling of Inspections

State - Director, Field Evaluation and Emergency Response Bureau.

EPA - Directors of Divisions

4. Notification of Enforcement Actions

The appropriate Director of EPA Media Divisions will notify the State Director, Field Evaluation and Emergency Response Bureau of any direct EPA enforcement action in the State.

5. Issues that cannot be resolved by those personnel listed in 1,2,3, and 4 above will be resolved between the Administrator and Regional Administrator.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

copy to...
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...
...

AUG 10 1978

THE ADMINISTRATOR

Honorable Robert D. Ray
Governor of Iowa
Des Moines, Iowa 50319

Dear Governor:

With great pleasure I am today approving your request to conduct a State permit program pursuant to the provisions of the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (the Act).

Pursuant to section 402(c) of the Act, I am suspending, as of this date, the issuance of permits by the Environmental Protection Agency under section 402(a) of the Act as to discharges in the State of Iowa, including those from agencies and instrumentalities of the Federal Government.

The program that you conduct pursuant to this authority must at all times be in accordance with section 402 of the Act, all guidelines promulgated pursuant to section 304(i)(2) of the Act, and the Memorandum of Agreement signed by Kathleen Q. Camin, Regional Administrator of Region VII, and Larry E. Crane, Executive Director of the Iowa Department of Environmental Quality (IDEQ) which I have also approved today (copy enclosed).

REC'D

SEP 25 1978

EPA
REGION VII

Iowa has demonstrated a great deal of capability, patience and cooperation in developing a permit program compatible with this Agency's NPDES program. You should be proud of this achievement. We look forward to continuing the strong relationship which exists between EPA and IDEQ and to the prospect of working closely with you and the Department to continue the progress you have made toward cleaner water throughout the State.

Sincerely yours,

/s/ Douglas M. Costle

Douglas M. Costle
Administrator

Enclosure

cc: Larry E. Crane
Executive Director, Iowa
Department of
Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: July 21, 1978

SUB. RE: Region VII Recommendation for Approval of the Iowa Request for NPDES Authority under Clean Water Act, Section 402(b) - ACTION MEMORANDUM

FROM: Kathleen Q. Camin, Ph.D.
Regional Administrator, Region VII

TO: Douglas M. Costle
Administrator (A-100)

ISSUE

Should the Administrator approve Iowa's request for NPDES authority pursuant to Section 402(b) of the Clean Water Act?

DISCUSSION

On March 9, 1978, Mr. Larry E. Crane, Executive Director of the Iowa Department of Environmental Quality, requested approval of Iowa's request to conduct the National Pollutant Discharge Elimination System (NPDES) pursuant to Section 402(b) of the Clean Water Act (CWA). On March 20, 1978, Dr. Kathleen Q. Camin, Regional Administrator, acknowledged Mr. Crane's letter of March 9, 1978, and indicated that it constituted substantial completion of the Iowa NPDES request, and began the 90-day period for EPA approval or disapproval. On May 8, 1978, Mr. Larry E. Crane submitted a revised proposed Memorandum of Agreement, and acknowledged that it constituted a revision to the Iowa request, and re-started the 90-day period for EPA review. On July 21, both Mr. Larry E. Crane and Dr. Kathleen Q. Camin agreed that the final memorandum of agreement constitutes a significant modification of the Iowa request, and that the 90-day period for EPA review began again on that date. Because of the August 24, 1978 effective date for the "General Pretreatment Regulations for Existing and New Sources of Pollution" however, approval of the Iowa NPDES program must occur prior to August 24, 1978. Copies of that and other correspondence referred to herein accompany this Action Memorandum as Appendix 1.

On June 28, 1978, a public hearing was held in Des Moines, Iowa, to consider the state's request. The hearing panel consisted of Jeff Miller, EPA Deputy Assistant Administrator for Water Enforcement; John H. Morse, Regional Counsel, Region VII; Robert R. Buckmaster, Chairman, Iowa Water Quality Commission; and Larry E. Crane, Executive Director, Iowa Department of Environmental Quality. Public notice of the hearing was published in the Federal Register on June 5, 1978; published in 27 newspapers in the State of Iowa; and mailed to a general mailing list. In addition, a press release was mailed to all media in the state. A transcript of that hearing, including copies of proofs of publication, a copy of the press release, and a copy of the Federal Register notice, accompanies this Action Memorandum as Appendix 2. Only three written comments were received after the public hearing, and those accompany this Action Memorandum as Appendix 3.

Two issues remain, the first of which concerns the Attorney General's statement of December 29, 1977 (Appendix 4). In that opinion, Mr. James C. Davis, Assistant Attorney General of Iowa, indicated that several Iowa regulations covering legally necessary NPDES program elements were unconstitutional, but that their unconstitutionality could be cured by submitting the Memorandum of Agreement to the procedure outlined in Chapter 28E of the Iowa Code (attached as Appendix 5); and Mr. Davis reiterated his opinion that use of Chapter 28E of the Iowa Code would cure the constitutionality problems at the public hearing on Iowa's request (see transcript of hearing, Appendix 1). On June 27, 1978, Alan W. Eckert, Acting Associate General Counsel, Water and Solid Waste Division, EPA, opined that Mr. Davis' conclusions concerning the constitutionality of the Iowa regulations are incorrect (attached as Appendix 6). In order to avoid any question as to the legality or enforceability of the Iowa regulations, my recommendation for approval is contingent upon receipt of approval of the Memorandum of Agreement by Mr. James Davis, which will render the Memorandum of Agreement a proper agreement under Chapter 28E of the Iowa Code.

The other question which must be resolved is whether or not the maximum assessable penalties under Iowa law, \$5,000 per day for a civil offense and \$10,000 per day for a criminal offense, constitutes "an actual and substantial economic deterrent to the actions for which they are assessed or levied" in accordance with the requirements of 40 CFR 124.73(h). Because the Nebraska NPDES program, which included equal maximum assessable penalties, was approved, and because this agency approved those penalty levels on April 1, 1975, in the form of a letter from Russell E. Train, Administrator, to Governor Ray approving a bill containing the current penalty amounts (included in Appendix 1), I suggest that the maximum penalties assessable under Iowa law do constitute an actual and substantial economic deterrent to the actions for which they are assessed or levied, and should be approved.

RECOMMENDATION

Region VII Regional Counsel finds that the Iowa statutory authority and regulations promulgated pursuant thereto provide the requisite authority to establish and administer the NPDES program in Iowa as provided by CWA Section 402(b) and 40 CFR 124.

Based on the record of the June 28, 1978 public hearing, the Iowa submission, and the responses to the public notices, I recommend approval of the Iowa NPDES request upon approval of the Memorandum of Agreement by the Iowa Attorney General's Office and by the Executive Committee of the Iowa Water Quality Commission. The Iowa Department of Environmental Quality is an aggressive and capable agency which has demonstrated both

the desire and ability to conduct a successful NPOES program in the state. A Memorandum of Agreement is also included as Appendix 7 for your approval.

DECISION OF THE ADMINISTRATOR

Approve : *Joan Z. Bernstein*

Disapprove : _____

Date : *August 10, 1978*

DISPOSITION

A draft letter of approval to Governor Robert D. Ray of Iowa (Appendix 8) has been prepared for the Administrator's signature. This letter should be executed and transmitted with the approved Memorandum of Agreement.

CONCURRENCE

Joan Z. Bernstein, General Counsel

Concur : *Joan Z. Bernstein*

Nonconcur : _____

Date : *July 28, 1978*

Harvin Durning, Assistant Administrator for Enforcement

Concur : *Harvin B. Durning*

Nonconcur : _____

Date : *August 4, 1978*

September 27, 1976

ENVIRONMENTAL PROTECTION; National Pollution Discharge Elimination System Permit Delegation — Chapter 455B, Division III as amended by House File 1477, Acts of the 46th General Assembly, Second Session; Iowa Law grants such authority to the Iowa Department of Environmental Quality as will qualify it to administer NPDES permit program under Environmental Protection Agency guidelines. (Davis to Crane, Executive Director, Department of Environmental Quality, 9-27-76) #76-9-32

Mr. Larry E. Crane, Director, Iowa Department of Environmental Quality: In accordance with the desires of your Department and the

detailed questions required by the Environmental Protection Agency, we have reviewed the laws of Iowa and hereby issue the following:

ATTORNEY GENERAL'S STATEMENT

I hereby certify, pursuant to Section 402(b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1261, *et seq.*), that in my opinion the laws of the State of Iowa provide adequate authority to carry out the program set forth in the "Request for NPDES Permit Delegation" submitted by the Department of Environmental Quality of the State of Iowa. The specific authorities provided, which are contained in lawfully enacted or promulgated statutes or regulations in full force and effect on the date of this Statement, include the following:

1. Authority to Issue Permits.

a. Existing and new point sources.

State law provides authority to issue permits for the discharge of pollutants by existing and new point sources to the same extent as required under the permit program administered by the U. S. Environmental Protection Agency ("EPA") pursuant to Section 402 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1261 *et seq.* (hereinafter "the FWPCA" or "the Act"). [Federal Authority: FWPCA §301(a), 402(a)(1), 402(b)(1)(A); 40 C.F.R. §124.10.]

State Statutory or Regulatory Authority:

Section 455B.45, Code of Iowa 1975 as amended by House File 1477 Laws of 60th General Assembly Second Session; Section 455B.32(2); Section 455B.33(3) as amended by House File 1477; Chapters 10 and 20 of Title 400 of the Iowa Administrative Code.

Remarks of the Attorney General:

Laws of the State of Iowa do not specifically require that permits be issued for discharge of pollutants by existing point sources, however, Section 455B.45, as amended by HF 1477, Laws of the 60th General Assembly, Second Session, requires the issuance of permits for the operation of *any* waste disposal system, "operation" by definition would include the discharge of pollutants by such an existing system. That Section also specifically includes the construction or use of any new point source for the discharge of any pollutant into the waters of the state.

It must be noted that definition of the "Waters of the State of Iowa", as included in her laws, is broader than any definition of "navigable waters of the United States."

Neither of the laws nor regulations of the State of Iowa incorporate the scheme set out in Section 301B of the Federal Water Pollution Control Act.

Section 6 of House File 1477 adopted by the 60th General Assembly of Iowa, Second Session specifically authorizes the adoption of pretreatment or effluent standards promulgated pursuant to Section 301, 306 or 307 of the Federal Water Pollution Control Act.

b. Disposal into wells.

State law provides authority to issue permits to control the disposal of pollutants into wells. [Federal Authority: FWPCA §402(b)(1)(D); 40 C.F.R. §124.80.]

State Statutory and Regulatory Authority:

Section 455B.30(5) as amended by House File 1477; Laws of the 60th General Assembly, Second Session; Section 455B.45, Code of Iowa 1975

as amended by House File 1477 and Section 455B.22(3) 1975 Code of Iowa as amended by House File 1477; Section 455A.25, 1975 Code of Iowa, administered by the Iowa Natural Resources Council.

Remarks of the Attorney General:

The same D.E.Q. permit requirements are effective for the subsurface water disposal as for surface water disposal particularly with the specific inclusions of injection wells within the "sewer system" definition of Section 455B.30(3), by House File 1477. The same remarks apply in this subparagraph (h) as were made in subparagraph (a). Injection wells have long been regulated in Iowa under Section 455A.25.

2. *Authority to Apply Federal Standards and Requirements.*

a. *Effluent standards and limitations and water quality standards.*

State law provides authority to apply in terms and conditions of issued permits applicable Federal effluent standards and limitations and water quality standards promulgated or effective under the FWPCA, including:

- (1) Effluent limitations pursuant to Section 301;
- (2) Water quality related effluent limitations pursuant to Section 302;
- (3) National standards of performance pursuant to Section 306;
- (4) Toxic and pretreatment effluent standards pursuant to Section 307; and
- (5) Ocean discharge criteria pursuant to Section 403. (Federal Authority: FWPCA §§301(b), 301(e), 302, 306, 304(d), 304(f), 306, 307, 402(b) (1) (A), 403, 208(e), and 510; 46 C.F.R. §124.42.)

State Statutory and Regulatory Authority:

Section 455B.22(1) (2) (3) (5), and Section 455B.35, as amended by House File 1477.

Remarks of the Attorney General:

The State of Iowa cannot and has not surrendered her sovereignty over future determination of the needs of the State in the Water Quality area and the criteria for the waters of the State, however, House File 1477, Acts of the 48th General Assembly, Second Session authorizes the Department of Environmental Quality to adopt water quality standards and effluent limitations in accordance with those adopted by the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act.

b. *Effluent limitations requirements of Sections 301 and 307.*

In the absence of formally promulgated effluent standards and limitations under Sections 301(b) and 307 of the FWPCA, State law provides authority to apply in terms and conditions of issued permits effluent limitations to achieve the purpose of these sections of the FWPCA. Such limitations may be based upon an assessment of technology and processes as required under the FWPCA with respect to individual point sources, and include authority to apply:

- (1) To existing point sources, other than publicly-owned treatment works, effluent limitations based on application of the best practicable control technology currently available or the best available technology economically achievable;
- (2) To publicly-owned treatment works, effluent limitations based upon the application of secondary treatment or the best practicable waste treatment technology; and

(3) To any point source, as appropriate, effluent standards or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants which interfere with, pass through, or otherwise are incompatible with the operation of publicly-owned treatment works. [Federal Authority: FWPCA §§301, 304 (d), 307, 402(a) (1), 402(b) (1) (A); 40 C.F.R. §124.42(a) (0).]

State Statutory and Regulatory Authority:

Section 455B.32(1) (2) (3) (6), 1076 Code of Iowa, and Section 455B.33(4) as amended by House File 1477.

Remarks of the Attorney General:

Laws of the State of Iowa do not specifically require that permits be issued for discharge of pollutants by existing point sources, however, Section 455B.36 as amended by House File 1477, Laws of the 56th General Assembly, Second Session, requires the issuance of permits for the operation of any waste disposal system, "operation" by definition would include the discharge of pollutants by such an existing system. That Section also specifically includes the construction or use of any new point source for the discharge of any pollutant into the waters of the state.

It must be noted that the definition of "Waters of the State of Iowa" as included in its laws is broader than any definition of "navigable waters of the United States."

Neither the laws nor regulations of the State of Iowa incorporate the scheme set out in Section 301 of the Federal Water Pollution Control Act.

Section 6 of House File 1477 adopted by the 56th General Assembly of Iowa, Second Session, specifically authorizes the adoption of pretreatment or effluent standards promulgated pursuant to Section 301, 304 or 307 of the Federal Water Pollution Control Act.

c. Schedules of compliance.

State law provides authority to set and revise schedules of compliance in issued permits which require the achievement of applicable effluent standards and limitations or, in the absence of a schedule of compliance contained therein, within the shortest reasonable time consistent with the requirements of the FWPCA. This includes authority to set interim compliance dates in permits which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality. [Federal Authority: FWPCA §§301(h), 303(a), 304(b), 306, 307, 402 (b) (1) (A), 402(1), and 402(17); 40 C.F.R. §§124.44 and 124.72.]

State Statutory and Regulatory Authority:

Section 455B.32(1) (2) (3), 1076 Code of Iowa and Section 455B.33 (4) as amended by House File 1477.

Remarks of the Attorney General:

The Executive Director of D.F.O. has this specific authority under Section 455B.33(4) as amended by House File 1477.

3. Authority to Deny Permits in Certain Cases.

State law provides authority to insure that no permit will be issued in any case where:

- a. The permit would authorize the discharge of a radiological, chemical, or biological warfare agent or high-level radioactive waste;
- b. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States;

c. The permit is objected to in writing by the Administrator of EPA, or his designee, pursuant to any right to object provided to the Administrator under Section 402(i) of the FWPCA; or

d. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(h) of the FWPCA. [Federal Authority: FWPCA §§301(f), 402(d)(2), and 208(i); 40 C.F.R. §§124.41 and 124.46.]

State Statutory and Regulatory Authority:

Section 455D.32(2), 1975 Code of Iowa and Section 455I.83(4), as amended by House File 1477.

Remarks of the Attorney General:

No authority exists for a state agency to subject its judgment on the issuance of the state permit to the judgment of the Secretary of Army acting through the Chief of Engineers or the administrator of the EPA or his designee nor to a pre-existing plan approved by the Environmental Protection Agency. However, the issuance of a federal permit by a state agency pursuant to an agreement with the federal agency (which would require a Chapter 28E, 1975 Code of Iowa, interstate compact) could be subject to the terms of the agreement to such considerations, but they could not effect the issuance of a state permit.

4. Authority to Limit Duration of Permits.

State law provides authority to limit the duration of permits to a fixed term not exceeding five years. [Federal Authority: FWPCA §402(b)(1)(B); 40 C.F.R. §124.51.]

State Statutory and Regulatory Authority:

Section 455D.32(3) as amended by House File 1477; Section 455D.33(4) as amended by House File 1477; Section 455D.45 as amended by House File 1477; Rule 19.3(7) of Title 400 of the Iowa Administrative Code.

Remarks of the Attorney General:

No statutory limitations presently exists in Iowa Law, however, the broad implications of the permit requirements and rule-making authority allow such permits to be limited as the commission and the executive director feel necessary. Such limitations presently include a five-year term for such permits under Rule 19.3(7).

5. Authority to Apply Recording, Reporting, Monitoring, Entry, Inspection and Sampling Requirements.

State law provides authority to:

a. Require any permit holder or industrial user of a publicly-owned treatment works to:

- (1) Establish and maintain specified records;
- (2) Make reports;
- (3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate, biological monitoring methods);
- (4) Take samples of effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as may be prescribed; and
- (5) Provide such other information as may reasonably be provided.

b. Enable an authorized representative of the State, upon presentation of such credentials as are necessary, to:

- (1) Have a right of entry to, upon, or through any premises of a permittee or of an industrial user of a publicly-owned treatment works in which premises an effluent source is located or in which any records are required to be maintained;
- (2) At reasonable times have access to and copy any records required to be maintained;
- (3) Inspect any monitoring equipment or method which is required;
- (4) Have access to and sample any discharge of pollutants to State waters or to publicly-owned treatment works resulting from the activities or operations of the permittee or industrial user. [Federal Authority: FWPCA §§304(b)(2)(A) and (B), 308 (a), 407(b)(2), and 402(b)(3); 40 C.F.R. §§124.48(c), 124.61-63, and 124.78(d).]

State Statutory and Regulatory Authority:

Section 455B.32(3) as amended by House File 1477; Section 455B.32(4) as amended by House File 1477; Section 455B.35 as amended by House File 1477; Section 455B.32 as amended by House File 1477.

Remarks of the Attorney General:

The broad rule-making authority established by law for the issuance of permits and the new subsection inserted by the legislature in this session grants specific authorization for these requirements.

6. Authority to Require Notice of Introductions of Pollutants into Publicly-Owned Treatment Works.

State law provides authority to require in permits issued to publicly-owned treatment works conditional requiring the permittee to give notice to the State permitting agency of:

- a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the FWPCA if such source were discharging pollutants directly to State waters;
- b. New introductions of pollutants into such works from a source which would be a point source subject to Section 301 if it were discharging such pollutants directly to State waters; or
- c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. [Federal Authority: FWPCA §402(b)(8); 40 C.F.R. 124.48(d).]

State Statutory and Regulatory Authority:

Section 455B.32(3) as amended by House File 1477, Section 455B.33(1) as amended by House File 1477, Section 455B.45 as amended by House File 1477, Section 455B.32 as amended by House File 1477.

Remarks of the Attorney General:

The broad rule making authority established by law for the issuance of permits and the new subsection inserted by the legislature in this session grants specific authorization for these requirements.

7. Authority to Insure Compliance by Industrial Users with Sections 304(b), 407, and 308.

State law provides authority to insure that any industrial user of a publicly-owned treatment works will comply with FWPCA requirements concerning:

- a. User charges and recovery of construction costs pursuant to Section 304(b);

b. Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307; and

c. Inspection, monitoring and entry pursuant to Section 308. [Federal Authority: FWPCA §402(h)(2); 40 C.F.R. §124.48(e).]

State Statutory and Regulatory Authority:

Section 455B.33(4) as amended by House File 1477.

Remarks of the Attorney General:

No statutory authority now exists to insure that industries pay the user charges and recovery of construction costs pursuant to Section 204B of the federal act, however, statutory authority granted to the executive director by the last session of the General Assembly insures that the other requirements of this paragraph are met and the user charges and construction cost recovery are written into the federal grant contracts and are binding upon the grantees.

8. Authority to Issue Notices, Transmit Data, and Provide Opportunity for Public Hearings.

State law provides authority to comply with requirements of the FWPCA and EPA Guidelines for "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System", 40 C.F.R. Part 124 hereinafter "the Guidelines") to:

a. Notify the public, affected States and appropriate governmental agencies of proposed actions concerning the issuance of permits;

b. Transmit such documents and data to and from the U. S. Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and

c. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits. [Federal Authority: Generally: FWPCA §§101(a) and 304(h)(2)(B).]

Function 8(a): FWPCA §§402(b)(3) (public notice), 402(b)(5) (notice to affected States), 402(b)(6) (notice to Army Corps of Engineers); 40 C.F.R. §§124.31 (tentative permit determinations), 124.32 (public notice), 124.33 (fact sheets) and 124.34 (notice to government agencies).

Function 8(b): FWPCA §§402(b)(4) (notices and permit applications to EPA), 402(h)(6) (notices and fact sheets to Army Corps of Engineers); 40 C.F.R. §§124.22 (receipt and use of Federal data), 124.23 (transmission of data to EPA), 124.34 (notice to other government agencies), 124.48 (transmission of proposed permits to EPA), 124.47 (transmission of issued permits to EPA).

Function 8(c): FWPCA §402(h)(3) (opportunity for public hearing); 40 C.F.R. §§124.36 (public hearings), 124.37 (notice of public hearings).

State Statutory and Regulatory Authority:

Section 455B.32(1) (7), 455B.33(4) as amended by House File 1477; Section 455B.34 as amended by House File 1477.

Remarks of the Attorney General:

Statutory authority cited above exists for public hearing with adequate notice thereof. Subparagraphs (a) and (b) of this paragraph should be covered in the agreement between the Department of Environmental Quality and the Environmental Protection Agency. Authority for such agreement exists in Chapter 28E of the Code.

9. Authority to Provide Public Access to Information.

State law provides authority to make information available to the public, consistent with the requirements of the FWPCA and the Guidelines, including the following:

a. Except insofar as trade secrets would be disclosed, the following information is available to the public for inspection and copying:

- (1) Any NPDES permit, permit application, or form;
- (2) Any public comments, testimony or other documentation concerning a permit application; and
- (3) Any information obtained pursuant to any monitoring, recording, reporting or sampling or other investigatory activities of the State.

b. The State may hold confidential any information (except effluent data) shown by any person to be information which, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. (Federal Authority: FWPCA §§304(h)(2)(B), 308(b), 402(h)(2) and 402(j); 40 C.F.R. §124.35.)

State Statutory and Regulatory Authority:

Chapter 68A, 1975 Code of Iowa: Section 455B.33(4) as amended by House File 1477; Chapter 455B as amended by Section 13 of House File 1477.

Remarks of the Attorney General:

Federal requirements are fully covered by the statutes cited above.

10. *Authority to Terminate or Modify Permits.*

State law provides authority to terminate or modify permits for cause including, but not limited to, the following:

- a. Violation of any condition of the permit (including, but not limited to, conditions concerning monitoring, entry, and inspection);
- b. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- c. Change of any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. (Federal Authority: FWPCA §402(b)(1)(C); 40 C.F.R. §§124.45(b) and 124.72.)

State Statutory and Regulatory Authority:

Section 455B.32(3) as amended by House File 1477; Section 455B.33(3)(4) as amended by House File 1477; Section 455B.34 as amended by House File 1477.

Remarks of the Attorney General:

Statutory authority completely covers this paragraph.

11. *Authority to Abate Violations of Permits or the Permit Program.*

State law provides authority to:

- a. Abate violations of:
 - (1) Requirements to obtain permits;
 - (2) Terms and conditions of issued permits;
 - (3) Effluent standards and limitations and water quality standards (including toxic effluent standards and pretreatment standards applicable to dischargers into publicly-owned treatment works); and

(4) Requirements for recording, reporting, monitoring, entry, inspection, and sampling;

b. Apply sanctions to enforce violations described in paragraph (a) above, including the following:

(1) Injunctive relief, without the necessity of a prior revocation of the permit;

(2) Civil penalties;

(3) Criminal fines for willful and negligent violations; and

(4) Criminal fines against persons who knowingly make any false statement, representation or certification in any form, notice, report, or other document required by the terms or conditions of any permit or otherwise required by the State as part of a recording, reporting, or monitoring requirement;

c. Apply maximum civil and criminal penalties and fines which are comparable to the maximum amounts recoverable under Section 309 of the FWPCA or which represent an actual and substantial economic deterrent to the nation for which they are assessed or levied. Each day of continuing violation is a separate offense for which civil and criminal penalties and fines may be obtained. [Federal Authority: FWPCA §§402(b) (7), 309, 304(n) (2) (C), 402(h), 504; 40 C.F.R. §124.73.]

State Statutory and Regulatory Authority:

Section 455B.34 as amended by House File 1477; Section 455B.30 as amended by House File 1477; Section 455B.41 as amended by House File 1477; Section 455B.45 as amended by House File 1477; Section 455B.40 as amended by House File 1477.

Remarks of the Attorney General:

Iowa law includes a civil penalty of \$5,000 per day or in the alternative a criminal penalty of \$10,000 per day for each day of violation for discharge of pollutants with a maximum of \$20,000 per day upon second violation. A person making false statement or who falsifies, tampers with or renders inaccurate a monitoring device is subject to a fine of not more than \$10,000 or imprisonment in the county jail for not more than six months or both. The state additionally has authority to seek injunctive relief which, upon the adoption of proper rules, could restrict or prohibit the introduction of pollutants into a publicly-owned treatment work in the event a condition of a permit for the discharge of pollutants from such a treatment work is violated. The Attorney General may seek an injunction to stop pollution in addition to any penalty for past violations.

12. State Board Membership.

No State board or body which has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal, includes (or will include, at the time of approval of the State permit program), as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. No State law requires representation on the State board or body which has or shares authority to issue permits which would violate the conflict of interest provision contained in Section 304(h) (2) of the FWPCA. [Federal Authority: FWPCA §304(h) (2) (D); 40 C.F.R. §124.94.]

State Statutory and Regulatory Authority:

None.

Remarks of the Attorney General:

There are no statutory regulations restricting board membership as required in FWPCA §304(h)(2)(D).

Under authorities in effect at the time of this Statement, no outstanding permits issued by this State for the discharge of pollutants are valid for the purposes of the National Pollutant Discharge Elimination System created under the FWPCA. All persons presently in possession of a valid State permit for the discharge of pollutants are required to:

1. Comply with the application requirements specified in subpart C of the Guidelines;
2. Comply with permit terms, conditions, and requirements specified in subparts E, F, and G of the Guidelines; and
3. If such persons are disposing of pollutants into wells without a permit from the Iowa Natural Resources Council, cease; if with a permit from the Iowa Natural Resources Council, apply for another from the Iowa Department of Environmental Quality.

RICHARD C. TURNER
Attorney General of Iowa