

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

MEMORANDUM OF AGREEMENT

BETWEEN THE

STATE OF UTAH

DEPARTMENT OF HEALTH

(BY AND THROUGH

THE UTAH WATER POLLUTION CONTROL COMMITTEE)

AND THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN THE
STATE OF UTAH
BUREAU OF WATER POLLUTION CONTROL
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

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 Utah Bureau of Water Pollution Control (hereinafter, the STATE) and reviewed by Region VIII of the United States Environmental Protection Agency (hereinafter, EPA). All additional agreements between the STATE and EPA are subject to review by the Administrator of the U.S. Environmental Protection Agency (hereinafter, the ADMINISTRATOR), and the Executive Secretary of the Utah Water Pollution Control Committee who, according to historical practice, also serves as the Director of the Bureau of Water Pollution Control (hereinafter, the STATE DIRECTOR). If the ADMINISTRATOR determines that any provision of any such agreement does not conform to the requirements of Section 402(b) of the Federal Clean Water Act, 33 U.S.C. 1251 et seq., as amended (hereinafter, the CWA), to the requirements of 40 CFR Parts 122-125, 40 CFR Part 403 or other applicable Federal regulations the ADMINISTRATOR shall notify the STATE DIRECTOR and the Regional Administrator of EPA (hereinafter, the REGIONAL ADMINISTRATOR), of any proposed revisions or modifications which must be made in such agreements.

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 partnership to assure successful and effective administration of NPDES. In this partnership, EPA will provide on a continuing basis, technical and other assistance to the STATE on permit matters as requested.

The STATE and EPA may amend this Memorandum of Agreement from time to time. Amendments will be put in writing, and signed by the STATE DIRECTOR and the REGIONAL ADMINISTRATOR. In addition, separate subagreements which relate to implementation of the NPDES program in Utah may be entered into by the State and EPA.

Section II. Policies

The STATE will administer NPDES in accordance with Section 402 of the CWA, this AGREEMENT, applicable STATE legal authority, applicable Federal regulations, the annual State Program Plan and the Description of State Program. The STATE'S program equivalent to NPDES will be the Utah Pollutant Discharge Elimination System (UPDES).

A. State Responsibilities

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

1. Create and maintain the legal capability and the resources required to carry out the level of effort agreed to by the STATE and EPA for all aspects of the UPDES program.
2. Process in a timely manner and propose to issue, reissue, modify or deny UPDES permits for discharges to the waters of the State, including, but not limited to, the following categories of applicants:
 - a. Industrial, commercial, mining and silvicultural dischargers and Federal facilities as outlined in Section III of this AGREEMENT;
 - b. Animal feeding operations, aquatic animal production facilities and aquaculture projects (as defined in 40 CFR 122.23 to 122.25) as outlined in Section 318 of the CWA, 40 CFR Part 125 Subpart B, and Section III of this AGREEMENT;
 - c. Publicly Owned Treatment Works (POTWs) including those which dispose of sewage sludge as outlined in Section 405 of the CWA, and Section III of this AGREEMENT;
 - d. Any other categories which may be identified.
3. Comprehensively evaluate and assess compliance with compliance schedules, effluent limitations and other conditions in these permits as outlined in Section IV of this AGREEMENT.
4. Maintain a program of taking timely and appropriate enforcement action in accordance with the CWA.
5. Maintain a program to carry out the pretreatment responsibilities outlined in Section VI of the AGREEMENT.
6. Maintain an adequate and orderly public file which will be easily accessible to EPA for audit purposes for each permittee. Such files must include at a minimum, copies of:
 - a. Permit Application
 - b. Issued Permit and the Previously Issued Permits
 - c. Public Notice and Fact Sheet or Statement of Basis and amendments
 - d. Discharge Monitoring Reports
 - e. All inspection reports
 - f. All enforcement actions
 - g. All pertinent information and correspondence
7. The STATE will submit to the REGIONAL ADMINISTRATOR the information described in Section VII of this AGREEMENT, the State Program Plan and applicable portions of 40 CFR Part 123.
8. Maintain in a timely, complete and accurate manner all required data elements in PCS.
9. Operate a Discharge Monitoring Report - Quality Assurance Program and conduct followup with dischargers who do not perform satisfactorily on test samples.

B. EPA Responsibilities

1. EPA will commit funding to the STATE, to the maximum extent possible, to support UPDES efforts. It is recognized that a significant portion of UPDES related activities are supported by EPA funds and should a reduction in funds occur, the UPDES support effort may be reduced by a negotiated amount.

2. Where no effective guidelines exist for a discharge, EPA will provide when requested, technical information to the STATE to assist in writing permit terms and conditions, for example, contractor reports, draft development documents, and available effluent data from similar facilities. Such information will be provided within 30 days of request by the STATE.
3. As outlined in Section VIII of this AGREEMENT, EPA will oversee the STATE administration of UPDES on a continuing basis for consistency with the CWA, this AGREEMENT, the Description of State Program, the State Program Plan, and all applicable Federal regulations. In addition, EPA may consider as part of its assessment, comments from permittees, the public, and Federal and local agencies concerning the STATE'S administration of UPDES. Any such comments considered by EPA will be brought to the attention of the STATE by written correspondence, if the commenting party has not previously communicated with the STATE.
4. EPA will provide the STATE with a public notice mailing list, a complete library of all EPA regulations and guidelines applicable to the program at the time of assumption, and make available on a timely basis all future revisions, guidelines or modifications to these regulations.
5. EPA will provide the STATE with necessary assistance to implement PCS.

C. Jurisdiction over Permits

Upon the Administrator's approval of the UPDES program, jurisdiction over permits will be as follows:

1. The STATE will assume responsibility for NPDES, including permitting, compliance assurance, and enforcement activities as scheduled in Section X of AGREEMENT, except NPDES authority on Indian lands.
2. Permits for which modifications, variances, or evidentiary hearings have been requested before the UPDES approval date will be handled by EPA until such requests have been finally resolved. As each request is resolved, EPA will notify the STATE and transfer jurisdiction of that permit to the STATE. EPA will make every effort to resolve these issues in a timely manner. Also, permits under active enforcement (a list of which will be agreed upon by EPA and the STATE) before the UPDES approval date will be handled by EPA even after approval of the UPDES program. EPA shall handle these permits until final resolution of the enforcement action. As each enforcement issue is finalized, EPA will notify the STATE and transfer jurisdiction of that permit to the STATE.

See Section X for schedule of assumption of NPDES activities by the STATE.

Section III. Permit Review and Issuance

The STATE is responsible for crafting, public noticing, issuing, denying, modifying, reissuing, and terminating permits in accordance with this AGREEMENT and 40 CFR Parts 122-125, to the extent applicable to the STATE.

A. Transfer of Files from EPA to State

Upon approval of the UPDES program by the ADMINISTRATOR, EPA will deliver permit files to the STATE in accordance with Section X of this agreement. Permit files shall include all relevant information including but not limited to application forms, correspondence, draft permits, public notices, fact sheets, statements of basis, and any other documents relating to the permit. EPA will ensure all permit files are complete prior to delivery to the STATE. The transfer will not include backlog (permit modifications, enforcement, etc.) for which EPA will remain responsible until all issues have been resolved. EPA will ensure all files are complete and are in conformance with quantity and quality standards for permit files prior to delivery to the STATE.

B. Receipt of New Permit Applications by the State

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

C. EPA Review of Draft Permits and Permit Modifications

1. Unless otherwise waived, EPA will review all draft permits. For water quality based permits, EPA may request the wasteload analysis one month prior to submittal of the draft permit. No later than the time of issuance of public notice, the STATE will send to the EPA Region VIII, water Compliance Branch one copy of the public notice, the draft permit, and the fact sheet or Statement of Basis. EPA objections to the draft permit, if any, will be made in accordance with the provisions of 40 CFR 123.44. EPA will make all reasonable efforts to provide written detailed objections to the permit, or concurrence with the permit, within thirty (30) working days of receipt of the draft permit. All EPA comments and objections will be considered by the STATE along with any other public comments received in the preparation of the proposed final permit.
2. Following expiration of the period for public comment, a proposed final permit will be drafted. If (a) the proposed final permit is the same as or more stringent than the draft permit defined in the public notice, (b) EPA has not objected to such draft permit, in accordance with 40 CFR 123.44, and (c) valid and significant public comments have not been made, the STATE may issue the permit without further review by EPA.
3. Following the receipt of an objection to a draft or proposed permit by EPA, the State shall not issue the permit until all procedures required by 40 CFR 123.44 have been satisfied. If, after 90 days following receipt of an objection to a draft or proposed permit by EPA, the State has failed to follow the procedures of 40 CFR 123.44, or otherwise fails to take adequate action to resolve the objections(s), EPA may issue the permit.
4. If, after a period of 360 days following receipt of an application for permit renewal, the State has failed to take action regarding the permit, it may be issued, denied, or modified and issued by EPA.

D. Waiver of Permit Review by EPA

1. EPA waives the right to comment on or object to the sufficiency of permit applications, draft permits, proposed permits, and finally adopted permits for all discharges or proposed discharges with the exception of the following:
 - a. Discharges which may affect the waters of a state other than Utah;
 - b. Draft general permits (see 40 CFR 122.28)
 - c. Discharges from publicly owned treatment works with a daily average discharge exceeding 1.0 million gallons per day;
 - d. Discharges from any major discharger or a discharger within any of the industrial categories listed in Appendix A to 40 CFR 122;
 - e. Discharges from other sources with an average discharge exceeding 0.5 million gallons per day except that review of permits for discharge of non-process wastewater is waived, regardless of flow;
 - f. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day.
 - g. Any discharge for which EPA specifically requests in writing the opportunity to comment on before or during the Public Notice period.

The foregoing does not include waiver of receipt of complete copies of Fact Sheets or Statements of Basis, applications, public notices of proposed permit issuances or denials, notices of public hearings, copies of all final permits issued, or any notices required under Section VI of this AGREEMENT.

2. With respect to modifications of permits, EPA waives the right to review the following:
 - a. A modification to any permit for which the right to review the original permit was waived (unless the modification would put the permit in one of the categories in Section III.D.1).
 - b. A modification to any permit which grants an extension of a schedule of compliance for 120 days or less for good and valid cause. However, only one such extension is waived. Any second extension for any permit must be submitted for review.
 - c. A modification to any permit which makes minor changes to the monitoring requirements.
3. EPA reserves the right to terminate the waivers in paragraphs 1 and 2 above (in whole or in part) with respect to any specific discharger, at any time. Any such determination shall be accomplished by the EPA Regional Water Management Division Director in writing, and a copy of such written termination shall be delivered to the STATE. Notice of termination shall be given at least 30 days in advance of the termination date.
4. 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, or effluent guidelines, or to which EPA has objected. EPA may petition the STATE for review of any action or inaction because of violation of Federal or State laws, rules, regulations, or effluent guidelines.

E. Public Participation

1. Draft permits, public notices, fact sheets, and statements of basis will be made available to any party upon request, upon payment of applicable duplicating fees. Public access will be provided to NPDES files at all times during normal working hours.
2. Unless otherwise waived by the specific organization, the STATE will provide to the following organizations, copies of all public notices and Fact Sheets (when prepared) in accordance with 40 CFR 124.8 and 124.10:
 - a. U.S. Army Corps of Engineers
 - b. U.S. Fish and Wildlife Service
 - c. Other appropriate State and Federal Agencies
 - d. Adjacent States (only for permits which affect them)
 - e. Major Commands of the Department of Defense (only for DOD permits)
3. The STATE will investigate and respond to all citizen complaints; not oppose intervention where permissive under STATE law; and provide notice and opportunity for comment on any proposed settlement of a STATE enforcement action.

F. Issuance of Permits or Notice of Intent to Deny

1. If the final determination is to issue the permit, it 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 VII of this AGREEMENT.
2. If the final determination is to deny the permit, notice of intent to deny shall be given to the EPA Region VIII Water Compliance Branch and to the applicant in accordance with applicable UPDES regulations.

G. Suspension or Revocation of Permits

When the STATE makes a determination to suspend or revoke a permit, in whole or in part for cause, EPA will be notified.

H. Major Discharger List

There shall be referenced as a part of the annual State Inspection Plan a "Major Dischargers" list, which shall include those dischargers defined by the applicable definitions plus any additional dischargers that, in the opinion of the STATE, have a high potential for violation of water quality standards.

Section IV. Compliance Monitoring

The STATE will operate a timely and effective compliance monitoring system utilizing PCS to track compliance of permittees with permit conditions. For purposes of this AGREEMENT, the term "compliance monitoring" shall refer to all efforts associated with assuring full compliance with permit conditions. Compliance monitoring shall normally focus first on major dischargers in accordance with the priorities and time frames for compliance tracking as established in the 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, they will lead to timely, appropriate, and effective enforcement actions as outlined in Section V.

A. Schedule Dates

The STATE will track the submittal of all reports on date-related permit conditions or other schedules in effect pursuant to the permit (i.e., Administrative Orders, Enforcement Compliance Schedule Letters, or Court Orders, etc.). In order to determine the permitte's compliance status, the STATE 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. The STATE will operate a tracking system utilizing PCS to determine if:
 - a. The required self-monitoring reports are submitted on time;
 - b. The submitted reports are complete and on approved forms; and
 - c. The permit conditions are met.
2. The STATE will conduct a review of self-monitoring reports received, and will evaluate the permitte's compliance status. This evaluation will take into account frequency, severity, and analytical error in determining where limitations have been exceeded.
3. The STATE will ensure that monitoring data are entered into PCS.
4. EPA may object in writing to deficiencies in reporting forms used by permittees or the STATE. The STATE will ensure that deficiencies identified by the WATER MANAGEMENT DIVISION DIRECTOR are adequately addressed.

C. Facility Inspections

1. General Procedures

The STATE and EPA will develop as part of the annual State Inspection Plan an annual list of permittees to be the subject of various types of compliance inspections. EPA will be given adequate notice and opportunity to participate in inspections performed by the STATE for any discharger for which EPA has requested such prior notice. EPA may also elect to participate with the STATE in an inspection at any time for overview purposes. EPA or the STATE may determine that additional inspections are necessary to monitor compliance with issued permits. If EPA makes a determination that additional inspections are necessary or appropriate, it shall notify the STATE of such determination and may perform the inspection alone (only if STATE declines to participate) or jointly with the STATE, or may request the STATE to conduct those inspections. In cases where the STATE chooses not to conduct such additional inspections or participate in the EPA inspections, EPA will keep the STATE fully informed of its plans to carry out such inspections and furnish copies of the inspection report to the STATE.

2. Federal Facility Procedures

Because of its responsibilities regarding Federal facilities and the need for continued and periodic coordination with the Office of Management and Budget, EPA reserves the right to inspect Federal facilities at any time. However, EPA will notify and allow opportunity for the STATE to attend planned federal facilities inspections.

3. Reporting Schedule

Reports of all inspections conducted by the STATE will be forwarded to EPA 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 STATE within sixty (60) days after the inspection. Each report will be reviewed by the STATE to determine what, if any, enforcement action (as outlined in Section V of the AGREEMENT) shall be initiated. All State inspections will be entered into PCS within 60 days of the inspection.

D. Miscellaneous Compliance Activities

1. Independent Inspections Capability

The STATE shall have inspection and surveillance procedures and capability to identify compliance or non-compliance independent of permittee supplied information.

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 required information is not available, the agency making the request shall be promptly notified.

3. Emergency Pollution Incidents

Upon receipt of any information of actual or threatened pollution incidents that may result in endangerment to human health and/or environmental damage, the party in receipt of such information shall immediately notify by telephone the other party to this AGREEMENT of the incident. The STATE may be notified by contacting the Emergency Response Coordinator at 801-538-6333. EPA may be notified by telephone at 303-293-1788.

Section V. Enforcement

A. Enforcement Responsibility - General

1. The STATE is responsible for implementing the UPDES compliance procedures found in the Program Description and the State Enforcement Management System (EMS).

2. The STATE is responsible for taking timely and appropriate enforcement action against permittees in violation of compliance schedules, effluent limitations, pretreatment standards and requirements, and all other permit conditions. This responsibility encompasses violations whether detected by STATE or EPA compliance monitoring and inspections.

3. EPA is responsible for providing oversight of STATE enforcement activity and to initiate direct federal enforcement where appropriate.

B. Enforcement Agreement

1. The STATE and EPA will develop and implement an Enforcement Agreement to clearly define the STATE/FEDERAL relationship in NPDES enforcement.
2. The Enforcement Agreement will address the following:
 - a. noncompliance consultation and coordination
 - b. reporting
 - c. civil penalty policies
 - d. state consent agreements and individual referrals
 - e. direct EPA enforcement actions
 - f. State Attorney General involvement
 - g. federal facilities
 - h. pretreatment
 - i. EPA oversight criteria for timely and appropriate actions
 - j. other items of mutual concern
3. The Enforcement Agreement will be considered by reference, a part of this NPDES Memorandum of Agreement.
4. The Enforcement Agreement will be reviewed annually and revised as necessary.

Section VI. Pretreatment

This section defines STATE and EPA responsibilities in carrying out the establishment, implementation and enforcement of the National Pretreatment Program under Section 307(b) and (c) of the CWA.

A. Basic Program

1. The STATE has primary responsibility for ensuring:
 - a. Enforcement of prohibited discharges and categorical standards under the National Pretreatment Standards (NPS)(40 CFR 403.5 and 403.6).
 - b. Application and enforcement of any NPS established by the ADMINISTRATOR in accordance with Section 307(b) and (c) of the CWA;
 - c. Review approval, and oversight of Publicly Owned Treatment works (POTW) Pretreatment Programs to see that NPS are enforced in accordance with the procedures outlined in 40 CFR 403.11;
 - d. Incorporation of POTW Pretreatment Program conditions in permits issued to POTW's as required in 40 CFR 402.8 and as provided in Section 402(b)(8) of the CWA;
 - e. Review and approval of modification of categorical NPS to reflect removal of pollutants by a POTW and enforcement of related conditions in the municipal permit.
2. The STATE shall carry out independent inspection, surveillance, and monitoring procedures which will determine compliance or noncompliance by the POTW with pretreatment conditions incorporated into their permit. The STATE will also carry out inspection, surveillance, and monitoring procedures which will determine whether each Industrial User (IU) is in compliance with the NPS.
3. The STATE will issue, reissue, or modify permits according to the procedures outlined in Section III of this AGREEMENT.
4. Upon request, copies of notices received by the STATE from POTWs

that relate to new introduction of pollutants, or substantial changes in the volume or character of pollutants will be provided to EPA.

5. EPA will overview STATE pretreatment operations in accordance with 40 CFR 403.

B. Section 403.6 NPS Categorical Standards

The STATE shall review requests from IU's for industrial subcategory determinations received within thirty (30) 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 the particular subcategory. The STATE shall forward its findings together with a copy of the request and necessary supporting information to the Region VIII EPA, Water Compliance Branch. If EPA does not object to the STATE's decision within thirty (30) days after receipt thereof, the STATE's finding is final.

C. Section 403.7 Categorical NPS Credit Removal and Section 403.9 POTW Pretreatment Program Approvals

The STATE shall review POTW applications to revise discharge limits for users who are or may be subject in the future to categorical NPS and review requests for approval of POTW Pretreatment Programs. The STATE's findings together with the complete application and supporting information shall be submitted to Region VIII EPA Water Compliance Branch for review. No POTW Pretreatment Program or request for revised discharge limits shall be approved by the STATE if during the thirty (30) day (or extended) evaluation period provided for in 40 CFR 403.11 (b)(1)(ii), EPA, Regional Water Management Division Director, objects in writing to the approval of such submission.

D. Section 403.13 Variance from Categorical National Pretreatment Standards (NPS) for Fundamentally Different Factors (FDF)

The STATE will make an initial finding on all requests from IU's for variances from categorical NPS for FDF, and in cases where the STATE supports the variance, submit its findings together with the request and supporting information to EPA, Water Compliance Branch, for a final review. The STATE can deny requests for FDF variances without EPA review.

Section VII. Reporting and Transmittal of Information

Reporting and transmittal of information shall be according to the following schedule:

A. STATE to EPA

<u>DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
1. A copy of all complete permit applications received by the STATE.	As received but no later than thirty (30) days
2. a. WLA for water quality based permits.	At time of public notice unless requested sooner
b. A copy or a listing of all public notices, draft permits and Fact Sheets or Statements of Basis for permits not waived.	No later than the time of public notice
3. A copy of all proposed final permits (including general permits) and final Statements of Basis which have had changes made to any original draft sent to EPA for permits not waived.	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 compliance inspection reports.	In accordance with State Compliance Inspection Plan
6. For all minor UPDES permittees a statistical summary shall be prepared indicating number of minor permits reviewed, number of significant noncompliances, number of enforcement actions and number of compliance deadline extensions. The summary shall list noncompliances according to the following categories: a. Failure to complete construction b. Failure to submit scheduled report c. Significant noncompliance with effluent limits d. Failure to report effluent data e. Deficient reports.	Annually within 60 days following the end of the Federal fiscal year (September 30)

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|-----|--|---|
| 7. | Copies of all of the following enforcement actions against major discharge violators of permit conditions and pretreatment requirements: | As issued |
| | <ul style="list-style-type: none"> a. All correspondence to and from major permittees regarding UPDES noncompliance b. Administrative Orders c. Initial Determinations d. Processing for Judicial Action e. Consent Decrees f. Assessment of Penalties g. Federal Facilities Compliance Agreements | |
| 8. | For all dischargers, a summary list of the enforcement actions shown in Item 7 including information identifying permit number, permittee name, type of action and date of action. | Quarterly |
| 9. | Copies of the following correspondence, required by Section VI of this AGREEMENT to carry out the Pretreatment Program: | As issued or received |
| | <ul style="list-style-type: none"> a. Notices of introduction of new pollutants under Section VI.A.4. b. Categorical pretreatment determinations made under Section VI.B. c. Pretreatment limit determination under Section VI.C. d. Initial determinations on pretreatment FDF under Section VI.D. e. Copies of POTW Pretreatment Programs approved by the Executive Secretary | |
| 10. | Copies of significant comments presented on the draft permits, unless permit review has been waived under Section III.C. | Within 15 days of closing for receipt of comments |
| 11. | Copies of all pretreatment annual reports. | Within 30 days of receipt |
| 12. | Quarterly Noncompliance Report (QNCR) per 40 CFR 123.45 | Feb 28, May 31, Aug 31, Nov 30 |
| 13. | All required data input to PCS | In accordance with EMS |

14. Annual inspection plan

June 1

15. Written response to EPA NOV's

Within 30 days
of receipt

B. EPA to STATE

DESCRIPTION

FREQUENCY OF
SUBMISSION

- | | |
|--|--|
| 1. Revisions to the schedule of compliance inspections | As needed |
| 2. Copies of all EPA completed compliance inspection reports and data | In accordance with annual compliance inspection plan. |
| 3. Notification of citizen complaints where a citizen does not agree to contact the STATE directly. | Immediately |
| 4. Notification to the STATE of observed violations resulting from EPA oversight inspections which do not qualify as compliance inspections. | Immediately |
| 5. Issue Notice of Violation (NOV) to the STATE for EPA-observed violations | Within 30 days of violation |
| 6. Notification of the commencement of Federal enforcement and the actions being taken | Fourteen (14) days prior to date action is to be initiated |
| 7. An analysis of the UPDES program operation based on STATE reports, meetings with STATE officials, and file audits. | Established in SEA |
| 8. Provide onsite PCS training to STATE personnel | As needed and as available |
| 9. Assistance in obtaining PCS retrievals and prompt notice of changes in PCS procedures. | As needed and as available |
| 10. Copies of court decision/actions affecting the permit issuance, compliance | Within 15 days of action |

and enforcement process, regulatory changes and proposed changes, and policy or guidance memorandum.

Section VIII. Program Review

EPA is responsible for assuring that UPDES is consistent with all requirements of this AGREEMENT, the State Program Plan, and applicable sections of 40 CFR Parts 122 through 125 and Part 140. This review is accomplished in three major components. First, formal program audits are conducted generally on an annual basis to identify any major program deficiencies and needed corrective actions. Second, continuous review of STATE permit, compliance and enforcement actions on major permittees is conducted which may result in EPA permit vetoes and direct EPA enforcement actions. Third, quarterly review of annual commitments in the State Program Plan (SEA) is conducted to evaluate progress and to resolve program implementation issues. To fulfill this responsibility, EPA shall:

1. Review the information transmitted from the STATE to assure that all the requirements of Section VII of this AGREEMENT are met.
2. Meet with STATE officials to observe the data handling, permit processing, compliance monitoring, and enforcement procedures, including both manual and automated data processing.
3. Examine in detail the STATE files and documentation of selected facilities to determine whether:
 - a. Permits are processed and issued consistently with Federal requirements;
 - b. Ready capability exists to discover permit violations;
 - c. Compliance reviews are timely;
 - d. Selection of enforcement actions is appropriate;
 - e. Enforcement actions are both timely and effective.These detailed file audits shall be conducted by EPA in the STATE office semiannually during the first two years of the agreement and annually thereafter. The STATE shall be notified 30 days in advance of the audit so that appropriate STATE officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the STATE within thirty (30) days of completion of the audit.
4. Conduct oversight inspections to evaluate the STATE compliance inspection program.
5. Review the STATE's public participation policies, practices, and procedures.
6. Identify program deficiencies. In the event EPA determines that elements of UPDES are in any way deficient or inconsistent with this AGREEMENT, the State Program Plan, applicable regulations, and statutes, EPA shall notify the STATE in writing of these inconsistencies or other deficiencies. The STATE shall respond in writing within thirty (30) days. EPA shall inform the STATE in writing, within thirty (30) days of its determination, whether noted inconsistencies or deficiencies have been rectified. If they have not been corrected, EPA may proceed in accordance with Section 309 and 402(c)(3) of the CWA.

7. Determine the need for (and to hold) public hearings on UPDES. Threshold criteria for determining the need for a public hearing include:
- a. Programmatic
 - (1) Permit issuance backlog in excess of 10% of the total permissess.
 - (2) Deficient permits as expressed by EPA formal objections and/or vetoes of proposed permits.
 - (3) Inspection coverage below regulatory requirements.
 - (4) Continued high rates of noncompliance (i.e. significantly above regional and national averages).
 - (5) Failure to meet criteria established in the Enforcement Agreement.
 - b. Legal

The State legal authorities must be consistent with EPA's minimum requirements at all times. This includes statutory or regulatory provisions or judicial decisions that may limit the scope of State law.
 - c. Resources

Resource problems include inadequate funding and personnel problems. Programmatic problems are often due, in part, to lack of adequate resources and/or expertise. The State is expected to maintain the level of resources and kinds of personnel presented in the Description of State Program.

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

Nothing in this AGREEMENT shall be construed to limit EPA authority to take action under Section 308, 309, 311, 402, 504, or other sections of the CWA.

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

Section IX. Miscellaneous Provisions

- A. The STATE will comply with the conflict of interest provisions contained in Section 304(h)2 of the CWA.
- B. The STATE will not be required to update its Utah Pollutant Discharge Elimination System (UPDES) regulations more often than once per year in order to comply with EPA NPDES regulations promulgated subsequent to STATE assumption of the program.

Section X. Schedule of Assumption of NPDES Activities by the State of Utah

NPDES activities will be assumed by the STATE according to the following schedule:

	<u>Date of Assumption</u>
1. NPDES	
a. UPDES activities for all POTWs and privately owned domestic wastewater treatment facilities for which applications are received subsequent to effective date of approval of UPDES program and which are not included in items c and d below.	Upon approval of UPDES program
b. UPDES activities for all industrial commercial, mining, silvicultural, animal feeding operation, aquatic animal production facilities and agriculture projects for which applications are received subsequent to UPDES program approval and which are not included in items c and d below.	Upon approval of UPDES program
c. Permitting activities for all permits which have EPA enforcement actions existing at time of UPDES program	Permits to be transferred to State upon completion of EPA action
d. Municipal and industrial permit applications received by EPA prior to approval and permits for which there is an existing request for modification or variance at time of approval thirtyof the UPDES Program.	Permits to be transferred to State jurisdiction within thirty (30) days of effective date of EPA approval of modific-ation/variance
2. UPDES activities for Federal facilities	Upon approval of UPDES program
3. General Permits	Upon approval of UPDES program
4. Direct implementation of PCS	Upon approval of UPDES program
5. Pretreatment	Upon approval of UPDES program

- | | |
|--|--------------------------------|
| 6. Adoption of State Enforcement Management System (EMS) | Upon approval of UPDES program |
| 7. Adoption of the State/EPA NPDES Enforcement Agreement | Upon approval of UPDES program |

Section XI. Modification

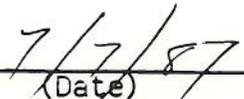
This Agreement will take effect immediately upon approval by the Regional Administrator. Either the State Director or the Regional Administrator may initiate action to modify this Agreement at any time. If the Regional Administrator or the Administrator of EPA determines that any modification to the Agreement initiated by the State does not conform to the requirements of Section 402(b) of the CWA, or to the requirements of 40 CFR Parts 122-125 or any other applicable Federal regulation, as amended, the Regional Administrator or Administrator of EPA will notify the State in writing of any proposed revision or modifications which must be in this Agreement. Any proposed amendments or revisions must be put in writing and signed by the State Director, EPA Office of Water Enforcement and Permits, and EPA Associate General Counsel for Water.

In witness thereof, the parties execute this agreement.

FOR STATE OF UTAH:



 Executive Secretary
 Utah Water Pollution Control Committee

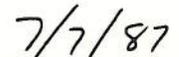


 (Date)

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



 Regional Administrator,
 Region VIII



 (Date)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

JUN 14 1996

Ref: 8P2-SA

Honorable Michael O. Leavitt
Governor
State of Utah
office of the Governor
Salt Lake City, Utah 84114-0601

Dear Governor Leavitt:

It is with pleasure that I am today approving the State of Utah's request to administer and enforce the Sludge Management (biosolids) program. Utah is the first state in the country to receive EPA authorization to administer a sludge management program. I have also signed the Memorandum of Agreement between the U.S. Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality, reflecting this transfer (copy enclosed). This approval is a program modification to the Utah Pollutant Discharge Elimination System, which was approved on July 7, 1987.

The approval does not extend to "Indian Country", as defined in 18 U.S.C. Section 1151, and does not include lands within the exterior boundaries of the following Indian reservations within or abutting the State of Utah:

1. Paiute Indian Reservation
2. Skull Valley Band of Goshute Indian Reservation
3. Uintah & Ouray Indian Reservation
4. Northwestern Band of Shoshone Washakie Indian Reservation
5. Navajo Indian Reservation
6. Ute Mountain Ute Indian Reservation
7. Goshute Indian Reservation

We are aware that the State of Utah and the United States Government differ as to the exact geographical extent of Indian Country within the Uintah and Ouray Indian Reservation and are currently litigating this question in Federal Court. Until that litigation is completed and this question is resolved, EPA will enter into discussions with the Northern Ute Tribe and Utah Department of Environmental Quality to determine the best interim approach to managing this program in the disputed area. EPA will notify the public of the outcome of these discussions.

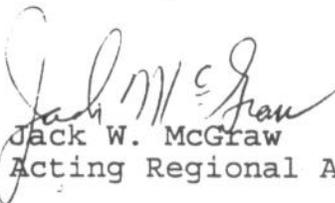


In excluding Indian Country from the scope of this proposed program modification, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sludge management facilities and activities in Indian Country. Should the State of Utah choose to seek program approval within Indian Country, it may do so without prejudice. Before EPA will approve the State's program for any portion of Indian Country, EPA will have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

There are no EPA-issued sludge management permits for facilities or activities on "Indian Country" within Utah at this time. We have provided the Department of Environmental Quality with a list of the sludge-permitted facilities and activities which will continue to be administered by EPA until EPA enforcement cases against these facilities have been closed. Operators or owners of these facilities or activities should continue to send original or renewal sludge permit applications to EPA. They will be notified of this at the time all permittees are notified of the program authorization decision. Persons with questions as to whether their facility or proposed activity may be in Indian Country are advised to consult with the Bureau of Indian Affairs and the EPA.

We look forward to working with you and the Department of Environmental Quality in continued efforts toward the prevention and control of sludge pollution in the State of Utah. Congratulations on receiving authorization for this program.

Sincerely,



Jack W. McGraw
Acting Regional Administrator

Enclosure

cc: Dianne Nielsen, DEQ
Carol Browner, Administrator