

MEMORANDUM OF AGREEMENT
BETWEEN THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
AND
REGION V, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Chief Administrative Officer of the Ohio Environmental Protection Agency, referred to herein as the Director and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c), 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

-1-

I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

- A. The two purposes of this part of the Agreement are: (1) to provide for the transfer of data bearing on NPDES permit and Refuse Act applications from the U.S. EPA to the Ohio EPA, and (2) to insure that any deficiencies in the transferred NPDES and Refuse Act applications will be corrected prior to the issuance of an NPDES permit.
- B. Commencing immediately, the Regional Administrator will transmit to the Ohio EPA a list of all NPDES permit and Refuse Act applications received by the U.S. EPA. This list will include the name of each discharger, SIC Code, the application number, and will indicate those NPDES and Refuse Act permit applications which U.S. EPA has determined to be administratively complete.
- C. After receipt of the list, the Ohio EPA will identify the priority order to be used by U.S. EPA to transmit application files to the Ohio EPA. The application file will include the NPDES and Refuse Act permit application and any other pertinent data collected by U.S. EPA. The application files will be transmitted to the NPDES Permit Records Section of the Ohio EPA according to the priority order identified, and U.S. EPA will retain one copy of each file transmitted to the Ohio EPA.
- D. When an NPDES or Refuse Act application transmitted to the Ohio EPA has been identified as administratively incomplete, the Ohio EPA will request the necessary information from the applicant and correct the application. The Director, at his discretion, may also obtain additional information for those applications identified by U.S. EPA as administratively complete to update or evaluate and process the application.
- E. The Ohio EPA NPDES Permit Records Section will transmit two (2) copies of completed NPDES applications (other than those determined by U.S. EPA to be complete under paragraph B. above) to the Regional Administrator, Attention: Permit Branch.
- F. If the Regional Administrator determines that an NPDES or Refuse Act application is not complete, he will specifically identify the deficiencies by letter to the NPDES Permit Records Section, Ohio EPA. If no objection is received from the Regional Administrator within 20 days of the date of the postmark of the transmittal, the application shall be deemed to be complete and the Ohio EPA will act upon the permit application without further action by the Regional Administrator. If deficiencies are identified by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until all deficiencies are corrected in a revised NPDES application, the revised application is transmitted to the Regional Administrator, and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- G. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

-2-

II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

- A. The procedure specified in this section (Section II) of this Memorandum of Agreement will apply to NPDES applications, forms and reporting forms received by the Director from dischargers after the receipt of permit authorization under Section 402(b) of the Federal Act.
- B. When the Ohio EPA determines that NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted by the Ohio EPA NPDES Permit Records Section to the Regional Administrator, Attention: Permit Branch. If the U.S. EPA concurs with the Director's findings of completeness, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Ohio EPA may transmit forms directly into the National Data Bank subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the U.S. EPA determines that any NPDES application or reporting form received from the Ohio EPA is not complete, the deficiencies will be identified by letter to the NPDES Permit Records Section, Ohio EPA. The Ohio EPA will request the necessary information from the applicant or reporting entity and correct the application or reporting form. If no objection to an NPDES application is received from the Regional Administrator within 15 days of the date of the postmark of the transmittal of the application or within 40 days of the postmark of the transmittal of the reporting form, the application or reporting form shall be deemed to be complete. If deficiencies are identified in an NPDES application by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until a revised NPDES application is transmitted to the Regional Administrator and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- C. The Regional Administrator may waive his rights to receive copies of NPDES forms with respect to classes, types and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can discontinue sending the EPA copies of NPDES forms. In exercising his discretion in relation to the provisions of this paragraph, the Regional Administrator shall pay heed to Section 101(f) of PL 92-500.
- D. Upon receiving an NPDES form from the Director, if the Regional Administrator identifies any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge and notifies the Director, the Director will require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.
- E. When requested by the Regional Administrator, the Director will transmit copies of notices received by him from publicly owned treatment works pursuant to 40 CFR 124.45(d) and (e) within 20 days of the postmark of the request.

-3-

- F. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of the applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

-4-

III. 124.35(b) and (c) PUBLIC ACCESS TO INFORMATION

- A. The Ohio EPA will protect any information (other than effluent data) contained in NPDES application forms or other documents as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If such information appears in NPDES applications or other documents that must be forwarded to the Regional Administrator under the terms of this Memorandum of Agreement, the information for which confidential treatment has been requested will be specifically identified by the Director when the information is transmitted. If the Regional Administrator finds it necessary to consider releasing such information to the public, he will request advice from the Office of General Counsel, requesting a determination of the validity of the claim of confidentiality. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of the date of postmark of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator, the Director, and the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the date of the postmark of such notice, the Regional Administrator will communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.
- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Director, upon written request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

IV. 124.44(d) COMPLIANCE SCHEDULE REPORTS

On the last day of the months of February, May, August, and November, the Director will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an initial, interim or final requirement or to notify the Director of compliance or non-compliance with each initial, interim or final requirement (as required pursuant to paragraph, 40 CFR 124.44(b)). The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

- (1) The name and address of each non-complying NPDES permittee;
- (2) A short description of each instance of non-compliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility, failure to notify the Director of compliance with an interim requirement to complete construction by June 30, etc.);
- (3) A short description of any action or proposed action by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and
Any details which tend to explain or mitigate an instance of non-compliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

-6-

V. SECTION 124.46 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF PROPOSED NPDES PERMITS

- A. At the time the public notice required by 40 CFR 124.32 is issued, the Director will transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit, and a list of all persons receiving the public notice, fact sheets, and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.
- B. The Director will provide periods of public notice and, where appropriate, Public Meetings on proposed NPDES permits in accordance with the provisions of the Ohio EPA Rules of Procedure, which satisfy the Public Notice and Public Hearing requirements of the U.S. EPA Guidelines. If the Director has received a specific request that a Public Meeting be held on a proposed NPDES permit, he will notify the Regional Administrator of that fact and his decision whether to hold such a Public Meeting within 45 days of the date of public notice. If the Director decides not to hold such a Public Meeting, he will provide the Regional Administrator and all parties requesting the Public Meeting, within 45 days of the date of public notice, with a written explanation of why the Public Meeting was not held.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or Public Meeting, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: Permit Branch, together with a copy of all statements received from the public notice, and where a Public Meeting is held, a summary of all objections. In lieu of a summary, the Director may provide a verbatim transcript of the entire Public Meeting. If no comment is received by the Director within 35 days of the date of the postmark of the transmittal of the revised permit, he will assume U.S. EPA has no objections to NPDES permit issuance.
- D. If a proposed NPDES permit is not revised after a public notice or, if held, a public hearing, the Director will notify the Regional Administrator, Attention: Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and will include a copy of all written statements received from the public notice. If no comment is received by the Director within 20 days of the date of the postmark of this letter, he will assume U.S. EPA has no objection to NPDES permit issuance. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- E. No NPDES permit will be issued by the Director until he receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402(b) of the Federal Act, or if no comment is received by the Director from U.S. EPA within the time provided in paragraphs C and D above. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- F. If the Regional Administrator objects to a proposed NPDES permit he will notify the Director in writing within the time period or sooner as identified in paragraphs C or D above and specify the nature of the objection

-7-

and the terms and conditions required to eliminate his objection to the proposed permit. The response of the Director to these objections will be communicated in writing by the Director to the Regional Administrator, and no permit will be issued before written approval of a revised NPDES discharge permit is received by the Director from the Regional Administrator.

- G. The Regional Administrator may waive his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can issue an NPDES permit without U.S. EPA approval.
- H. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permits Branch, a list of permits to be issued. Before any permit is issued by the Director, he shall confirm that a copy of the permit has been received by the Regional Administrator.

-8-

VI. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR
OF ISSUED NPDES PERMITS

- A. The Director will transmit to the Regional Administrator, Attention: Permit Branch, two (2) copies of every issued NPDES permit, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.
- B. The Director will transmit the above information together with a copy of the Director's letter to the applicant forwarding the NPDES permit, at the same time the NPDES permit is issued.

VII. 124.61(b) MONITORING

- A. Permit conditions issued by the Ohio EPA for any discharge authorized by an NPDES permit which (1) is not a minor discharge as defined by 40 CFR 124, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Federal Act, will require monitoring by the permittee for at least the following:
- i. Flow in gallons per day and
 - ii. All of the following pollutants:
 - a. Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
 - b. Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
 - c. Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
 - d. Any pollutants in addition to the above which the Region Administrator requests, in writing, be monitored.
- B. The Regional Administrator may make the request specified in A (2) and A (3) (ii) (d) above at any time before an NPDES permit is issued.
- C. The Director will transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring reporting forms, either by (1) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (2) by direct entry into the General Point Source File data system.
- D. The Director will transmit on the last day of the months of February, May, August, and November, to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances as of 30 days prior to the date of such report, of all violations of effluent limitations indicated by self-monitoring reports. At the time of transfer of permanent authority, the Director shall formulate and continually update a list of all other permittees for which effluent monitoring data will be forwarded monthly. The list, which may be a computer printout, will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:
- (1) The name and address of each non-complying NPDES permittee;
 - (2) The effluent limitations exceeded;
 - (3) Any action or proposed action by the NPDES permittees or the Director to comply or enforce compliance with the effluent limitations; and
 - (4) Any details which tend to explain or mitigate an instance of non-compliance.

-10-

VIII. 124.62(c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of monitoring records under 40 CFR 124.62(c).

IX. 124.71(c) RECEIPT AND FOLLOW-UP NOTIFICATIONS AND REQUESTS

If the Director determines that a condition of a permit of a publicly owned treatment works relating to a new introduction of pollutants or changes in the volume or character of pollutants introduced into such treatment works is violated, he will notify the Regional Administrator in writing and take appropriate steps to assure compliance, including where necessary, the restriction or prohibition of introduction of pollutants into treatment works under Section 402(h) of the Federal Act.

X. 124.72(b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If an issued NPDES permit is subsequently revised, suspended, or modified, the Director shall notify the Regional Administrator of such revision or modification and provide the Regional Administrator up to 30 days from the date of the postmark of the notice in which to comment or object and make recommendations to the Director. The Regional Administrator shall respond no later than 30 days from the date of postmark of the notice and may request additional time (not to exceed a total of 40 days from the date of the postmark of the notice).
- B. If the Director upon request of the permittee, decides to make a revision, suspension, or modification of the NPDES permit for good cause, such as strikes, floods and acts of God, he shall notify the Regional Administrator in writing and, if no written objection or request for additional time (not to exceed a total of 40 days from the date of the postmark of the notice) is received from the Regional Administrator within 30 days of the date of the postmark of the notice, he shall deem it approved. Any such revision, suspension or modification of a schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.
- C. The Director will transmit to the Regional Administrator two (2) copies of any document modifying, suspending, or revoking an NPDES permit or schedule of compliance.

-12-

XI. 124.73(b) (2) EMERGENCY NOTIFICATION

The Director or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the District Offices or the Regional Offices, as the Director determines appropriate.

XII. 124.80(d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator will transmit to the Director any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Federal Act or in directives issued to the U.S. Environmental Protection Agency Regional Offices governing the disposal of pollutants into deep wells.

XIII. OTHER ITEMS

- A. Attached hereto is a list of all dischargers including major dischargers along with a schedule covering a six-month period for the processing of the permits for those dischargers. This schedule is the first part of a schedule aimed at issuing all permits to be issued in the State of Ohio by December 31, 1974. This schedule will be expanded by the Ohio EPA on a quarterly basis thereafter to schedule the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Ohio EPA to the Regional Administrator for his information.
- B. This Memorandum of Agreement may be modified by the Director and the Regional Administrator following the public hearing to evaluate the State's Section 402(b) program submittal on the basis of the issues raised at the hearing. The hearing record will be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of the Agreement following the public hearing will be finalized, reduced to writing, and signed by the Director and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of U.S. EPA for review and approval. The Director and the Regional Administrator will make any such revised Agreement available to the public for inspection and copying.
- C. All Agreements between the State of Ohio and the Regional Administrator are subject to review by the Administrator of U.S. EPA. If the Administrator of U.S. EPA determines that any provisions of such Agreements do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of the Section 304(h) (2) Guidelines, he will notify the Ohio EPA and the Regional Administrator of any deficiencies, and the Agreement will be renegotiated in light of these comments.
- D. This Memorandum of Agreement will take effect upon signature of the Director and Regional Administrator and concurrence by the Administrator, U.S. EPA.
- E. No later than 120 days from the effective date of this Agreement, the Regional Administrator shall consider whether to waive his rights to receive, comment upon, object to any class or category of NPDES permit or reporting form. The Regional Administrator shall promptly notify the Director in writing of his decision.
- F. This Memorandum of Agreement shall remain in effect until modified or suspended.

Ohio Environmental Protection Agency

by

Ira L. Whitman

Ira L. Whitman,
Director

1-17-74

Date

United States
Environmental Protection Agency
Region V

by

Francis T. Mayo

Francis T. Mayo
Regional Administrator

1/24/74

Date

Approved:

United States Environmental Protection Agency

Ronald T. ...

Administrator

3-11-74

Date