

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF MAINE AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Section I. General

This Memorandum of Agreement (hereinafter, AGREEMENT) establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Maine Department of Environmental Protection, including the Commissioner and the Maine Board of Environmental Protection (hereinafter, the DEPARTMENT) and reviewed by Region 1 of the United States Environmental Protection Agency (hereinafter, the EPA). All additional agreements between the DEPARTMENT and EPA shall be in writing and are subject to review by the EPA and the DEPARTMENT.

If the ADMINISTRATOR of EPA determines that any provision of any agreement does not conform to the requirements of Section 402(b) of the Federal Clean Water Act (hereinafter, the CWA), 33 U.S.C. § 1251 et seq., or to the requirements of 40 CFR Parts 122-125, or other applicable Federal regulations, the ADMINISTRATOR shall notify the DEPARTMENT and the EPA, Region 1 of any proposed revisions or modifications which must be in such agreements.

The DEPARTMENT and the EPA hereby agree that this AGREEMENT does not address DEPARTMENT permits or portions of DEPARTMENT permits which do not apply to discharges of pollutants to navigable waters of the United States as defined in the CWA.

The DEPARTMENT and the EPA hereby agree to maintain a high level of cooperation and coordination between DEPARTMENT and EPA staffs in a partnership to assure successful and effective administration of a NPDES program. In this partnership, EPA will provide to the DEPARTMENT, on a continuing basis, technical and other assistance on permit matters as requested.

The DEPARTMENT will administer a NPDES program in accordance with Section 402 of the CWA and the applicable federal regulations promulgated thereunder, this AGREEMENT, applicable state legal authority, and any other agreements entered into between the State of Maine and EPA. This includes the "annual State Program Plan" consisting of the annual Performance Partnership Agreement and annual Memorandum of Understanding on Compliance and Enforcement Process and Communication contained therein. The DEPARTMENT has the primary responsibility to establish the State NPDES program priorities which are consistent with national NPDES goals and objectives.

The strategies and priorities for issuance, compliance monitoring and enforcement of permits, as established in this AGREEMENT, may be set forth in more detail in the annual State Program Plan. This AGREEMENT and the annual State Program Plan regarding the NPDES program shall be consistent. However, the basic requirements of this AGREEMENT shall

override any other agreement(s) entered into between the State of Maine and EPA, as required by 40 CFR § 123.24(c).

Either the DEPARTMENT or the EPA may initiate action to modify this AGREEMENT at any time. However, before this AGREEMENT may be modified, any proposed revisions must be put in writing, signed by the DEPARTMENT and the EPA and approved by the ADMINISTRATOR.

Section II. Scope of Authorization

The DEPARTMENT and the EPA acknowledge that Maine has requested that the EPA grant it authority to administer NPDES permitting, compliance, and enforcement program, including the general permit program, and pretreatment programs in Maine. Maine is not, however, seeking authorization for a sewage sludge management program as part of the NPDES program.

Maine has requested authorization for partial and/or phased program, as provided for by Section 402 (n) of the Clean Water Act. This first phase of authorization does not include implementation of the pretreatment program. No later than December 31, 2000, the DEPARTMENT agrees that Maine will commence administration of the pretreatment program. Until the DEPARTMENT assumes administration of the pretreatment program, EPA will continue to administer the program, including conduct of inspections, audits, reviews of various reports and initiation of compliance actions as necessary. The DEPARTMENT will continue to support EPA's pretreatment program activities as it has done in the past. Additionally, prior to its full assumption of the program, the DEPARTMENT will include in permits it issues, reissues, or modifies, appropriate pretreatment conditions. EPA will provide the DEPARTMENT with language regarding pretreatment for the DEPARTMENT to include in such permits and, until the DEPARTMENT assumes implementation of the program, EPA will review draft permits requiring pretreatment conditions.

The initial authorization does not include the program element regulating the location, design, construction and capacity of cooling water intake structures established by CWA 316(b). The DEPARTMENT shall seek legislation no later than the 2001 legislative session to obtain clear authority to regulate such structures, including existing structures not being constructed, altered or repaired, in accordance with the standards specified in CWA 316(b). Upon obtaining such legislation, the DEPARTMENT shall promptly apply to operate this element of the program. Until such time as legislation is enacted, and the EPA approves the DEPARTMENT to operate this element of the program, sources in Maine with cooling water intake structures subject to CWA 316(b) will continue to be regulated by EPA. They will need to obtain a NPDES permit from the EPA regarding the intake structures in addition to obtaining a NPDES permit from the DEPARTMENT covering their discharges (including those regulated pursuant to CWA 316(a)).

Section III. Program Responsibilities

The DEPARTMENT program equivalent to NPDES, under Section 402 of the CWA, and the regulations promulgated thereunder will be the Maine Pollutant Discharge Elimination System (MEPDES) adopted under Title 38, Chapters 2 and 3 of the Maine Statutes and implemented by Chapters 2, 543 and 520 through 529 of the DEPARTMENT'S rules.

A. DEPARTMENT Responsibilities. In accordance with the priorities and procedures established in this AGREEMENT and the annual State Program Plan, and any other agreements between State of Maine and EPA, the DEPARTMENT will:

1. Create and maintain the legal authority and the resources required to carry out all aspects of the MEPDES program.
2. Process in a timely manner and propose to issue, reissue, modify, terminate, or deny all MEPDES permits. Permit applications by major dischargers shall normally receive first priority in all NPDES activities, depending on water quality and public health considerations.
3. Comprehensively evaluate and assess compliance with schedules, effluent limitations and other conditions in these permits as outlined in Section V of this AGREEMENT.
4. Maintain a vigorous program of taking timely and appropriate enforcement actions in accordance with Maine Statutes and the CWA.
5. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section VII of this AGREEMENT.
6. Maintain an adequate public file at the appropriate regional or central office that must be easily accessible to EPA for program evaluation for each permittee. Such files must include, at a minimum, copies of:
 - Permit Application
 - Public Notice and either Fact Sheet or Statement of Basis
 - Draft Permit
 - Public Comments
 - Final Permit or Final Order of Denial
 - Discharge Monitoring Reports
 - All inspection reports
 - All enforcement actions
 - Other pertinent information and correspondence.
7. Submit to the EPA the information described in Section VIII of this AGREEMENT, the annual State Program Plan and applicable portions of 40 C.F.R Part 123. Additionally, upon request by the EPA staff, the DEPARTMENT shall submit specific information and allow access to files necessary for evaluating the DEPARTMENT's administration of the MEPDES.
8. Any information obtained or used by the DEPARTMENT under the MEPDES

shall be available to EPA upon request without restriction due to claims of confidentiality. If the information has been submitted to the DEPARTMENT under a claim of confidentiality, the DEPARTMENT shall inform EPA of that claim. Information claimed confidential which is used to develop permit conditions will be treated in accordance with 40 CFR 2, Subpart B; and 40 CFR § 122.7

9. The DEPARTMENT will cooperate with EPA in the administration of the MEPDES in accordance with EPA program policies and guidance.
10. By November 2001, the DEPARTMENT shall issue draft permits (or draft general permits or draft permit denials, if appropriate) covering any concentrated aquatic animal production facilities (as defined in 40 CFR §122.24) and any aquaculture projects (as defined in 40 CFR §122.25) engaged in the rearing of salmon and operating in or discharging to Maine waters. Final permits (or final general permits or final permit denials, if appropriate) shall be issued within six months thereafter. This schedule is subject to renegotiation if the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) do not issue their final determination regarding listing of the Gulf of Maine distinct population of anadromous Atlantic Salmon (Salmo salar) as endangered, by November 2000. The DEPARTMENT fully intends to carry out the NPDES program so as to protect endangered species (including the segment of the Atlantic Salmon, if listed) in accordance with the requirements of the CWA. Notice of all permit applications will be provided to the NMFS and FWS pursuant to Chapter 522, section 8(c)(iv) of the DEPARTMENT's rules. If the DEPARTMENT is advised in writing by NMFS or FWS that imposition of specific conditions in a permit is necessary to avoid substantial impairment of fish, shellfish or wildlife resources, the DEPARTMENT shall include the specific conditions in the permit to the extent they are determined necessary to carry out the provisions of the CWA, in accordance with Chapter 523, section 10(b) of the DEPARTMENT's rules. In particular, endangered species will be protected by the requirement that all NPDES permits issued by the DEPARTMENT shall ensure compliance with the State's water quality standards, including State narrative criteria for water quality, pursuant to Chapter 523, section 5(d) of the DEPARTMENT's rules. In addition, any failure by the DEPARTMENT to ensure compliance with CWA requirements including water quality standards so as to protect endangered species shall constitute grounds for EPA objection to a permit pursuant 40 CFR §123.44(c).

B. EPA's Responsibilities.

1. EPA will commit, to the maximum extent possible, funding to the DEPARTMENT to support its administration of the NPDES program. It is recognized that a portion of MEPDES related activities are funded under Section 106 of the CWA and should a reduction in funds occur, the MEPDES effort may

- be reduced by a negotiated amount.
2. Where no effective effluent guidelines or standards exist for a discharge, EPA will assist the DEPARTMENT by providing available technical information to assist in writing permit terms and conditions, for example, contractor reports, draft development documents, and available permits and effluent data from similar facilities.
 3. EPA will ensure that the DEPARTMENT is kept fully informed and up to date concerning:
 - a. EPA contractor reports; draft and final EPA development documents; and proposed and final effluent guideline regulations; and
 - b. Draft and final settlement agreements between litigants and EPA that may affect the MEPDES or water quality interests of the State.
 4. EPA will provide the DEPARTMENT with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep the DEPARTMENT informed of development of NPDES program guidance, and provide for input by the DEPARTMENT when appropriate.
 5. As negotiated in the annual State Program Plan, EPA will provide the DEPARTMENT with the necessary assistance to implement, utilize and update PCS for all aspects of the MEPDES program.
 6. As outlined in Section IX of this AGREEMENT, EPA will oversee the DEPARTMENT's administration of MEPDES on a continuing basis for consistency with the CWA and all applicable regulations promulgated thereunder, State law or rules, this AGREEMENT, any other agreements between the DEPARTMENT and EPA, and the annual State Program Plan. In addition, EPA may consider as a part of its assessment, comments from permittees, the public, and Federal and local agencies concerning the DEPARTMENT's administration of MEPDES. Any such comments by EPA will be brought to the attention of the DEPARTMENT by written correspondence, if the commenting party has not previously provided the DEPARTMENT with comments.
 7. EPA shall provide training courses in compliance inspections and permit writing, on an as need basis, contingent upon available EPA resources.

C. Jurisdiction over Permits.

Upon the ADMINISTRATOR'S approval of the MEPDES program, the DEPARTMENT will immediately assume authority (subject to EPA's oversight and enforcement authority) for permitting, compliance and enforcement activities of the NPDES program (except sludge as regulated under Section 405 of the CWA). Administration of the pretreatment program and the CWA 316(b) program element shall be assumed as detailed in Section II of this AGREEMENT.

1. Upon program approval, EPA shall suspend (except as provided in paragraph 3, below) the issuance of federal permits for those activities subject to the approved

State program. After program approval, EPA shall retain jurisdiction over any permits it has issued (including General Permits) until the DEPARTMENT issues, reissues or modifies a MEPDES permit for that discharge source, subject to the following. The DEPARTMENT shall conduct inspections and receive and review discharge monitoring reports for all permits pursuant to the annual State Program Plan. EPA shall process appeals, modifications requests and variance requests pertaining to permits issued by EPA. After program approval and where the conditions of existing state-issued discharge licenses are substantially the same as those in current EPA permits, the DEPARTMENT may initiate and pursue enforcement action to address violations of those parallel requirements, subject to EPA's oversight and enforcement authority. Requirements unique to EPA issued permits will be enforced by EPA.

2. For permits under active Federal enforcement at the time of program authorization, EPA will complete the enforcement action unless otherwise agreed to by the parties. However, the DEPARTMENT will assume permitting, compliance, pretreatment and take the lead on future enforcement authority when such permits are renewed, subject to EPA's oversight and enforcement authority. As each EPA enforcement action is resolved, EPA will notify the DEPARTMENT and transfer any additional permit file materials at the time. EPA will make every effort to resolve these matters in a timely manner. Resolution of an enforcement action can be accomplished by either the permittee complying with the requirements of a compliance order, consent agreement or court order resulting from the EPA enforcement action or, if agreed to by EPA, the imposition of an equivalent enforceable compliance schedule by the DEPARTMENT.
3. EPA may retain permitting authority over draft permits that are at EPA's public notice stage at the time of program approval, until final issuance. For permits for which an evidentiary hearing has been requested or an appeal taken at the time of program authorization, EPA will retain full jurisdiction until that matter has been resolved. Upon resolution of the administrative challenge or expiration of the permit, EPA will notify the DEPARTMENT and the permittee that jurisdiction over the permit has been transferred to the DEPARTMENT. EPA will make every effort to resolve these issues in a timely manner and if requested by either EPA or the DEPARTMENT, meetings will be scheduled to discuss issues pertaining to NPDES permits retained by EPA. The DEPARTMENT shall retain its rights under Section 401 of the CWA to consider certification to subsequent EPA permitting actions on these retained NPDES permits. A list of permits that may be on public notice at the time of program approval appears in **Attachment A** to this AGREEMENT. EPA will provide a final list to the DEPARTMENT of permits on public notice at the time of program approval.
4. If a DEPARTMENT permit is vetoed by EPA, EPA will assume permitting, compliance, and enforcement authority for that facility, concurrent to authority under Maine law.

Section IV. Permit Review and Issuance

The DEPARTMENT is responsible for drafting, providing public notice if not provided by the permittee, issuing, modifying, revoking and reissuing, and terminating permits in accordance with Section III, Section VIII, and Subsection IV.D of this AGREEMENT, any other agreements between the DEPARTMENT and EPA, the CWA, and the regulations promulgated thereunder at 40 CFR Parts 122-123, and applicable State statutes and rules.

- A. **Receipt of New Permit Applications by the DEPARTMENT.**
Upon receipt of a completed permit application, the DEPARTMENT will enter all required information into the EPA national Permit Compliance System (PCS).
- B. **Permit Reissuance.** All expiring NPDES permits for which timely and complete permit renewal requests have been submitted shall be reissued on or before their date of expiration. If such timely reissuance is not possible, the DEPARTMENT will notify EPA of the reasons for the delay. In such case the permit may be administratively continued beyond its expiration date in accordance with State law, but in no event will the permit be modified or revised to extend its expiration date.
- C. **EPA Review of Draft and Proposed Permits, Permit Modifications, and Permit Revocations and Reissuances.** The DEPARTMENT shall consult with EPA before issuing public notice of a draft permit to ensure that the permit will comply with federal guidelines and requirements. The DEPARTMENT shall transmit to the EPA appropriate portions of working documents in connection with these consultations.
 - 1. EPA will review draft permits rather than proposed permits. A proposed permit need not be prepared by the DEPARTMENT and transmitted to EPA for review unless the DEPARTMENT proposes to issue a permit which differs from the draft permit reviewed by EPA, the EPA has objected to the draft permit, or there is significant public comment.
 - 2. Unless otherwise waived, EPA will review all draft MEPDES permits, permit modifications and revocations and reissuances. Prior to the date the draft permit is sent to the applicant, the DEPARTMENT will send EPA one copy of the public notice, the draft permit, the complete permit application, the fact sheet associated with the draft permit, copies of significant comments, and once issued, a copy of the issued permit. Upon request, the DEPARTMENT will provide EPA with copies of documents related to or supporting the draft permit. When applicable, the submittal must be accompanied by a new source/new discharger determination. The DEPARTMENT shall supply EPA with copies of these documents for permits EPA has waived review whenever requested by EPA.

3. Within thirty (30) days of EPA's receipt of the draft permit, EPA may make to the DEPARTMENT general comments upon, objections to, or recommendations with respect to the draft permit. Within this review time, EPA shall notify the DEPARTMENT of any objections to the issuance of the draft permit, and shall set forth in writing the general nature of the objection. The time for EPA review shall be extended to ninety (90) days upon request of EPA. A copy of any comments, objections, recommendations will also be sent by EPA to the permit applicant.
4. In the case of general permits, EPA shall have ninety (90) days from the date of receipt of the draft general permit to comment upon, object to or make recommendations with respect to the draft general permit.
5. In the event EPA files a general objection to a draft permit, EPA shall have ninety (90) days from the date of EPA's receipt of the draft permit to supply the DEPARTMENT, in writing, with the specific grounds for objection, including:
 - (i) A statement of the reason for the objection (including the section of CWA or regulations that support the objection); and
 - (ii) The actions that must be taken by the DEPARTMENT to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the EPA.).EPA's objection to the issuance of a draft permit must be based upon one or more of the grounds listed in 40 CFR § 123.44 (c).
6. Prior to notifying the DEPARTMENT of an objection based upon any of the grounds set forth in 40 CFR § 123.44(c), EPA:
 - a. Shall consider all data transmitted pursuant to 40 CFR § 123.43;
 - b. May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the DEPARTMENT to transmit to EPA the complete record of the permit proceedings before the DEPARTMENT, or any portions of the record that EPA determines are necessary for review. If this request is made within 30 days of receipt of the DEPARTMENT's submittal under 40 CFR § 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in Paragraph 3 above for EPA's review shall recommence when EPA has received such record or portions of the record; and
 - c. May, in its discretion, and to the extent feasible within the period of time available under Paragraph 3 above afford to interested persons an opportunity to comment on the basis for the objection.
7. In the event written notification is not provided within ninety (90) days of the draft or proposed permit having been sent, the objection shall be considered to be satisfied.
8. Within 90 days of receipt by the DEPARTMENT of an objection by EPA, the DEPARTMENT or any interested person may request that a public hearing be held by EPA on the objection in accordance with 40 CFR §§ 123.44(e) and (f), and 124.10. Following the public hearing, EPA shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall

notify the DEPARTMENT of this decision.

If no public hearing is held and the DEPARTMENT does not resubmit a permit revised to meet EPA's objection within ninety (90) days of receipt of the objection, EPA may issue the permit in accordance with 40 CFR Parts 121, 122 and 124 and any other guidelines and requirements of CWA.

If a public hearing is held, EPA does not withdraw the objection, and the State does not resubmit a permit revised to meet EPA's objection or modified objection, EPA may issue the permit in accordance with 40 CFR Parts 121, 122, and 124 and any other guidelines and requirements of CWA. Exclusive authority to issue the permit passes to EPA if its objections are not satisfied within ninety (90) days of the notice of objection (or thirty (30) days following EPA's reaffirmation of the original objection or modification of the objection following a public hearing on the objection).

9. EPA may request to review any applicant's notice of intent to be covered under a general permit. EPA will, within ten (10) days after receipt of the notice of intent, notify the DEPARTMENT of any formal objections to the applicant's suitability for coverage under the general permit.
 10. Following expiration of the period for public comment on a draft permit, a proposed permit will be drafted. If (a) the proposed permit is the same as the draft permit defined in the public notice, (b) EPA has not objected to such draft permit, and (c) significant public comments have not been made, the DEPARTMENT may assume EPA has waived its review of the proposed permit and issue the permit without further review by EPA. A copy of the final issued permit shall be sent to EPA. In all other cases, the DEPARTMENT will send one copy of the proposed permit, recommendations of any other affected State and copies of written comments and hearing records, including the response to comments prepared under 40 CFR § 124.17 to the EPA. Whenever the DEPARTMENT prepares a written explanation to an affected State explaining the reasons for rejecting any of its recommendations, the DEPARTMENT shall transmit a copy to EPA. EPA will, within thirty (30) days of the date the proposed permit is received by EPA, notify the DEPARTMENT and the permit applicant of any formal objections authorized under the CWA. The notification shall set forth in writing the general nature of the objection.
- D. Waiver of Permit Review by EPA. The EPA is not waiving the review of any permits at this time. The EPA may waive review of designated permits or classes of permits through a letter sent by the EPA to the DEPARTMENT. The EPA also may terminate any such waiver, through such a letter, at any time prior to a permit becoming final.
- E. Public Participation. The public notice provided in the permit process shall be consistent with 40 CFR Part 124, but the EPA agrees that the DEPARTMENT may issue public

notice of the permit application instead of public notice of the draft permit, provided that the intent of the federal regulations are met. To ensure that the intent of the federal regulations are met, the DEPARTMENT agrees to provide, at the time of the application, a public notice containing all the information in Chapter 522 § 8(d)(1) of the Department's rules and those sections of 40 CFR Part 124 applicable to state programs. The DEPARTMENT also agrees to send the entities listed in Chapter 522 § 8(e) and 40 CFR Part 124, as well as anyone else who responds to the notice of the permit application, a copy of the permit application and, when prepared, copies of the fact sheet and draft permit. The DEPARTMENT also agrees to provide each person who receives a copy of the draft permit with thirty (30) days within which to submit comments on the draft permit and/or request a public hearing.

1. Draft permits, public notices, applications and fact sheets or statements of basis will be provided to any party upon request and upon payment of applicable state duplicating fees.
2. Unless otherwise waived by the specific organizations, the DEPARTMENT will provide the persons listed in Chapter 522 § 8(c) and 40 CFR § 124.10(c) with copies of public notices and, if required by Chapter 522 § 6, or 40 CFR § 124.8, or Chapter 522 § 8(e) or 40 CFR § 124.10(e), copies of fact sheets, permit applications and draft permits. In particular, all of the above documents will be provided to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.
3. All draft general permits, applications for permits, and pretreatment program approvals shall be publicly noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with Chapters 2 and 522.
4. The federally required public notice and comment procedures will be followed with respect to all permit modifications, except those minor modifications described in 40 CFR § 122.63. In the event the DEPARTMENT initiates a permit modification for the reasons set forth in 38 MRS § 414-A(5), it will make the necessary public notice of the proposed permit modification when a draft permit modification has been prepared. In other cases, public notice will be given of the permit modification application in the same manner as for initial permit applications.
5. Copies of final permits will be sent to persons requesting or commenting upon draft permits.

F. Issuance of Permits or Notice of Intent to Deny.

1. If the final determination is to issue the permit, the final permit will be forwarded to the permit applicant, along with a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in Section VIII of this AGREEMENT.
2. If the final determination is to deny the permit, notice of intent to deny shall Be

given to EPA, and to the applicant in accordance with applicable MEPDES Rules, and NPDES regulations.

- G. Termination, Modification, Revocation and Reissuance of permits. Except as waived pursuant to Section IV.D above, the DEPARTMENT shall notify EPA whenever it intends to terminate an issued NPDES permit. In addition, the DEPARTMENT shall transmit to EPA a copy of any permit that it proposes to modify or revoke or reissue with the proposed changes clearly identified. The procedures in Section IV.C above shall be followed with respect to modifications by the DEPARTMENT of any issued permit and, for purposes of this agreement, each permit proposed to be modified shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR § 122.63.
- H. Major Discharger List. There shall be included as a part of the annual State Program Plan a "major dischargers" list, for industrial and municipal facilities. The industrial major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a point rating worksheet or applicable definitions plus any additional dischargers that, in the opinion of the DEPARTMENT or EPA, have a high potential for violation of water quality standards. The municipal major dischargers list shall include those facilities mutually defined by the DEPARTMENT and EPA as major dischargers based on a design domestic treatment plant flow of at least 1.0 MGD or a high potential for violation of water quality standards or pose a threat to human health or the environment.
- I. Administrative or Court Action. If the terms of any permit, including any permit for which review has been waived by EPA, are affected in any manner by administrative or court action, the DEPARTMENT shall immediately transmit a copy of the permit, with changes identified to the EPA and shall allow for EPA to make written objections to the changed permit in accordance with Section IV.C above.
- J. Variances. The DEPARTMENT will conduct an initial review of all requests for fundamentally different factors variances, for variances under Sections 301(c), (g), (h) and (k) and Section 316(a) of the CWA, and for modifications to federal effluent limitations established under Section 302 of the CWA.
1. The DEPARTMENT may deny or approve a request for a variance under Sections 301(k) or 316(a) of the CWA after EPA has concurred with the proposed decision.
 2. The DEPARTMENT may deny a request for a variance under Sections 301(c), (g), or (h), or Section 302 of the CWA, or for fundamentally different factors. Such determination shall be forwarded to the requester and EPA. If the DEPARTMENT determines that factors exist that may warrant a variance, the request and the DEPARTMENT recommendation for approval shall be sent to EPA. If EPA denies the variance request, the DEPARTMENT shall notify the

applicant. If EPA approves the variance request, the DEPARTMENT will prepare a draft permit factoring in the variance.

Section V. Compliance Monitoring

As further delineated in the annual State Program Plan, the DEPARTMENT agrees to maintain a vigorous program to identify noncompliance and initiate timely, appropriate and effective actions to return the discharger to compliance. Discharges endangering public health shall receive immediate and paramount attention. The DEPARTMENT will operate a timely and effective compliance monitoring system including entry of required data to the Permit Compliance System (PCS) at least monthly. For purposes of this AGREEMENT the term "compliance monitoring" shall refer to all efforts to assure full compliance with MEPDES permit conditions and NPDES program requirements. Compliance monitoring shall normally focus first on major dischargers, as defined in Section IV.H above, 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. All compliance monitoring activities shall be undertaken in such a manner that, if the situation requires, will lead to timely, appropriate and effective formal enforcement actions as outlined in Section VI.

As indicated in Section III.A.6 of this AGREEMENT, the DEPARTMENT shall maintain complete records of all written material relating to the compliance status of MEPDES permittees including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, and any other reports that permittees may be required to submit under the terms and conditions of a MEPDES permit, approved pretreatment program (when applicable), state administrative actions, or state court orders.

- A. **Schedule Dates.** The DEPARTMENT will track on its own tracking system and on PCS the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (i.e., Administrative Orders, Consent Agreements; Notices of Violation, court orders, etc.). In order to determine the permittee's compliance status, the DEPARTMENT will conduct a timely and substantive review of all date-related permit conditions and reports and consider possible enforcement actions for failure to submit required reports.
- B. **Review of Self-Monitoring Reports.**
 - 1. In accordance with the annual State Program Plan, the DEPARTMENT will operate a tracking system capable of determining if:
 - a. the required self-monitoring reports are submitted on time;
 - b. the submitted reports are complete;
 - c. the data are accurately entered into PCS; and
 - d. the permittee is in full compliance with all permit conditions.

2. The DEPARTMENT will conduct a timely and substantive review of all self-monitoring reports received and will evaluate the permittee's compliance status. This evaluation will be uniform and consistent, and will take into account the frequency, severity, circumstances and analytical error in determining where limitations have been exceeded.
3. The DEPARTMENT will ensure that MEPDES permit limitation and permittee self-monitoring compliance data are entered into PCS in accordance with the annual State Program Plan.
4. EPA may object in writing to deficiencies in reporting forms used by permittees or the DEPARTMENT. The DEPARTMENT will ensure that deficiencies identified by EPA staff are adequately addressed.
5. The DEPARTMENT shall use EPA approved Discharge Monitoring Reports (DMRs) for all facilities.
6. The DEPARTMENT will process and review Discharge Monitoring Reports and other compliance information in accordance with the annual State Program Plan.

C. Facility Inspections.

1. Types. The different types of compliance inspections will be conducted in accordance with (and are described in) any DEPARTMENT inspection policy, EPA's NPDES Compliance Inspection Manual (September, 1994), or any subsequent revisions thereto, and the annual State Program Plan.
2. General Procedures. The DEPARTMENT and EPA will, as part of the annual State Program Plan, define the scope of compliance audits and inspections to be undertaken by the DEPARTMENT. EPA or the DEPARTMENT may determine that additional inspections are necessary to assess compliance with issued permits. If EPA makes a determination that additional inspections are necessary or appropriate, it shall notify the DEPARTMENT of such determination and may perform the inspection alone or jointly with the DEPARTMENT or may request the DEPARTMENT to conduct those inspections. EPA will keep the DEPARTMENT fully informed of its plans to conduct inspections and of the results of such inspections. Likewise, the DEPARTMENT will keep EPA informed of any inspections it performs and of the results of such inspections. EPA will attempt to provide the DEPARTMENT with notice before a joint or independent inspection is conducted, except for confidential criminal program inspections.
3. Reporting Schedule. The DEPARTMENT will forward to EPA the reports of all compliance and sampling inspections of all major dischargers within sixty (60) days of the date of the inspection. When an inspection is conducted solely by EPA, a copy will be forwarded to the DEPARTMENT within sixty (60) days after the inspection, except for confidential criminal program inspections. Each report will be reviewed by the DEPARTMENT to determine what, if any, enforcement action may be necessary, subject to EPA's oversight and enforcement authority.

All DEPARTMENT and EPA inspections will be entered into PCS as negotiated in the annual State Program Plan.

D. Miscellaneous Compliance Activities.

1. Independent Inspection Capability. The DEPARTMENT shall have inspections and surveillance procedures to identify compliance or noncompliance independent of permittee supplied information.
2. Information Requests. Whenever either EPA or the DEPARTMENT requests information concerning a specific discharger and the requested information is available from the files, that information will be provided to the requesting agency within a reasonable time.
3. Laboratory Quality Assurance
 - a. The EPA will be responsible for coordinating the DMR-QA program to evaluate laboratories serving the wastewater treatment facilities in Maine.
 - b. EPA will take the lead in enforcing DMR-QA on non-responders and will be responsible for following up on DMR-QA study results.
 - c. The DEPARTMENT will ensure permitted facilities follow approved quality assurance protocols.
4. Emergency Pollution Incidents. Upon receipt of any information of any actual or threatened pollution incident that may result in endangerment to human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this AGREEMENT of the incident (that is, the DEPARTMENT notifies EPA, and EPA notifies the DEPARTMENT).

Section VI. Enforcement

- A. Timely Enforcement Responsibility. Consistent with the annual State Program Plan, the DEPARTMENT is responsible, subject to EPA's oversight and enforcement authority, for taking timely and appropriate enforcement action against persons in violation of compliance schedules, effluent limitations, and all other permit conditions, and pretreatment standards and requirements. This responsibility encompasses violations whether detected by the DEPARTMENT or EPA. The DEPARTMENT agrees to implement the enforcement procedures described in the Program Description of this application and in the annual State Program Plan and in appropriate federal statutes, regulations, and policies. Actions against minor dischargers generally should be given lower priority but should be taken as quickly as possible.
1. In implementing its enforcement program, the DEPARTMENT will follow procedures that are consistent with the principles in the DEPARTMENT'S Compliance and Enforcement Policies and the annual State Program Plan. Such procedures will include (but are not limited to) procedures for: tracking the

timeliness of permittee program submissions and the permittee's compliance with compliance schedules; screening of DMR compliance data and the application of the Technical Review Criteria (TRC) to determine Significant Non-compliance (SNC); the application of initial compliance and/or escalated formal enforcement to address identified violations according to specific time frames negotiated in the annual State Program Plan; and the maintenance of a chronological summary of all violations. The DEPARTMENT will screen all DMRs from permittees and all pretreatment monitoring reports to determine the level and frequency of all violations and will evaluate instances of noncompliance by all major and minor permittees.

2. For violations which endanger or cause damage to public health or the environment, the DEPARTMENT shall issue a complaint for injunctive relief under 38 MRSA § 348(2) or shall take other appropriate enforcement action which may include, but not be limited to an order pursuant to 38 MRSA § 347-A(3) to effect the immediate correction of the violation. Such orders shall be issued as soon as possible when the DEPARTMENT makes a determination that the condition or activity is of a nature which, if not abated, will endanger or cause damage to public health or the environment.
 3. The DEPARTMENT shall keep records demonstrating that: (a) its enforcement procedures result in appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent and timely manner; (b) its formal enforcement actions clearly define what the permittee is expected to do by a reasonable date certain; and (c) the assessment of a civil penalty, when appropriate, is based on consideration of established factors and is an amount appropriate to the violation.
 4. The DEPARTMENT will regularly keep EPA informed, through mutually acceptable procedures as set forth in the annual State Program Plan, of the compliance status of facilities, enforcement activities completed and cases filed in court.
 5. The DEPARTMENT shall implement procedures for receiving and ensuring proper consideration of information about alleged violations that are submitted by the public.
- B. EPA's Oversight and Enforcement Authority. This AGREEMENT is not meant to restrict or limit EPA's oversight and enforcement authorities under the Clean Water Act. Any discussion of EPA or State roles and responsibilities is intended to guide EPA and State personnel in carrying out an effective partnership, but is not meant to make the State the EPA's agent for purposes of enforcement, or to restrict or limit the EPA's direct enforcement authority under the CWA. Thus, the EPA reserves the right to bring federal enforcement action under the CWA in response to any violation of the CWA. In particular, if the EPA determines that the DEPARTMENT has not taken timely enforcement action against a violator and/or that its action has not been appropriate, the EPA may proceed with any or all enforcement options available under section 309 of the CWA. EPA generally will not proceed with federal civil enforcement until the

DEPARTMENT has been given at least thirty (30) days notice to take appropriate enforcement action. Such notification will be made through a written communication to the DEPARTMENT. Notification generally may not be provided when the EPA is exercising its emergency power under Section 504 of the CWA. The EPA may determine that the DEPARTMENT has failed to take appropriate enforcement action including but not limited to when the Department has failed to seek or impose, where appropriate, penalties in amounts which the EPA believes to be substantially adequate in comparison to the amounts which the EPA would require under similar facts. Finally, this AGREEMENT does not create any rights in law or equity for any person not a party to this AGREEMENT. Any failure by the EPA to follow any provision(s) of this AGREEMENT shall not affect the validity of any inspection or enforcement action, and shall not constitute a defense to any violation of the Act.

C. Appropriate Involvement of Department of the Attorney General (AG)

1. The DEPARTMENT and AG have established procedures for the routine coordination of enforcement cases, including notification of proposed enforcement actions and general time frames for actions from case referral to filing. The DEPARTMENT shall maintain procedures to assure that coordination procedures with the AG result in:
 - a. timely review of initial referral packages;
 - b. satisfactory settlement of cases, as appropriate;
 - c. timely filing and prosecution of well-prepared referral cases; and
 - d. prompt action where dischargers violate consent orders.

As a general goal, the DEPARTMENT cases should proceed from referral to filing in 60 to 90 days.

2. The DEPARTMENT is also responsible for establishing internal procedures for notifying and consulting with the AG on individual cases arising throughout the year. The DEPARTMENT will provide a copy of these procedures to EPA.

D. DEPARTMENT Requested Enforcement. The DEPARTMENT may request EPA to initiate federal enforcement action when the DEPARTMENT has been unable to achieve compliance through State remedies.

E. The DEPARTMENT will not oppose intervention in the State enforcement process by any citizen when permissive intervention may be authorized by statute, rule, or regulation.

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

Section VII. Pretreatment

This section is intended to define DEPARTMENT and EPA responsibilities for establishment and enforcement of the National Pretreatment Program under Sections 307(b) and (c) and 402 of the CWA. In general, the DEPARTMENT will apply and enforce the pretreatment regulations as required by 40 CFR Part 403 and EPA will oversee DEPARTMENT pretreatment program operations consistent with 40 CFR Part 403 regulations and this AGREEMENT.

The DEPARTMENT will have authority to implement the pretreatment program upon approval, and will commence implementation of the pretreatment program prior to December 31, 2000. However, as the DEPARTMENT issues, reissues, or modifies permits in accordance with Section IV of this AGREEMENT, the DEPARTMENT will include in those issued, reissued or modified permits appropriate pretreatment conditions. EPA will provide the DEPARTMENT with pretreatment permit language for the DEPARTMENT to include in the permits and will, until the DEPARTMENT commences implementation of the pretreatment program, review the draft permits that include pretreatment conditions. After the DEPARTMENT commences full implementation, EPA will only review the permits for which it has not waived review pursuant to Section IV.D.

- A. Basic Program (to be effective prior to December 31, 2000)
 1. The DEPARTMENT will have primary responsibility, subject to EPA's oversight and enforcement authority, for
 - a. seeking civil and criminal penalties and injunctive relief, for noncompliance by a POTW with pretreatment conditions incorporated into the POTW Permit and for noncompliance with Pretreatment Standards by Industrial Users ("IU") as set forth in Chapter 528 § 9, adopted in conformance with 40 CFR § 403.8(f)(1)(vi).
 - b. reviewing, approving, denying and overseeing of POTW Pretreatment Programs submitted by POTWs to ensure that Chapter 528 is enforced in accordance with procedures outlined in that Chapter and federal regulations;
 - c. incorporating POTW Pretreatment Program conditions in permits issued to POTWs as required in Chapter 528 § 9 which is adopted to be in conformance with 40 CFR § 403.8 and CWA Section 402(b)(8), requiring compliance by POTWs with these incorporated permit conditions, and requiring compliance by Industrial Users with Pretreatment Standards;
 - d. ensuring continuing compliance by POTW's with pretreatment conditions incorporated into the POTW Permit through review of monitoring reports submitted to the DEPARTMENT by the POTW, as required by Chapter 528 § 12, which is adopted in conformance with 40 CFR § 403. 12, and ensuring continuing compliance by IUs with Pretreatment Standards

through the review of self-monitoring reports submitted to the POTW or to the DEPARTMENT by the IUs as required by Chapter 528 § 12, which is adopted in conformance with 40 CFR § 403.12;

- e. carrying out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment conditions incorporated into the POTW permit, and carrying out inspection, surveillance and monitoring procedures which will determine, independent of information supplied by the Industrial User, whether the IU is in compliance with Pretreatment Standards.
- f. as specified in subsection D below, reviewing and recommending approval of (but not approving) requests for Fundamentally Different Factors variances submitted by IUs in accordance with the criteria and procedure set forth in 40 CFR §§ 403.7, 403.9, and 403.11.
- g. reviewing and, as appropriate, approving POTW requests for authority to modify categorical pretreatment standards to reflect removal of pollutants by a POTW in accordance with Chapter 528 §§ 8, 10 and 11, which are adopted in conformance with 40 CFR §§ 403.7, 403.9 and 403.11.
- h. Identifying POTW's required to develop Pretreatment Programs in accordance with 40 CFR § 403.8(a) and notifying these POTW's of the need to develop a POTW Pretreatment Program, and provide technical and legal assistance to POTW's in developing Pretreatment Program. In the absence of a POTW's Pretreatment Program, the DEPARTMENT shall carry out the activities set forth in 40 CFR § 403.8(f)(2);
- i. Sampling and analyzing: (A) Influent and effluent of POTWs to identify, independent of information supplied by the POTW, compliance or noncompliance with pollutant removal levels set forth in the POTW permit; and
(B) The contents of sludge from the POTW and methods of sludge disposal and use to identify, independent of information supplied by the POTW, compliance or noncompliance with requirements applicable to the selected method of sludge management;
- j. Investigating evidence of violations of pretreatment conditions set forth in the POTW Permit by taking samples and acquiring other information as needed.

B. 40 CFR § 403.6(a) NPS Categorical Standards. Pursuant to Chapter 528 § 7, the DEPARTMENT shall review requests from IUs for industrial category or subcategory determinations received within sixty (60) days after the effective date of an NPS for a subcategory under which an IU believes itself to be included and prepare a written determination and justification as to whether the IU does or does not fall within that particular subcategory. The DEPARTMENT shall forward its findings together with a

copy of the request and necessary supporting information to EPA for concurrence. If EPA does not modify or object to the DEPARTMENT proposed findings within sixty (60) days after receipt thereof, the DEPARTMENT will take agency action approving or denying the request.

- C. 40 CFR § 403.7 Removal Credits. Pursuant to Chapter 528 § 8, the DEPARTMENT shall review POTW applications for removal credits for users who are or may be subject in the future to NPS. The DEPARTMENT findings together with application and supporting information shall be submitted to EPA for review. No removal credits request shall be approved by the DEPARTMENT, if during the thirty (30) day (or extended) evaluation period provided for in 40 CFR § 403.11(b)(1)(ii), and any hearing held pursuant to 40 CFR § 403.11(b)(2), EPA objects in writing to the approval of such a submission. Any requests for removal credits submitted to EPA before authorization of the MEPDES shall be processed by EPA until a final decision is issued/denied by EPA.
- D. Pursuant to Chapter 528 § 13, and 40 CFR § 403.13 Variances From Categorical NPS for Fundamentally Different Factors (FDF), the DEPARTMENT will make an initial finding on all requests from IUs for variances from categorical NPS for FDF, and in cases where the DEPARTMENT supports the variance, submit its findings together with the request and supporting information to EPA for a final review. The DEPARTMENT will not grant a FDF request until written concurrence has been received from EPA. The DEPARTMENT can deny requests for FDF without EPA review.
- E. Effective Integration of Pretreatment Enforcement Activities into the MEDEPS Program.
 - 1. The DEPARTMENT will have enforcement response procedures and time frames consistent with the Pretreatment Compliance Monitoring and Enforcement Guidance and Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements (Sept. 1989) or any subsequent guidance. This includes reporting all regulated POTWs (including minor POTWs with approved pretreatment programs) on the QNCR when reportable noncompliance (RNC) and significant noncompliance criteria (SNC) are met. These procedures will include taking appropriate enforcement action where POTW's fail to submit approvable pretreatment programs, have violations of pretreatment requirements, or fail to submit timely reports. The DEPARTMENT will also have procedures for evaluating whether POTW's are taking appropriate enforcement responses to violations by IUs. Where POTWs are not the primary control authorities, the DEPARTMENT will be directly responsible for having these procedures in place for categorical and significant non-categorical Industrial Users.
 - 2. The DEPARTMENT will take appropriate action against permittees with pretreatment programs that are in significant noncompliance, as a result of: failure to meet milestones in enforceable schedules for submitting required local

pretreatment programs; violations of effluent limits; and delinquent POTW pretreatment reports. Enforcement actions against these POTWs will be taken consistent with the criteria and time frames for the program. The DEPARTMENT will also take enforcement actions against POTWs for failure to adequately implement the pretreatment program or enforce against their IUs and will take IU enforcement actions where necessary, generally in conjunction with enforcement against the responsible POTW that is failing to enforce or as part of an overall strategy to bolster a local program. The DEPARTMENT will ensure that POTWs provide, at least annually, public notification of industries in SNC with applicable pretreatment requirements in the daily newspaper with the largest circulation published in the municipality in which the POTW is located.

- F. Miscellaneous. 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 no less stringent than any set forth in the National Pretreatment Program, or other requirements or prohibitions established under the CWA or federal regulations.

Section VIII. Reporting and Transmittal of Information on MEPDES Regulated Facilities

A. DEPARTMENT to EPA

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| 1. | A copy of all complete permit applications, draft permits, public notices, fact sheets or statements of basis, and as applicable, new source/new discharger determinations, except for those for which permit review is waived. | Upon availability |
| 2. | A copy of any applicant's NOI to be covered by a general permit. | Upon request by EPA |
| 3. | A copy of all draft permits (including general permits), recommendations of any other affected State, written comments and hearing records. DEPARTMENT response to comments, including response to recommendations from another State, except those draft permits for which permit review is waived by EPA. | When drafted |
| 4. | One copy of all issued permits and documentation which is related to or affects authorization of the permit. | As issued |
| 5. | Copies of all major municipal and industrial facility inspection reports and copies of letters transmitting them to permittees. Inspection reports for minor facilities will be provided upon request. | Within 60 days of survey or for CSI, 60 days after the sampling results are received |

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| 6. | For all major dischargers subject to regulation under Section 402 of CWA, a permit noncompliance report (the "Quarterly Noncompliance Report") including information defined in 40 CFR § 123.45. | As negotiated in the annual State Program Plan |
| 7. | For all non major dischargers subject to regulation under Section 402 or 307 of the CWA, a statistical summary shall be prepared (as described in 40 CFR § 123.45) indicating number of noncompliances, number of enforcement actions and number of extensions of compliance deadlines. | Annually within 60 days following the end of the Federal fiscal year. (September 30) |
| 8. | Copies of all enforcement actions against major discharger violators of permit conditions and pretreatment requirements, including: Administrative Orders Processing for Judicial Action Consent Decrees. | As issued |
| 9. | Copies of the following correspondence, required by Section VII of this Agreement to carry out the Pretreatment Categorical pretreatment determinations made under Section VII.B Initial removal credit determinations under Section VII.C. Initial determinations on pretreatment FDF under Section VII.D. | As issued or received |
| 10. | Notification of any DEPARTMENT, legislative, or court action that may affect the MEPDES program. | As the DEPARTMENT becomes aware |
| 11. | Notification of any revisions that need to be made to the MEPDES program to preserve compliance with new or revised federal NPDES program requirements and a timetable for completing such revisions. | Annually |

B. EPA to DEPARTMENT

| | | |
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| 1. | Revisions to the schedule of Pretreatment Audit Inspections (PAIs), Compliance Sampling Inspections (CSIs) and Compliance Evaluation Inspections (CEIs). | As needed |
| 2. | Copies of all EPA completed PAIs, CSI and CEI reports and data. | Within 60 days of survey |
| 3. | Notification of citizen complaints. | Upon receipt |
| 4. | Notification to the DEPARTMENT of observed violations resulting from EPA oversight inspections. | Within 30 days of inspection |
| 5. | Notification of the commencement of Federal enforcement and copies of final actions. | As in annual State Program Plan |
| 6. | An analysis of the MEPDES operation based on DEPARTMENT reports, meeting with DEPARTMENT officials, and file audits. | As available |
| 7. | Assistance in obtaining PCS retrievals and prompt notice of changes in PCS procedures. | As needed, 30 days in advance of change in PCS procedures |
| 8. | Copies of court decisions/actions affecting the permit issuance, compliance and enforcement process. | Within 15 days of receipt by Regional Office of EPA |
| 9. | A list of major dischargers located in Maine who have multi-state interests and noncompliance or violations in other States and identification of the type of noncompliance. | Annually |

C. Transfer of Files from EPA to State upon Program Approval. In accordance with a mutually agreed upon schedule EPA will deliver to the DEPARTMENT all permit files requested by the DEPARTMENT. Permit files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all DMRs, all compliance reports, all enforcement actions, and other pertinent information and correspondence. For pending permit applications, files shall contain all relevant information including but not limited to application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the pending permit. EPA will ensure all files are complete prior to delivery to the DEPARTMENT.

Section IX. Program Review

The DEPARTMENT and EPA are responsible for assuring that MEPDES is consistent with all requirements of this AGREEMENT, the annual State Program Plan, and applicable sections of the Clean Water Act and the regulations promulgated thereunder, including 40 CFR Parts 122-125. To fulfill this responsibility:

- A. EPA shall review the information transmitted from the DEPARTMENT to assure that all the requirements of Section VIII of this AGREEMENT are met.
- B. EPA shall meet with DEPARTMENT officials as set forth in the annual State Program Plan to review the DEPARTMENT's data handling (including both manual and automated data processing), permit processing, compliance monitoring, and enforcement procedures.
- C. The DEPARTMENT shall meet with EPA officials as requested by EPA, to conduct an audit which shall consist, in part, of examining in detail the DEPARTMENT files and documentation of selected facilities to determine whether:
 - 1. Permits are processed and issued consistently with federal requirements;
 - 2. Easy capability exists to discover permit violations when they occur;
 - 3. DEPARTMENT compliance reviews are timely;
 - 4. DEPARTMENT selection of enforcement actions is appropriate;
 - 5. DEPARTMENT enforcement actions are both timely and effective; and
 - 6. DEPARTMENT public participation policies, practices, and procedures are satisfactory.

The DEPARTMENT shall be notified thirty days in advance of the audit so that appropriate DEPARTMENT officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the DEPARTMENT when available.

- D. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, rule, directive or policy which has been approved by EPA in connection with the MEPDES program, or prior to taking any action to propose or enact any statute, regulation, rule, directive, or policy which affects the implementation of the MEPDES program, including the state water quality standards, the DEPARTMENT shall notify EPA and shall transmit the text of any such change to EPA, for review and approval. The DEPARTMENT shall also keep EPA fully informed of any proposed legislative or court action which acts to amend, rescind or repeal any part of its authority to administer the NPDES program or which may affect its ability to implement the NPDES program. The DEPARTMENT agrees to monitor bills proposed in the Maine Legislature, and to promptly notify EPA of any legislative action which proposes to repeal or enact any statute, regulation, rule, directive, or policy,

including the state water quality standards which may affect implementation of the MEPDES, as soon as the DEPARTMENT becomes aware of any such proposed action. Notification under this paragraph and the following paragraph shall be given to both the EPA Office of Ecosystem Protection and the Office of Regional Counsel. EPA reserves the right to initiate procedures for withdrawal of approval of the MEDPES program in the event that the state legislature enacts any legislation which is inconsistent with and less stringent than the Clean Water Act or the regulations promulgated thereunder.

- E. Applications for alternative test procedures shall be made in accordance with 40 CFR §§ 136.4 and 136.5.
- F. If there are revisions to the Clean Water Act and the regulations which implement it, the DEPARTMENT shall seek any amendments to its statutes, rules, or program authorization that are necessary to preserve and maintain compliance with NPDES program requirements within the shortest possible time frame, but in no event longer than the time frames set out in 40 CFR § 123.62(e). During the negotiation of the annual Performance Partnership Agreements, the DEPARTMENT and EPA shall determine whether there needs to be any revisions made to the MEPDES program as a result of any changes to the Clean Water Act and the regulations promulgated thereunder and related guidance documents. Included in the Performance Partnership Agreement and in the annual State Program Plan shall be a list of the revisions that have been made by the State as a result of that determination, or, if such revisions have not yet been made, a timetable for implementing such revisions. A copy of the list of revisions, and/or the timetable for implementing revisions shall be sent to the Office of Regional Counsel in addition to the Office of Ecosystem Protection. Unless otherwise agreed by the EPA and DEPARTMENT, this updating shall include seeking legislation no later than the 2001 legislative session, to update (or if possible eliminate in favor of the reference in the state regulations) the state statutory reference incorporating federal regulations through Jan. 1, 1997. Also, the references in the State regulations incorporating the federal regulations through July 1, 1998, shall be updated within one year of program authorization to incorporate the then current federal regulations and updated annually thereafter, as necessary. Finally, the DEPARTMENT will seek to enact all appropriate corrections to its regulations within one year of program authorization. As part of this process, the DEPARTMENT will address each of the changes recommended in the EPA memoranda entitled "Maine NPDES Program: Resolution of Remaining Issues Regarding Regulations" dated December 9, 1999, and "Response to Comments Opposing Approval of Maine to Administer the NPDES Program", dated April 2000.
- G. Pending adoption of State rules to incorporate the Ocean Discharge Criteria requirements set out in 40 CFR Part 125, subpart M, the DEPARTMENT will use its statutory authority to ensure that all applicable permits comply with these requirements. The DEPARTMENT will seek to enact the necessary rules within

- one year of program authorization.
- H. EPA may initiate withdrawal proceedings under 40 CFR § 123.64 on its own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of 40 CFR Part 123, as set forth in 40 CFR § 123.63. EPA shall notify the DEPARTMENT in writing of these inconsistencies or other deficiencies prior to the initiation of withdrawal proceedings. The DEPARTMENT shall respond in writing within thirty (30) days. EPA shall inform the DEPARTMENT in writing, within thirty (30) days of its determination, whether noted inconsistencies or deficiencies have been rectified. If they have not been corrected, EPA may proceed with withdrawal proceedings pursuant to 40 CFR § 123.64.

Nothing in this AGREEMENT shall be construed to limit EPA authority to take action under the Clean Water Act.

Nothing in this AGREEMENT shall be construed to require the DEPARTMENT to take any action which is not authorized by State law.

Nothing in this AGREEMENT shall be construed to authorize the DEPARTMENT to take any action that is less stringent than or inconsistent with the Clean Water Act.

Section X. Computation of Time

In computing any period of time prescribed by this AGREEMENT, the day from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period extends until the next day which is not a Saturday, Sunday, or legal holiday. When the period is less than seven days, intermediate Saturdays, Sunday or legal holidays shall be excluded in the computation.

Section XII. Approval and Effective Date

This Memorandum of Agreement shall take effect upon approval by the Administrator of the Environmental Protection Agency.

In witness whereof, the parties execute this agreement.

FOR THE STATE OF MAINE:

Martha G. Kirkpatrick
Martha G. Kirkpatrick, Commissioner
Maine Department of Environmental Protection

4/24/00
Date

John Tewhey
John Tewhey, Chair
Maine Board of Environmental Protection

4/20/00
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Mindy Lubber
Mindy Lubber, Regional Administrator
EPA, Region I

1/12/2001
Date

APPENDIX A

Permits over which EPA may retain issuance authority.
(See Section III (C)(3))

The following NPDES permits may be on public notice at the time of Maine NPDES program approval.

| <u>PERMIT</u> | <u>NPDES NUMBER</u> |
|-----------------------------------|----------------------------|
| Georgia-Pacific Corporation | ME0001872 |
| S.D. Warren Company | ME0021521 |
| South Berwick Sewer District | ME0100820 |
| Berwick Sewer District | ME0101397 |
| Falmouth | ME0100218 |
| Westbrook | ME0100846 |
| Portland Water District | ME0102075 |
| Yarmouth | ME0100765 |
| Freeport Sewerage District | ME0101036 |
| Old Orchard Beach | ME0101524 |
| York Sewer District | ME0101222 |
| Scarborough Sanitary District | ME0102059 |
| Hartland Pollution Control | ME0101443 |
| Lincoln Sanitary District | ME0101796 |
| Loring Development Authority | ME0090174 |
| Caribou Utilities District | ME0100145 |
| A E Staley Mfg. Company | ME0002216 |
| Presque Isle | ME0100561 |
| Houlton Water Company WWTF | ME0101290 |
| Fort Fairfield Utilities District | ME0100226 |
| Bangor | ME0100781 |
| Machias | ME0100323 |
| Holtrachem Mfg. Co. | ME0000639 |