



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

JUL 22 1977

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THE ADMINISTRATOR

MEMORANDUM

To: Deputy Regional Administrator, Region V  
Subject: Indiana Memorandum of Agreement

On June 9, 1977, you requested that I approve a new Memorandum of Agreement governing Indiana's operation of the National Pollutant Discharge Elimination System. With this memorandum I approve the new Memorandum of Agreement, as it is consistent with our policies and regulations.

As you requested, I have signed all five copies, and have returned one to you for distribution to the State, as well as a copy for your files.

  
Douglas M. Costle

Attachment

original: Enforcement

RECEIVED

JUL 29 1977

EPA REGION 5  
OFFICE OF REGIONAL  
ADMINISTRATOR

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT

BETWEEN THE

STATE OF INDIANA

AND THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

I. GENERAL

This Memorandum of Agreement (hereinafter, "Agreement") establishes policies, responsibilities and procedures pursuant to 40 CFR 124 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) Permit Program will be administered by the Indiana Stream Pollution Control Board (hereinafter, the "State") and reviewed by the United States Environmental Protection Agency (hereinafter, "EPA"). All agreements between the State and the Regional Administrator are subject to review by the Administrator of the EPA, and if the Administrator determines that any provision or provisions of any such agreement or agreements do not conform to the requirements of Section 402(b) of the Federal Water Pollution Control Act, (hereinafter, "FWPCA"), or to the requirements of 40 CFR 124, or other applicable Federal regulations or policies, he shall notify the State and the Regional Administrator of any revisions or modifications which must be in such agreements.

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This Agreement, and any subsequent modification hereto, shall take effect after it is signed by the State and the Regional Administrator, and on the date it is approved by the Administrator of EPA.

The Agreement shall be reviewed jointly at least annually by the State and Regional Administrator during the preparation of the annual State Water Pollution Control Program Plan (hereinafter, "State Program Plan"), as required by Section 106 of the FWPCA.

Either the State, Regional Administrator, or Administrator of EPA may initiate action to modify the Agreement. However, before the Agreement may be modified, any proposed revisions must be put in writing, signed by the State and the Regional Administrator, and approved by the Administrator of EPA.

The State will administer the NPDES Permit Program consistent with current Federal policies and regulations, promulgated effluent guidelines, and priorities established as part of the annually approved State Program Plan. It is the duty of EPA to oversee the State's administration of the NPDES Permit Program on a continuing basis to assure that such administration is consistent with this Agreement, the State Program Plan, and all applicable requirements embodied in current regulations, policies and Federal law.

## II. POLICIES

The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in the State, except for those permits applicable to facilities identified by the Regional Administrator as "Federal facilities." The strategies and priorities for

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issuance, compliance monitoring and enforcement of permits as established in this Agreement shall be further delineated in the annual State Program Plan prepared pursuant to Section 106 of the FWPCA. If requested by either party, meetings will be scheduled at reasonable intervals between the State and EPA to review specific operating procedures, resolve problems or discuss mutual concerns involving the administration of the NPDES Permit Program.

The State will administer the NPDES Permit Program in accordance with Section 402 of the FWPCA, this Agreement, applicable State regulations and applicable Federal policies and regulations. Recognizing the impact of major dischargers on the waters of the State, both the State and EPA agree that major dischargers as a group shall receive first priority in all NPDES activities.

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

1. Expeditiously process and issue all required NPDES permits and provide ongoing, timely and adequate review of permits;
2. Comprehensively evaluate and assess compliance with compliance schedules, effluent limitations and other permit conditions in accordance with mutually understood and agreed upon procedures; and,
3. Maintain a vigorous enforcement program and take timely and appropriate enforcement action in every case where such action is warranted.

Discharges endangering public health will receive immediate and paramount attention.

The State Director and the Regional Administrator hereby agree to maintain a high level of cooperation and coordination between State and EPA staffs in a

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partnership to assure successful and effective administration of the NPDES Permit Program. In this partnership, EPA will provide to the State on a continuing basis technical and policy assistance on permit matters.

The Regional Administrator will oversee the State administration of the NPDES Permit Program on a continuing basis for consistency with the FWPCA, this Agreement, and all applicable Federal regulations and policies. This assessment will generally be accomplished by the review of permits, reports and enforcement actions submitted by the State in accordance with this Agreement, the State Program Plan and applicable Federal regulations and policies. In addition, the EPA may consider as a part of its assessment, comments concerning the State's administration of the NPDES Permit Program received from permittees, the public and Federal and local agencies. Any such comments considered by the EPA will be brought to the attention of the State if the commenting party has not previously communicated such to the State.

Submission of information from the State to the Regional Administrator shall be accomplished in a manner consistent with this Agreement, the State Program Plan, applicable portions of 40 CFR 124 and other agreed upon procedures.

Additionally, the Regional Administrator may request, and the State will submit, specific information necessary for a comprehensive evaluation of the State's administration of the NPDES Permit Program.

### III. PERMIT REVIEW AND ISSUANCE

The State is responsible for drafting, public noticing, issuing, modifying, reissuing, and terminating NPDES permits and shall do so in accordance with 40 CFR 124.31 and 124.32.

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Upon receipt of proposed permits and other information specified in Section VI, 1. of this Agreement, EPA shall promptly review and submit to the State its approval, comments, objections or recommendations on the proposed permit. It is Regional policy to attempt to process each request for approval within 30 days. If no comment is received by the State within 90 days, the State may assume that EPA has no objection to the issuance of the NPDES permit.

If a proposed NPDES permit is modified as a result of the public notice or public hearing, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: NPDES Permit Branch, together with a copy of all letters sent in response to statements received from the public notice, and where a public hearing is held, a summary of all objections, together with a request for approval to issue the NPDES permit. In lieu of a summary, the State may provide a verbatim transcript of the entire public hearing.

Except for those permits for which the Regional Administrator has waived rights of review, no NPDES permit will be issued or modified by the State until it receives a letter from the Regional Administrator approving such issuance or modification or until no comment is received by the State from EPA within 90 days.

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 proposed by the State from: (1) publicly owned treatment works serving less than 10,000 population unless classified as a major discharger; (2) other dischargers 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

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apply to any of the following discharges, regardless of size: (a) discharges which affect the waters of any other State; or (b) discharges which contain toxic pollutants in toxic amounts, also provided that:

1. The State affirmatively supply the information itemized below at the time administratively complete applications are forwarded to the Regional Office of Region V or when requested by the Regional Administrator:

a. A statement that the daily average discharge, or population for publicly owned treatment works, are known and do not exceed the amounts and conditions authorized by the above waiver; and

b. Each specific point of discharge is identified as to the geographic location together with the name of the receiving water.

2. Each public notice issued by the State for permits covered by the waiver include the following statement:

Pursuant to the waiver provisions authorized by 40 CFR 124.46, this proposed permit is within the class, type and size for which the Regional Administrator, Region V, has waived his right to review, object or comment on this proposed permit action.

The foregoing does not include waiver of receipt of complete copies of NPDES applications, draft permits, public notices of permit applications (and any required fact sheets), notices of public hearings, and copies of all final NPDES permits issued. 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 State from any publicly owned treatment works, as detailed in 40 CFR 124.45(d) and (e).

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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 Technical Secretary, Indiana Stream Pollution Control Board.

The foregoing waiver shall not be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal or State laws, rules, regulations, policies or guidelines, nor to relinquish the right of the Regional Administrator to petition the State for review of any action or inaction because of violation of Federal or State laws, rules, regulations, policies or guidelines.

The State may request in writing a modification of the above waiver at any time. Any such modification shall take effect after it is signed by the Regional Administrator and on the date it is approved by the Administrator of EPA. Any such approved modification shall automatically be incorporated into this Memorandum of Agreement by reference.

The Regional Administrator will continue to receive copies of all issued NPDES permits on which he has waived his authority to review. These will be transmitted to the Regional Administrator by the State similarly to all other issued permits specified in the Agreement.

There shall be included as a part of the annual State Program Plan a major dischargers list, which shall include those dischargers mutually defined by the State and EPA as major dischargers plus any additional dischargers that have a high potential for violation of water quality standards or which are required to install substantial pollution abatement equipment.

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The major dischargers list shall be used for the purpose of defining that group of dischargers which shall receive first priority in all NPDES activities. The major dischargers list may be modified at any time upon the mutual agreement of the State and the Regional Administrator.

#### IV. COMPLIANCE MONITORING

The State will operate a timely and effective compliance monitoring system (ADP and/or manual) to track compliance with permit conditions. For purposes of this Agreement the term compliance monitoring shall refer to all efforts associated with assuring full compliance with NPDES permit conditions. Compliance monitoring shall focus first on major dischargers in accordance with the priorities and time frames for compliance tracking as established in this Agreement and as further delineated in the annual State Program Plan.

##### A. Schedule Dates.

The State will track the submittal of all date-related permit conditions. When required performance is not achieved, appropriate enforcement actions will be initiated by the State. The State will conduct a timely and substantive review of all date-related permit conditions and reports received and evaluate the permittee's compliance status. This review will be conducted so as to assure that any violation by a major discharger is acted upon by the State's initiation of an appropriate enforcement action within 30 days of the date a date-related report is due to the State. Priorities for reviewing date-related reports and for initiating enforcement actions will also be specified in the annual State Program Plan.

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## B. Review of Self-Monitoring Reports

The State will operate a tracking system to determine if:

1) the required self-monitoring reports are submitted; 2) the submitted reports are complete; and 3) the permit conditions are met. When required reports are not submitted, appropriate enforcement actions will be initiated by the State to prevent a recurrent problem, and, if possible, to obtain past data. The State will conduct a timely and substantive review of all self-monitoring reports received, and evaluate the permittee's compliance status. This evaluation will be uniform and consistent and will take into account frequency, severity, and analytical error in determining where limitations have been exceeded. This review will be conducted so as to assure that any violation by a major discharger is acted upon by the State's initiation of an appropriate enforcement action within thirty (30) days of the date a report is due to the State. Priorities for reviewing self-monitoring reports and for initiating enforcement action will also be specified in the annual State Program Plan.

## C. Facility Inspections.

### I. Sampling Surveys

A sampling survey is performed to assess permittee compliance with all NPDES permit conditions and is defined to include but not necessarily to be limited to effluent sampling and an assessment of a facility's monitoring and analysis program. Surveys at Federal facilities will be conducted by EPA and the State will be invited to participate in those surveys. The State and the Regional Office will meet as needed to develop lists of permittees to be sampled as part of the annual State Program Plan. Modifications may be

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incorporated into the list with concurrence of both parties. Except at Federal facilities the State will be given the first opportunity to perform all sampling surveys. The EPA will be given adequate notice and opportunity to participate in surveys performed by the State.

EPA or the State may determine that additional sampling surveys are necessary to monitor compliance with issued NPDES permits. If EPA makes a determination that additional sampling surveys are necessary or appropriate, it shall notify the State of such determination and request the State to conduct those sampling surveys. In cases where the State chooses not to conduct the sampling survey in accordance with EPA requests, EPA may then conduct the survey itself, keeping the State fully informed of plans and results.

## 2. Compliance Evaluation Inspections

Compliance evaluation inspections are designed to verify that the Permittee is meeting permit requirements for records maintenance, operation and maintenance, compliance schedule, self-monitoring, reporting, and other items as appropriate, that are defined in the NPDES Compliance Evaluation Inspection Manual. Limited effluent sampling may be incorporated into any compliance evaluation inspection based on the judgment of the inspector. Compliance evaluation inspections at Federal facilities will be conducted by EPA, and the State will be invited to participate in those surveys. The State and Regional Office will meet as needed to develop lists of permittees to be the subject of Compliance Evaluation Inspections, consistent with the annual State Program Plan. Modifications may be incorporated into the list with concurrence of both parties. The State will be given the first opportunity to perform all compliance evaluation inspections except at Federal facilities. The

EPA will be given adequate notice and opportunity to participate in compliance evaluation inspections performed by the State.

EPA or the State may determine that additional compliance evaluation inspections are necessary to monitor compliance with issued NPDES permits. If EPA makes a determination that additional compliance evaluation inspections are necessary or appropriate, it shall notify the State of such determination and may request the State to conduct those compliance evaluation inspections. In cases where the State chooses not to conduct the compliance inspection in accordance with EPA requests, EPA may then conduct the survey itself, keeping the State fully informed of plans and results.

D. Other

1. Survey Reports

All compliance evaluation inspections and sampling survey reports on major dischargers shall be available for review within thirty (30) days of the date of the inspection or survey. Each report will be thoroughly reviewed by the State to determine what, if any, enforcement action shall be initiated. Any necessary enforcement actions will be initiated within sixty (60) days of the date of the inspection or survey. Priorities for the review of these inspections and surveys and for initiating enforcement action will also be specified in the annual State Program Plan.

2. Information Requests

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

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Information is not so available, the party to whom the request was directed shall promptly notify the requestor.

#### V. ENFORCEMENT

The State is responsible for taking timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations and all other permit conditions for all NPDES permits except for Federal facilities. This includes violations detected by State or Federal surveys. In instances where the EPA determines that the State has not initiated timely and appropriate enforcement action against a NPDES permit violation, EPA shall proceed with any or all of the enforcement options available under Section 309 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1319.

Prior to proceeding with federal enforcement action against a NPDES violator, and for the purpose of providing notice only, EPA shall inform the State that federal enforcement action is to be initiated forthwith. This notification shall be in the form of a telephone or written communication, by EPA to the Technical Secretary of the Indiana Stream Pollution Control Board or his designee, and, except in the exercise by EPA of its emergency power under Section 504 of the FWPCA, 33 U.S.C. 1364, such notification shall be provided in all cases of federal enforcement action regardless of the existence or extent of previous communication between EPA and the State on the matter. In the usual case it is expected that preliminary staff discussions will take place between EPA and State representatives before institution of federal enforcement action.

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Nothing in this agreement shall preclude the EPA from appropriate exercise of its powers under Section 504 of the FWPCA, 33 U.S.C. 1364.

Failure by the State to initiate appropriate enforcement action against a major discharger within thirty (30) days of the date a date related report is due to the State or within (30) days of the date a report on effluent limitations is due to the State, may be the basis for EPA's determination that the State has failed to take timely enforcement action.

#### VI. REPORTING AND TRANSMITTAL OF INFORMATION

A. The State shall submit the following information to the EPA as frequently as noted below:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
1. A copy of all proposed NPDES permits placed on public notice, including public notices, fact sheets and permit applications if not previously submitted	As Public Noticed
2. Copy of all issued and modified NPDES permits	As issued
3. A letter of transmittal listing NPDES permit number, permittee's name, facility location, date signed, effective date and expiration date shall accompany copies of each permit or group of permits issued, modified, denied or terminated that are sent to Region V, U.S. EPA.	Monthly-by the 5th working day of each month
4. A list of facilities scheduled for sampling surveys and/or compliance evaluation inspections	Monthly
5. Proposed revisions to the schedule of sampling surveys and compliance evaluation inspections	As needed
6. A list of sampling surveys and compliance evaluation inspections performed during the previous quarter	Quarterly

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<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
7. Copies of all sampling survey and compliance evaluation inspection reports and data and transmittal letters to permittees for all major dischargers	Within 60 days of survey (30 days to prepare report, plus 30 days to act on report.)
8. Copies of all sampling survey and compliance evaluation inspection reports and data and transmittal letters to permittees for all minor dischargers	As requested
9. Copies of the Compliance Evaluation Inspection Report Form generated during the compliance evaluation and maintenance inspections of major municipal plants	Within 60 days of survey (30 days to prepare report, plus 30 days to act on report.)
10. For all dischargers, a listing of all permit non-compliances arising from scheduled dates and/or effluent reports showing facility name, location, permit number, description of violation, and State actions (proposed or actual), and mitigating circumstances	Quarterly
11. Copies of all enforcement actions against NPDES permittees (including notices of violation, administrative orders, initial determinations, and referrals to the Attorney General)	As issued

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

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
1. A list of sampling surveys and compliance evaluation inspections at which EPA intends to conduct a joint survey or inspection with the State	Annually in Program
2. Proposed revisions to the schedule of sampling surveys and compliance evaluation inspections	As needed
3. Copies of all EPA sampling surveys and compliance evaluation inspection reports and data	Within 30 days of survey

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<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
4. Notification of the commencement of Federal enforcement and the actions being taken	As initiated
5. A review of the State administration of the NPDES Permit Program based on State reports, meetings with State officials and file audits	As needed

#### VII. PROGRAM REVIEW

EPA is responsible for assuring that the NPDES Permit Program administered by the State is consistent with all requirements of this Agreement, the State Program Plan, State law, and applicable Federal policies and regulations, including 40 CFR 124. To fulfill this responsibility EPA shall:

1) Review the information transmitted from the State to assure that all the requirements of Chapter VI of this agreement are met.

2) Meet with State officials from time to time to observe the data handling, permit processing, and enforcement procedures, including both manual and ADP processes.

3) Examine in detail the files and documentation at the State Agency of selected facilities to determine: a) that permits are processed and issued consistent with Federal requirements; b) the ability of the State to discover permit violations when they occur; c) the timeliness of State reviews; d) the adequacy of State selection of appropriate enforcement actions; e) the timeliness and effectiveness of the State action. These detailed file audits shall be conducted by EPA in the State office as needed. The State shall be notified in advance of the audit so that appropriate State officials may be available

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to discuss individual circumstances and problems with EPA. The facilities to be audited need not be revealed to the State in advance. A copy of the audit report shall be transmitted to the State when available, and marked "Attention: Technical Secretary of the Indiana Stream Pollution Control Board".

4) Determine the need for and hold public hearings on the State's operation of the NPDES permit and enforcement program.

5) Review the State's public participation policies, practices and procedures.

In the event EPA determines that elements of the State's administration of the NPDES Permit Program are in any way deficient or inconsistent with this Agreement, the State Program Plan, applicable regulations, statutes, and policies, the EPA shall notify the State in writing of those inconsistencies or other deficiencies. The State shall respond in writing within thirty (30) days. The EPA shall inform the State in writing of its determination that noted inconsistencies or deficiencies have been rectified.

#### VIII. INDEPENDENT EPA POWERS

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

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IX. EXPIRATIONS

To reflect the true partnership between the State and USEPA this Agreement shall continue in effect until terminated by the State or USEPA, which termination shall be effective sixty (60) days following written notification of either party to the other.

INDIANA STREAM POLLUTION CONTROL BOARD

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V

By *Quentin*

By *Valdy V. Stawitz*

Date 5/13/77

Date JUNE 9<sup>th</sup>, 1977.

Approved:

*Raymond Kelly*

Administrator  
United States Environmental  
Protection Agency

Date JUL 22 1977

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STATE OF INDIANA



INDIANAPOLIS 46206

STREAM POLLUTION CONTROL BOARD

1330 West Michigan Street

July 12, 1983

Mr. Glenn Pratt  
Regional Pretreatment Coordinator  
U.S. EPA, Region V  
230 South Dearborn Street  
Chicago, IL 60604

Dear Mr. Pratt:

As instructed by Mr. Charles H. Sutfin's letter of June 27, I am returning to you the executed delegation agreement pertaining to the pretreatment program between the U.S. EPA's Region V Water Division and the Indiana Stream Pollution Control Board.

I am looking forward to a long and pleasant association with you pertaining to the pretreatment program. If I can be of help to you in the future, please do not hesitate to contact me.

Very truly yours,

Earl A. Bohner  
Technical Secretary

EAB/vs  
Enclosure

- cc: Mr. Charles Sutfin
- Mr. Ralph Pickard
- Mr. Joseph Stallsmith
- Mr. Larry Kane
- Mr. Lonnie Brumfield ✓



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION V  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:  
5WQP-11

JUN 7 1983

Mr. Earl Bohner  
Technical Secretary  
Indiana Stream Pollution Control Board  
1330 West Michigan Street  
Indianapolis, Indiana 46206

Dear Mr. Bohner:

Attached for your review and approval is a delegation agreement between the U.S. Environmental Protection Agency (U.S. EPA), Region V, Water Division and the Indiana Stream Pollution Control Board, acting through the Indiana State Board of Health (ISBH), Division of Water Pollution Control, Permit Section-Pretreatment Group. This agreement will further reduce the Region's overview responsibility and activities relative to the review of pretreatment program interim elements submitted by communities in Indiana, except for the special Federal interest cities listed in Attachment E of the delegation agreement.

My staff has worked very closely with Mr. Lonnie Brumfield and his staff in reaching such an agreement. We feel that the procedures established for reviewing pretreatment submittals along with the type of reviews being conducted by the State are complete and thorough.

If the agreement meets with your approval, please sign it and return a copy of the complete package to Glenn Pratt, Regional Pretreatment Coordinator.

Very truly yours,

Charles H. Sutfin  
Director, Water Division

Attachment

cc: (w/Attachment)  
Lonnie Brumfield, ISBH  
Larry Kane, ISBH

DELEGATION OF U.S. EPA REGION V, WATER DIVISION  
REVIEW OF INDUSTRIAL SURVEY, TECHNICAL INFORMATION, LEGAL AUTHORITY,  
FINANCIAL PROGRAM, STAFFING AND ORGANIZATION, ENFORCEMENT/MONITORING  
PROCEDURES AND EQUIPMENT NEEDS PRETREATMENT PROGRAM INTERIM ELEMENTS TO THE  
INDIANA STREAM POLLUTION CONTROL BOARD, ACTING THROUGH THE  
INDIANA STATE BOARD OF HEALTH (ISBH), DIVISION OF WATER  
POLLUTION CONTROL, PERMIT SECTION-PRETREATMENT GROUP

I. PURPOSE

The purpose of this delegation is to identify the activities, checks, judgments, and other requirements which the Indiana Stream Pollution Control Board, acting through the Indiana State Board of Health (ISBH), Division of Water Pollution Control, Permit Section-Pretreatment Group will follow in reviewing Industrial Survey, Technical Information, Legal Authority, Financial Program, Staffing and Organization, Enforcement/Monitoring Procedures and Equipment Needs pretreatment program interim elements submitted by municipalities pursuant to their NPDES pretreatment compliance schedules.

II. PROCEDURES

A. Review of Pretreatment Interim Elements

The State will:

1. Except for communities of special federal interest (see B. below), review and determine the acceptability of the following municipal pretreatment documents: Industrial Survey, Technical Information, Legal Authority, Financial Program, Staffing and Organization, Enforcement/Monitoring Procedures and Equipment Needs. The "Pretreatment Internal Review Guidance" (Attachment A) and the "POTW Pretreatment Program Checklist and Guidance" (Attachment B) will be used to guide and document the review.
2. Follow the "Pretreatment Program Interim Submittal Routing Chart" (Attachment C) for processing pretreatment program interim elements.
3. Maintain a pretreatment program tracking system (Attachment D) for each municipality submitting interim elements, and provide, upon request, a report of community program developments to U.S. EPA.

B. Communities of Special Federal Interest

The following additional procedures apply to the review of the above cited pretreatment program interim element documents from communities of special federal interest (Attachment E).

1. After receipt and review of the pretreatment program interim element documents from a community of special federal interest, the State will forward a copy of the submittal and its review material to the U.S. EPA Region V, Water Division, Water Quality Branch, Permits Section.

2. The U.S. EPA will notify ISBH by telephone of the receipt of said copy, will review each document, and will forward their comments, if any, to ISBH within 20 workdays of receipt of the interim element. If deficiencies are noted by the U.S. EPA, the Permit Section Pretreatment Group will reference them in their correspondence with the municipality. Any disagreements between the ISBH and the U.S. EPA will be resolved prior to contacting the community.

3. If no comments are received by the 25th workday after receipt by the U.S. EPA, the Permit Section-Pretreatment Group will complete processing of said documents in accordance with the procedures outlined in (A.) above.

Note: Any changes to the list of special interest communities will be negotiated between the State and the U.S. EPA at the time of development of State-EPA annual program plans.

C. U.S. EPA review of State Program

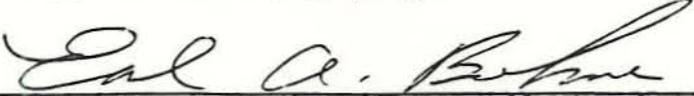
Semi-annually, the U.S. EPA may review a random sample of pretreatment program reviews performed by the State. These evaluations will consider:

1. Timeliness of review;
2. Thoroughness of review;
3. Use of review forms and documentation of any meeting or communications with the municipality, or its consultant, which warrants a written summary.

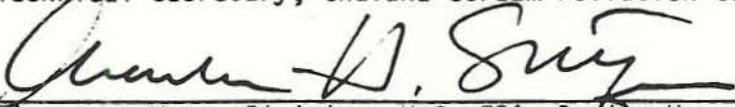
The State will be informed in writing of the results of the review and of deficiencies noted, if any. The State will respond in writing within 30 days of receipt of any comment letter on how it proposes to rectify the deficiencies.

D. Amendment and Duration of This Agreement

1. This agreement may be amended at any time by a written agreement between the U.S. EPA and ISBH.
2. This agreement shall remain in effect unless and until it is terminated, in whole or in part, by either party, following 60 days written notice to the other party.

  
 \_\_\_\_\_  
 Technical Secretary, Indiana Stream Pollution Control Board

7/12/83  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Director, Water Division, U.S. EPA, Region V

6/24/83  
 \_\_\_\_\_  
 Date

ADDENDUM  
TO THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
AND THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

The Memorandum of Agreement between the Administrator of the United States Environmental Protection Agency (hereinafter U.S. EPA) Region V and the Indiana Department of Environmental Management (hereinafter IDEM), and approved on January 1, 1975, is hereby modified to include IDEM U.S. EPA responsibilities for the establishment, development, implementation and enforcement of the National Pretreatment Program pursuant to Section 307 of the Clean Water Act (hereinafter the Act) as follows.

IDEM has primary responsibility for: (a) enforcing against discharges prohibited by 40 C.F.R. Section 403.5; (b) applying and enforcing Section 307 (b) and (c) of the Act; (c) reviewing, approving, and overseeing Publicly Owned Treatment Works (POTW) Pretreatment Programs to enforce National Pretreatment Standards in accordance with the procedures discussed in 40 C.F.R. section 403.11; (d) requiring a POTW Pretreatment Program in NPDES Permits issued to POTWs as required in 40 C.F.R. Section 403.8 and as provided in Section 402(b)(8) of the Act; (e) developing and implementing a pretreatment program for municipalities not required to develop POTW pretreatment programs; issuing and overseeing Industrial Waste Pretreatment permits in accordance with the procedures discussed in 40 C.F.R. 403.8(f)(2); (f) requiring compliance by POTWs and Industrial Users with Pretreatment Standards and permit conditions; seeking civil and criminal penalties and injunctive relief for non-compliance for POTWs and Industrial Users with these standards and conditions; (g) reviewing and approving modification of categorical Pretreatment Standards to reflect removal of pollutants by a POTW and enforcing related conditions in the municipal NPDES Permit. U.S. EPA will overview and approve State pretreatment program operations consistent with 40 C.F.R. 403 regulations and this Memorandum of Agreement.

IDEM shall perform inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit, and carry out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the Industrial User is in compliance with Pretreatment Standards. The number of inspections to determine compliance shall be agreed upon as part of the annual wastewater (sections 106 and 205g) program plan process.

The Regional Administrator will be provided the same period of time to review and comment upon or make recommendations with respect to proposed NPDES permits or modifications as outlined in this agreement (Section IV, Section VI, Section XI and Section XIV) for reviewing similar actions or other NPDES permit conditions. The Regional Administrator shall notify IDEM in writing within the allowed period that the U.S. EPA objects to certain conditions setting forth the reasons for objection and proposing alternate suggestions for inclusion in the permit.

#### Section 403.6 National Pretreatment Standards: Categorical Standards

The State shall incorporate into the Indiana Administrative Code categorical Pretreatment Standards which are no less stringent than those promulgated by U.S. EPA.

The IDEM shall review requests from industrial users for industrial subcategories, make a written determination whether the Industrial User does or does not fall within a particular categorical Pretreatment Standard and state the reasons for this determination. IDEM shall forward its findings together with a copy of the request and necessary supporting information to the U.S. EPA Regional Water Division Director for concurrence. If the Water Division Director does not modify the IDEM decision within 60 days after receipt thereof, the IDEM finding is final. Where the request is submitted to the U.S. EPA Water Division Director such request will be forwarded to IDEM for determination then sent back to U.S. EPA for concurrence. Where the Water Division Director elects to modify the Director's decision, the Water Division Director's determination will be forwarded to IDEM for concurrence. Where the final determination is made by the Water Division Director, he shall send a copy of this determination to the requester and to the IDEM.

#### Section 403.7 Categorical Pretreatment Standards Removal Allowances and Section 403.9 POTW Pretreatment Program Approvals

The IDEM shall review POTW applications to revise discharge limits for users who are or may in the future be subject to categorical Pretreatment Standards and requests for approval of POTW Pretreatment Programs. It shall submit its findings together with the application and supporting information to the U.S. EPA Regional Water Division Director for review. No POTW Pretreatment Program or request for revised discharge limits shall be approved by the IDEM if during the 30 day (or extended) evaluation period provided for in paragraph 40 C.F.R. Section 403.11 (b)(1)(ii) and (d), the U.S. EPA objects in writing to the approval of such submission.

#### Section 403.13 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors

The IDEM shall make an initial finding on all categorical Pretreatment Standards fundamentally different factors requests from industrial users.

Where the Director finds that fundamentally different factors do not exist, he may deny the request and notify the requester and the POTW of the same. Where the Director finds that fundamentally different factors do exist, he shall forward the request, and a recommendation that the request be approved, to the Water Division Director.

Miscellaneous

The State submits a list of municipalities, several times each year, which are required to fully develop their own pretreatment program or are under investigation for the possible need of a local pretreatment program. Based on the results of an investigation, the Director will determine whether or not the POTW will be required to fully develop a pretreatment program. This list may be changed from time to time without modification of the MOA, however, municipalities may not be deleted from this list without the approval of the U.S. EPA Regional Administrator.

Other Provisions

Nothing in this agreement is intended to affect any pretreatment requirement including any standards or prohibitions, established by State or local law as long as the State or local requirements are not less stringent than any set forth in the National Pretreatment Program, or other requirements or prohibitions established under the Act or this regulation.

Nothing in this Modification shall be construed to limit the authority of U.S. EPA to take action pursuant to Sections 204, 208, 301, 304 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the Clean Water Act of 1977 (33 USC - 1251 et. seq.).

This Modification will become effective upon approval of the Administrator.

STATE AGENCY

U.S. ENVIRONMENTAL PROTECTION AGENCY

By Charles B. Bandura

By \_\_\_\_\_

Date: 12/7/89

Date: \_\_\_\_\_

Approved:

\_\_\_\_\_  
Administrator  
United States Environmental Protection Agency

Date: \_\_\_\_\_

**Addendum  
to the  
National Pollutant Discharge Elimination System  
Memorandum of Agreement  
Between the  
State of Indiana  
and the  
United States Environmental Protection Agency  
Region 5  
Concerning Indiana's Great Lakes Water Quality Standards  
and Implementation Procedures Rulemaking**

The federal Water Quality Guidance for the Great Lakes System (federal guidance), 40 CFR Part 132, contains the minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes system to protect human health, aquatic life, and wildlife. The Great Lakes states and tribes were required to adopt provisions consistent with (as protective as) the federal guidance for their waters within the Great Lakes System. The Indiana Water Pollution Control Board adopted Great Lakes system water quality standards and implementation procedures on December 16, 1996, and these rules became effective on February 13, 1997.

The United States Environmental Protection Agency Region 5 (EPA) and the Indiana Department of Environmental Management (IDEM) enter into this Addendum to their National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement to ensure that Indiana's rules concerning Great Lakes system water quality standards and implementation procedures at 327 IAC 2-1.5 and 327 IAC 5-2 are implemented in a manner that is consistent with the federal guidance.

The duties in this Addendum only apply to those portions of Indiana's NPDES program applicable to the Great Lakes system within Indiana.

**I. Chemical Specific Reasonable Potential Implementation Procedures**

**A. Development of Preliminary Effluent Limitations**

327 IAC 5-2-11.5(b)(1) allows IDEM to exercise best professional judgment, taking into account the source and nature of the discharge, existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, and, where appropriate, the dilution of the effluent in the receiving water, in determining whether to develop preliminary effluent limitations (PELs). To ensure that IDEM's exercise of best professional judgment in determining whether to develop PELs pursuant to 327 IAC

5-2-11.5(b)(1) is exercised in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 5, IDEM and EPA agree as follows:

1. IDEM agrees always to develop a PEL when it is necessary to conduct a reasonable potential analysis to determine if a water quality-based effluent limitation is needed. IDEM uses two computer modeling programs to calculate WQBELs (or PELs), one for dissolved oxygen and ammonia and one for Tier I and Tier II criteria. IDEM always determines PELs for these pollutants or pollutant parameters. Regardless, IDEM reserves the right to exercise best professional judgment not to develop a PEL only when it can determine without use of the reasonable potential procedure that a discharge will not to cause or contribute to a violation of a water quality standard.
2. When IDEM exercises best professional judgment to not develop a PEL, IDEM shall explain with specificity in the permit fact sheet the basis for its decision. When IDEM submits the draft permit and fact sheet to EPA for review, IDEM shall specifically note to EPA that IDEM exercised best professional judgment to not develop a PEL, and that the reason for the determination is explained in the fact sheet.
3. If EPA determines that IDEM's exercise of best professional judgment to not develop a PEL is not consistent with the requirements of 40 CFR Part 132, Appendix F, Procedure 5, EPA may object to the issuance of the permit as being outside the guidelines and requirements of 40 CFR Part 132, Appendix F, Procedure 5 and the Federal Water Pollution Control Act. If EPA determines that IDEM's determination not to develop a PEL is consistent with 40 CFR Part 132, Appendix F, Procedure 5, EPA will not object to the issuance of the permit based solely on the grounds that IDEM exercised best professional judgment to not develop a PEL.

#### **B. Projected Effluent Quality Procedures**

327 IAC 5-2-11.5(b)(1)(B)(ii) describes how to determine the monthly average when monthly average data are not available. To ensure that this provision is implemented in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 5, IDEM and EPA agree as follows:

1. 327 IAC 5-2-11.5(b)(1)(B)(ii), read as a whole, generally concerns a monthly average, not monthly projected effluent quality (PEQ). IDEM interprets both instances where "monthly PEQ" appears in the second sentence to actually mean "monthly average". Therefore, when an alternate method is used to determine a monthly average value, this value will be multiplied by the relevant multiplying factor from Table 11.5-1 in 327 IAC 5-2-11.5(h) to determine a monthly PEQ.

2. IDEM shall allow use of an alternative statistical procedure for determination of a PEQ only if the permit applicant demonstrates that the alternate statistical procedure meets the criteria in 327 IAC 5-2-11.5(b)(1)(B)(v). EPA shall retain the authority to object to permits that have been developed using statistical procedures that do not meet the criteria outlined in 40 CFR Part 132, Appendix F, Procedure 5, Paragraph B.2.

#### **C. Developing Data Where There are Insufficient Data to Derive a Tier II Value**

327 IAC 5-2-11.5(b)(3)(B) provides that IDEM need not generate data to develop a Tier II value in situations where it otherwise would be required to do so under 327 IAC 5-2-11.5(b)(3)(A) if the discharger demonstrates that "the whole effluent does not exhibit acute or chronic toxicity [and] through a biological assessment, that there are no acute or chronic toxic effects on aquatic life in the receiving stream." 327 IAC 5-2-11.5(b)(3)(B)(iii) gives IDEM discretion to not generate data to develop a Tier II value in certain situations where there has not been a biological assessment. IDEM recognizes that the federal guidance does not allow IDEM to exercise this discretion. Therefore, IDEM will always generate data to develop a Tier II value as required under 327 IAC 5-2-11.5(b)(3)(A) unless the discharger demonstrates that the whole effluent does not exhibit acute or chronic toxicity and through a biological assessment that there are no acute or chronic toxic effects on aquatic life in the receiving stream.

#### **D. Intake Pollutants - Combined Wastestreams**

327 IAC 5-2-11.5(b)(4)(C)(ii) and (g)(6) contains provisions for combined wastestreams consisting of both intake water and process wastewater (combined wastestreams provisions). The federal guidance contains no similar provisions. To ensure that 327 IAC 5-2-11.5(b)(4)(C)(ii) and (g)(6) are implemented in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 5, IDEM and EPA agree as follows:

1. The combined wastestream provisions at 327 IAC 5-2-11.5(b)(4)(C)(ii) and (g)(6) do not allow discharge of a greater amount of pollutants than would be allowed under the federal guidance provisions applicable to the entire wastestream. IDEM will interpret and apply 327 IAC 5-2-11.5 (b)(4)(C)(ii) and (g)(6) as allowing the state flexibility to consider each wastestream separately in determining the most effective way to establish water quality controls (e.g., monitoring points), but not as a means to impose less stringent controls on the discharge than would otherwise apply. In cases where one of the wastestreams consists of stormwater, the provisions at 327 IAC 5-2-11.5 (b)(4)(C)(ii)(BB) and (g)(6)(A), which state that "[t]he requirements imposed shall be as if the storm water wastestream discharged directly into the receiving waterbody and shall be consistent with requirements imposed on other similar storm water discharges to the waterbody," will be interpreted to require controls for internal storm water waste streams

that mix with process waste streams before discharge consistent with controls imposed on direct discharges of storm water mixed with process water before discharge.

2. When issuing permits, IDEM shall make a combined wastestream determination in accordance with its rules as explained in its demonstration. When IDEM makes a decision in a permit involving its combined wastestream provisions, IDEM shall explain with specificity in the permit fact sheet the basis for its decision. When IDEM submits the draft permit and fact sheet to EPA for review, IDEM shall specifically note to EPA its combined wastestream determination, and that the reason for the determination is explained in the fact sheet.

3. If EPA determines that IDEM's combined wastestream decision is not consistent with 40 CFR Part 132, Appendix F, Procedure 5, EPA may object to the issuance of the permit as being outside the guidelines and requirements of 40 CFR Part 132, Appendix F, Procedure 5 and the Federal Water Pollution Control Act. If EPA determines that IDEM's combined wastestream decision is consistent with the requirements of 40 CFR Part 132, Appendix F, Procedure 5, EPA will not object to issuance of the permit based solely on the grounds that IDEM used its combined wastestream provisions.

#### **E. Intake Pollutants - Noncontact Cooling Water**

327 IAC 5-2-11.5(g) contains provisions concerning issuance of water quality-based effluent limitations for once-through noncontact cooling water discharges. To ensure that 327 IAC 5-2-11.5(g) is implemented in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 5, IDEM and EPA agree as follows:

1. 327 IAC 5-2-11.5(g) is not expressly limited to situations where the intake and outfall points are located on the same body of water. 40 CFR Part 132, Appendix F, Procedure 5, Paragraphs D and E require the intake and outfall points to be located on the same body of water in order for a discharger to qualify under the intake pollutant provisions. To ensure that 327 IAC 5-2-11.5(g) is only applicable to situations where the intake and outfall points are located on the same body of water:

IDEM shall not issue any permits allowing intake credits where the once-through noncontact cooling water intake and outfall points are located on different bodies of water.

2. 327 IAC 5-2-11.5(g)(1) states the IDEM may require a water quality-based effluent limitation based on an acute aquatic criterion for a substance or acute whole effluent toxicity when information is available to indicate that such a limit is necessary to protect

aquatic life, unless the substance or whole effluent toxicity is due solely to its presence in the intake water. 40 CFR Part 132, Appendix F, Procedure 5 requires a water quality-based effluent limitation in all cases when a limit is necessary to protect aquatic life, wildlife, or human health water quality standards, unless the discharge qualifies under the intake pollutant provisions in 40 CFR Part 132, Appendix F, Procedure 5, Paragraphs D and E. To ensure that IDEM always issues water quality-based effluent limitations unless the substance or whole effluent toxicity is due solely to its presence in the intake water:

IDEM shall exercise its discretion in 327 IAC 5-2-11.5(g)(1) to always require a water quality-based effluent limitation based on an acute aquatic criterion for a substance or acute whole effluent toxicity when information is available indicating that such a limit is necessary to protect aquatic life criteria unless the substance or whole effluent toxicity is due solely to its presence in the intake water.

3. 327 IAC 5-2-11.5(g)(3) states that if a substance is present at elevated levels in the noncontact cooling water wastestream due to improper operation and maintenance of the cooling system, the wastestream must be evaluated under the reasonable potential procedures in 327 IAC 5-2-11.5(b). IDEM considers pollutants added to the wastestream as a result of corrosion and erosion to be "elevated levels due to improper operation and maintenance," and shall evaluate a wastestream under 327 IAC 5-2-11.5(b) if a pollutant is present at elevated levels due to corrosion and erosion.

4. While 327 IAC 5-2-11.5(g)(1) only expressly applies to water quality-based effluent limitations based on acute aquatic life criteria and acute whole effluent toxicity, 327 IAC 5-2-11.5(g)(2) through 327 IAC 5-2-11.5(g)(6) authorize IDEM to undertake a reasonable potential analysis and issue water quality-based effluent limitations based on other criteria and standards. IDEM shall issue water-quality based effluent limitations based on an acute or chronic aquatic life, wildlife or human health criterion whenever information is available to indicate that the discharge causes, or has the reasonable potential to cause an exceedance of the criterion or standards.

### **III. Loading Limits for Wet Weather Flows**

327 IAC 5-2-11.6(g)(4) allows dischargers to request tiered mass limits for discharges that increase as a result of wet weather flow. To ensure 327 IAC 5-2-11.6(g)(4) is implemented in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 7, IDEM and EPA agree as follows:

A. IDEM interprets the language of 327 IAC 5-2-11.6(g)(4) to require the issuance of a concentration limit along with the tiered mass limits.

B. If a discharger requests tiered mass limits, IDEM always will issue a permit with a concentration limit along with the tiered mass limits.

**IV. Water Quality-Based Effluent Limitations Below the Level of Quantification - Pollutant Minimization Plan Monitoring**

327 IAC 5-2-11.6(h)(7)(A)(iii) states that the pollutant minimization plan shall include monitoring necessary to monitor progress toward the goal of maintaining the effluent at or below the water quality-based effluent limitation. To ensure that 327 IAC 5-2-11.6(h)(7)(A)(iii) is implemented in a manner consistent with 40 CFR Part 132, Appendix F, Procedure 8, Paragraph D, IDEM and EPA agree that, at a minimum, IDEM always will require semi-annual monitoring of potential sources of the pollutant at issue and quarterly monitoring for the pollutant in the influent of the wastewater treatment system, unless information generated by the pollutant minimization plan supports a request for less frequent monitoring or no monitoring requirements.

**INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

By: Lori F. Kaplan

Lori F. Kaplan  
Commissioner

Date: 4-17-00

**U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 5**

By: Francis X. Lyons

Francis X. Lyons  
Regional Administrator

Date: 7/28/00