

MEMORANDUM OF AGREEMENT

BETWEEN

THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL

QUALITY (DEQ)

AND THE

U.S. ENVIRONMENTAL PROTECTION AGENCY (REGION 6)

RELATING TO ADMINISTRATION AND ENFORCEMENT

OF THE DEQ'S NATIONAL POLLUTANT DISCHARGE

ELIMINATION SYSTEM PROGRAM (NPDES PROGRAM)

PRETREATMENT

STORM WATER

AND

SEWAGE SLUDGE PROGRAMS

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**STATE OF OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY
MEMORANDUM OF AGREEMENT**

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MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 6, AND THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ) RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF THE DEQ'S NPDES, PRETREATMENT, STORM WATER, AND SEWAGE SLUDGE PROGRAMS.

I. INTRODUCTION

This Memorandum of Agreement (hereinafter "MOA"), establishes policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which a partial National Pollutant Discharge Elimination System (hereinafter "NPDES") program, Pretreatment program, Storm Water program, and a Sewage Sludge program will be administered by the Oklahoma Department of Environmental Quality (hereinafter "DEQ") and reviewed by Region 6 of the United States Environmental Protection Agency (hereinafter "EPA"). All additional agreements between the DEQ and the EPA are subject to review by the Administrator of the U. S. Environmental Protection Agency (hereinafter the "Administrator"), and the Executive Director of the DEQ (hereinafter "Director" or "Executive Director").

This MOA, and any subsequent written modification hereto, shall take effect after it is signed by the Executive Director of DEQ and approved by the Regional Administrator, with concurrence from the Administrator of EPA. Either the DEQ, Regional Administrator, or Administrator of EPA may initiate action to modify this MOA. Any modification must be in writing, signed by the Executive Director of the DEQ and approved by the Regional Administrator, with concurrence from the Administrator of the EPA.

A. THE SCOPE AND PURPOSE OF THE NPDES, PRETREATMENT, STORM WATER, AND SEWAGE SLUDGE DISPOSAL PROGRAMS

Section 402 (n) of the Water Quality Act of 1987 (P.L. 100-4) amended the Clean Water Act of 1977 (P.L. 92-500) (hereinafter referred to as the "CWA" or the "Federal Act") and amended the Federal Water Pollution Control Act to allow the approval by the Administrator of EPA of a partial permit program to be administered by a state. The EPA has promulgated regulations requiring the development of program elements necessary for administration of the NPDES permit program by states, including partial NPDES programs. EPA's regulatory requirements for the NPDES program can be found at 40 CFR Parts 122, 123, 124 and 125. Various sections of the Federal regulations, in particular 40 CFR 123.24, require any state which seeks to administer the NPDES program to execute a Memorandum of Agreement setting forth the manner in which partial State assumption of Sections 301, 302, 306, 307, 402, 403 and 405 authority is to be undertaken. This document is the required Memorandum of Agreement.

The establishment and implementation of DEQ's Sewage Sludge Management Program is in accordance with the regulations promulgated under sections 402 and 405 of the CWA and CFR Part 503. The DEQ shall

operate the Sewage Sludge Use and Disposal Program in accordance with this MOA, the CWA as amended, promulgated federal regulations, the Annual National Guidance for Oversight of the NPDES Program, Oklahoma Administrative Code 252:605, the annual State/EPA Enforcement Agreement (SEA), the Enforcement Management System (EMS) Manual and the Sewage Sludge Program, and the State Program Plan.

This MOA shall be jointly reviewed by the DEQ and Regional Administrator at least annually during the preparation of the annual State Water Pollution Control Program Plan (hereinafter, "State Program Plan"), as required by Section 106 of the CWA. The definitions used in this MOA shall be the same as those found in Title 40, Code of Federal Regulations Parts 122, 123, and 124 (40 CFR Part 122, 123, and 124) promulgated April 1, 1983 and revised as of July 1, 1994; Title 40 Code of Federal Regulations Part 403 (40 CFR Part 403); Title 40, Code of Federal Regulations Part 503 (40 CFR Part 503) (promulgated February 19, 1993). In addition, for the purpose of this MOA the following definitions contained in the Environmental Quality Code (Title 27A O.S. Supp. 1993, Section 2-1-101 et seq., as amended) also apply:

"Director" and "Executive Director" in the context of this MOA, refer to the Executive Director of the Department of Environmental Quality.

Others as applicable - such as "interested parties" (see page 41)

The purpose of this MOA is to establish a basis upon which EPA Region VI and the DEQ shall agree, in accordance with 40 CFR Section 123.24, to implement and perform the following:

1. Transmit pertinent administrative data and forms from the Regional Administrator to the DEQ;
2. Transfer the administration of existing and future NPDES and sewage sludge permits from EPA to DEQ;
3. Transmit pertinent administrative data and forms from the DEQ to the EPA, Region 6;
4. Establish procedures for EPA access to DEQ and permittee information;
5. Establish provisions specifying classes and categories of permit applications, draft permits, and proposed permits as well as permit modifications, revocations and reissuance and other documents that DEQ will send to the Regional Administrator for review, comment, and concurrence;
6. Establish monitoring, record-keeping, and reporting requirements and procedures by which compliance

schedule reports shall be sent to EPA from DEQ;

7. Establish DEQ procedures for permit, regulatory, and statutory compliance and enforcement;
8. Define DEQ and EPA responsibilities for establishing and enforcing National Pretreatment Standards;
and
9. Modify the MOA, when needed.

II. GENERAL RESPONSIBILITIES

Upon program approval by the Regional Administrator, EPA, Region VI (hereinafter the "Regional Administrator") and concurrence from EPA Headquarters, the DEQ shall have sole responsibility for the issuance of all NPDES point-source, sewage sludge disposal permits, and all general permits under the DEQ jurisdiction, which will be assumed upon approval of the program revision, within the State of Oklahoma for those sources, activities and facilities which are within the jurisdiction of the DEQ unless otherwise specified in this MOA, federal laws or regulations. The general permits will be issued following Program assumption and EPA approval. Where valid NPDES and OPDES permits have been issued for the same facility with the OPDES permit containing more stringent limits than the NPDES permit, both the NPDES and OPDES permits will remain in effect and be enforceable until such time as the NPDES permit is modified and reissued with the more stringent limits contained in the OPDES permit. If not, the NPDES permit will remain the enforceable permit after program approval until DEQ reissues the permit -- it will be the OPDES permit at that time. Based on this approval, the Executive Director shall under existing State statutes and regulations, process and issue State permits which are consistent and compatible with the Federal Clean Water Act as amended, federal regulations, national and/or regional policies, guidance, the OPDES Act, and state rules promulgated thereunder and contained in the Oklahoma Administrative Code ("OAC"). EPA shall transfer existing NPDES permits, sewage sludge permits and storm water permits (after 7/1/97) to DEQ for administration in accordance with provisions set forth in Section IV of the MOA. In addition, on the date of program approval, the primary responsibility and right to prevent, reduce and eliminate pollution in waters of the state of Oklahoma rests with the DEQ to the full extent of DEQ's jurisdiction over such pollution under state law, provided that the DEQ's program for these purposes shall also promote and fulfill federal objectives and requirements. Nothing in this MOA should be interpreted to restrict EPA's oversight responsibility for all aspects of an NPDES program, including wastewater and sewage sludge permitting and storm water and pretreatment activities. The Executive Director shall administer the State program consistent with this MOA, the Federal and State Acts, current and future Federal and State laws, regulations, policies and promulgated effluent guidelines. EPA shall, as part of its statutory overview duty, assure that such administration is consistent with this MOA and all applicable requirements embodied in current regulations, policies, and Federal law. In addition, the MOA and the Performance Partnership Agreement should be consistent; however, adherence to this MOA shall not be contingent upon the

receipt of §106 grant funds from EPA. When the Performance Partnership Agreement is effective it will replace the 106 grant annual plan . If the State/EPA Agreement indicates that a change is needed in the MOA, the latter may be amended as provided in Section IX of this MOA. Any State/EPA Agreement or annual program grant may not override the basic requirements of this MOA as specified in 40 CFR §123.24(c). However, State/EPA Enforcement Agreements signed by the Director, DEQ and the Regional Administrator of EPA will be used to update this MOA on an annual basis.

The DEQ and the EPA hereby agree to cooperate and coordinate in a manner which will assure the successful and effective administration of the NPDES, Pretreatment, Storm Water and Sewage Sludge Disposal programs. Meetings between the DEQ and EPA will be scheduled at a minimum, quarterly, to review specific operating procedures, resolve problems, or discuss material concerns involving the administration of the DEQ's permit program. The EPA shall provide to the DEQ on a continuing basis, updated information, copies of proposed and final regulations and guidance documents, training, technical and other assistance on the interpretation and implementation of Federal regulations, policies and guidelines regarding permitting and enforcement matters and the NPDES, Pretreatment, Storm Water and Sewage Sludge programs.

The DEQ will administer their OPDES, Pretreatment, Storm Water, and Sewage Sludge Disposal programs in accordance with Section 405, Section 403 and Section 402 of the CWA, this MOA, applicable State legal authority, all applicable promulgated Federal regulations, in particular 40 CFR Parts 122-125, Section 503, policies, guidance, the Annual National Guidance for Oversight of the NPDES program, the annual State/EPA Enforcement Agreement (SEA), the Enforcement Management System (EMS), Pretreatment Program, Storm Water Program, and the State Water Pollution Control Program Plan (hereinafter "State Program Plan"). The SEA signed by the Director of DEQ and the Regional Administrator of EPA shall be updated on an annual basis. Permit applications by major dischargers, minor facilities causing water quality problems, and Class I sewage sewage sludge management facilities, shall normally receive first priority in all DEQ wastewater discharge and sludge permitting activities, depending on water quality and public health considerations. However, negotiations concerning strategies and priorities of issuance, compliance monitoring and enforcement of permits, as established in this MOA, may be set forth in more detail in future Working Agreements between EPA and DEQ negotiated annually as part of the State Program Plan required by Section 106 of the Act and the annual State/EPA Enforcement Agreement (SEA). Additionally, the DEQ has the primary responsibility to establish State OPDES, Pretreatment, Storm Water and Sewage Sludge Disposal program priorities which are consistent with the national and regional priorities, goals, objectives and policies.

At least annually and at the discretion of EPA, the EPA shall prepare and send to Public Notice a status report on the performance of the DEQ's OPDES program. At a minimum, the report shall address the following:

- 1) to what extent the DEQ has achieved the commitments established in the annual State Program Plan;
- 2) the adequacy of the State Program Plan to carry out the responsibilities and policies of the OPDES program; and
- 3) Report for Enforcement and Compliance Assurance Priorities (RECAP)

The Regional Administrator shall assess DEQ's administration of the State program on a continuing basis for consistency with the Federal Act, this MOA, and all applicable Federal regulations and policies. This assessment shall generally be accomplished by the review of permits, reports, and enforcement actions which shall include implementation of the Pretreatment, Storm Water and Sewage Sludge Programs submitted by the Executive Director and DEQ in accordance with this MOA, applicable Federal regulations (including 40 CFR §123.45) and policies, and any Working Agreements, including the annual State Program Plan. In the event EPA determines that elements of the NPDES, Pretreatment, Storm Water or Sewage Sludge Disposal Programs are in any way deficient or inconsistent with this MOA, the State Program Plan, applicable regulations and statutes, the EPA will notify the DEQ of these deficiencies noted in the reviews, and the DEQ will immediately initiate action to correct the problems or concerns. If the DEQ is unable to make the necessary corrections, EPA may proceed in withdrawing the administration of this program in accordance with Section 402(c)(3) of the Act and any federal regulations promulgated thereunder.

III. PROGRAM RESPONSIBILITIES

A. DEQ RESPONSIBILITIES

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

1. Develop and maintain the resources and legal capabilities required to carry out all aspects of the OPDES program, including the Pretreatment, Storm Water and Sewage Sludge programs. The DEQ will submit to the Regional Administrator the information described in Section VI of this MOA, the annual State Program Plan, the Performance Partnership Agreement and applicable portions of 40 CFR Part 123. Additionally, the DEQ shall submit specific information and allow access to files as necessary for evaluating DEQ administration of the OPDES program.
2. Process in a timely manner and propose to issue, reissue, modify or deny all OPDES and Sewage Sludge Disposal permits subject to DEQ jurisdiction. Permit applications by major dischargers, minor facilities causing water quality problems, Class I sewage sludge management facilities and new source dischargers shall normally receive first priority in all OPDES wastewater discharge and sewage sludge permitting activities, depending on water quality, environmental and public health considerations. Other DEQ priorities are the reissuance of permits to categorical industries or other significant

industrial users with discharges to POTWs without an approved local pretreatment program, the issuance of storm water permits and the issuance of other general permits.

3. Comprehensively evaluate and assess compliance with all enforcement documents including permits, regulations, administrative orders, consent agreements, consent orders and court orders which deal with all CWA issues including effluent limitations reporting, compliance schedules, operation and maintenance, pretreatment, sludge and storm water. This will be further discussed in Section V of this MOA.
4. Establish and maintain a vigorous enforcement program for permit, unauthorized discharges, and pretreatment violations by taking timely and appropriate actions in accordance with the CWA, National and Regional Guidance, applicable state law, the principles discussed in Section V of this MOA, and the OPDES enforcement management system (EMS), with any modifications thereto.
5. Maintain an effective program to carry out the pretreatment responsibilities outlined in Section V of this MOA.
6. Maintain adequate public files for each permittee at the central office which are easily accessible to EPA for audit purposes. Such files must include at a minimum, copies of:
 - a. permit applications
 - b. draft and issued permits
 - c. public notice and fact sheet or statement of basis, as applicable
 - d. all comments received during the public comment period
 - e. responses to comments
 - f. discharge monitoring reports (DMRs)
 - g. all inspection reports
 - h. all enforcement actions
 - i. other pertinent information and correspondence
 - j. noncompliance reports
 - k. construction reports
 - l. logs summarizing violations and actions
 - m. toxicity reports
 - n. sludge monitoring reports
 - o. pretreatment program reports
 - p. change to compliance schedule reports

- q. requests for appeals, evidentiary hearings, stays of permit and/or specific permit conditions, and other legal documentation.
- r. all compliance and noncompliance documents.
- s. approved POTW pretreatment program documents.
- t. approved storm water program documents
- u. notice of intent (NOIs) or authorization to discharge under general permits.

All effluent data, permits, and permit applications pertaining to the OPDES, Pretreatment, Storm Water and Sewage Sludge Disposal programs will be made available to the public with no restrictions, and other OPDES data will be made available to the public consistent with 40 CFR §122.7 and OAC 252:605-1-5(c)(3)(F).

- 7. Cooperate with EPA in the administration of the OPDES, Pretreatment, Storm Water and Sewage Sludge Disposal programs in accordance with EPA program policies and guidance.
- 8. Assess and collect penalties for non-compliance using the BEN & ABLE System and in accordance with the CWA Civil Penalty Policy.
- 9. Direct input of permit and enforcement data into the National Permit Compliance System (PCS) in accordance with PCS policy statement and regional guidance.
- 10. Review biomonitoring reports from permittees where biomonitoring requirements are in effect. Require and oversee Toxicity Reduction Evaluations (TREs) for those facilities with biomonitoring conditions in OPDES permits and which demonstrate persistent lethality. DEQ will enforce toxicity limitation(s) to protect water quality. DEQ will transmit a copy of the final report to EPA and will expeditiously reopen the OPDES permit to incorporate toxicity limit(s) and compliance schedules at the conclusion of the TRE.
- 11. Require POTW Pretreatment Programs to be modified as it is determined that they are no longer able to meet the letter and intent of the General Pretreatment Regulations(40 CFR 403). Also, require that Technically Based Local Limits (TBLLs) are reassessed when the OPDES permit for any of the POTW plants is next reissued. Review and respond to both Pretreatment Program modifications and TBLLs in a timely manner.
- 12. DEQ will develop technology based limits in accordance with EPA regulations.

13. DEQ will consider the adoption of pollution prevention programs developed by EPA.
14. DEQ will work diligently to clarify regulatory authority in reference to Indian Country.

B. EPA RESPONSIBILITIES

1. EPA will commit, to the maximum extent possible, funding to the State to support this effort. It is recognized that it is the State's responsibility after program approval to run and manage the OPDES, Pretreatment, Storm Water and Sewage Sludge Programs with or without the assistance of Federal funding.
2. EPA will provide training and technical support and assistance to the DEQ in the following areas:
 - a. Interpretations of Effluent Limitation Guidelines (ELGs) regulations.
 - b. Development of technology-based effluent requirements and related "best management practices," which include the use of "best professional judgment."
 - c. General technical assistance in processing permit applications.
 - d. Use of the PCS system and BEN and ABEL systems.
 - e. Training for permit writers, administrative and technical staffs.
 - f. Inspection program.
3. EPA will ensure that the DEQ is kept fully informed and up to date concerning:
 - a. EPA contractor reports; draft and final EPA development documents; and draft, proposed and final ELGs regulations for various industry categories.
 - b. Draft and final settlement agreements between EPA and litigants which concern the interpretation or modification of ELGs regulations for various industry categories.
 - c. Draft, proposed, and final versions of EPA regulations, technical guidance, policy and procedures which pertain to implementation of the OPDES, Pretreatment, Storm Water and Sewage Sludge Programs.
 - d. Copies of administrative orders, settlement agreements and court decisions involving EPA's NPDES, Pretreatment, Storm Water and Sewage Sludge Programs, general permits and implementing regulations in Oklahoma.
4. EPA will provide DEQ with the opportunity for meaningful involvement in program development activities and program initiatives. EPA will keep DEQ informed of development of NPDES, Pretreatment, Storm Water and Sewage Sludge programs policy statements, strategies and related

guidance, and provide for input by the DEQ when possible.

5. As outlined in this MOA, EPA will oversee the DEQ administration of OPDES Pretreatment, Storm Water and Sewage Sludge Management Programs on a continuous basis for consistency with the CWA, this MOA, 106 Program Plan or the Performance Partnership Agreement, and all applicable federal regulations, guidelines, and policies. EPA will, as a part of its assessment, consider among other things, review of permits, permit packages including fact sheets and/or statement of basis, reports and enforcement actions submitted by the DEQ. This consistency includes meeting EPA's timely and appropriate criteria for initiation of formal enforcement actions, the assessment and collection of administrative penalties and judicial actions consistent with the CWA Civil Penalty Statement Policy. EPA may also consider comments from permittees, the public, and federal and local agencies concerning the DEQ's administration of OPDES. Any such comments considered by EPA will be brought to the attention of the DEQ by written correspondence if the commenting party has not previously communicated this comment to the DEQ. Any information obtained or used by the DEQ under the OPDES program shall be available to EPA upon request without restriction. If the information has been submitted to the DEQ under a claim of confidentiality, the DEQ will inform EPA of that claim. Claims of confidentiality will be treated in accordance with 40 CFR Part 2, Subpart B, and 40 CFR §122.7.
6. EPA will review and comment on draft permits, proposed permits, variance requests, pretreatment program actions and any future OPDES program modification in a timely manner in accordance with this MOA.

C. JURISDICTION OVER PERMITS

Upon the Regional Administrator's approval of the revised OPDES Program, the DEQ will assume the responsibility for all NPDES/OPDES permits, including general permits within the scope of its jurisdiction. The EPA will only retain jurisdiction over permits as described in the following paragraphs.

EPA shall retain permit decision-making authority over permits which are currently out for EPA's public notice until final issuance, and permits for which variances or evidentiary hearings have been requested before the OPDES approval date until such time as they have been finally resolved. As each request is resolved, EPA shall notify DEQ and transfer jurisdiction of that permit. Also, enforcement lead over permittees subject to ongoing formal enforcement actions by EPA (a list of which will be agreed upon by EPA and DEQ) will be retained by EPA until final resolution of the enforcement actions. This resolution can be accomplished either by the permittee complying with the requirements of the enforcement action or by DEQ replacing EPA's Administrative Order with an equivalent State Administrative Order. The issuance of a DEQ Administrative

Order shall only occur after both EPA and DEQ agree that such an action is appropriate. Within 45 days of permittee compliance with the EPA action or DEQ has finalized an equivalent Administrative Order, the EPA action which constrained the transfer of enforcement responsibilities shall be closed and the file, and primary enforcement lead, shall be transferred to DEQ. The DEQ must assume primary enforcement lead on all facilities within its jurisdiction, within two years of program approval, in accordance with the previously described procedures, except for those facilities in which an EPA administrative fine or EPA civil referral is pending.

The State of Oklahoma does not seek primacy over Indian Country (as defined in 18 U.S.C. §1151). Indian Country is defined as (a) all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. DEQ is unaware of any wastewater facilities in Indian Country as defined above; facilities which may be in question will be handled on a case-by-case basis. The U.S. Environmental Protection Agency will retain authority to administer the NPDES program in Indian Country in Oklahoma. This does not preclude the development of joint discharge permits drafted by DEQ and issued by EPA.

EPA will retain jurisdiction and responsibility for the following portion of the NPDES program in the State of Oklahoma which is not within the scope of DEQ's jurisdiction, unless otherwise provided by law or an amendment to this MOA:

1. Discharges within the following described categories:
 - SIC Group 13 - oil and gas extraction; except that the DEQ has jurisdiction over point and nonpoint source discharges from natural gas liquid extraction plants identified under SIC (1321) and oil and gas field services identified under SIC (1389) when the service is provided at a site different than that of an exploration or production lease site;
 - SIC Group 46 - Pipelines, except pipelines within certain facilities regulated by DEQ;
 - SIC Group 492 - natural gas transmission, except that the DEQ has jurisdiction over natural gas liquid extraction plants;
 - discharges related to construction activities for the categories in this paragraph;
 - discharges related to transportation, storage and spills of deleterious substances including saltwater, mineral brines, waste oil, crude oil and other substances, which are produced from or obtained or used in connection with the drilling development, producing and operating of oil and gas wells at any of the facilities subject to EPA jurisdiction. If, however, deleterious substances are commingled in a discharge regulated by DEQ, the DEQ shall have sole

jurisdiction over the discharge and the commingled pollutants.

2. Discharges within the following SIC code categories:
 - SIC Group 01 - Agricultural production, crops;
 - SIC Group 02 - Agricultural production, dairies, livestock and animal specialties, except that DEQ shall have jurisdiction over industry group number 0273 (animal aquaculture);
 - SIC Group 07 - Agricultural services;
 - SIC Group 08 - Forestry;
 - SIC Group 09 - Fishing, hunting and trapping, except DEQ shall have jurisdiction over industry group number 092 (fish hatcheries and preserves).

Transfer of complete NPDES authority for general permits including, storm water and UST discharges, will be made using the following procedures:

- Once the Executive Director assumes authority in accordance with a promulgated final rule to issue general permits, the State will become the permitting authority (subject to EPA oversight) for all discharges of storm water associated with industrial and construction activity and UST remediation discharges. EPA general permits and any effective general permits for UST remediation discharges will then be transferred to DEQ for administration. Within 30 days of the transfer of authority, EPA will provide DEQ with a list of all facilities authorized to discharge under these general permits.

IV. PERMIT REVIEW AND ISSUANCE

The DEQ is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, and terminating of permits in accordance with Section II and Section III of this MOA and 40 CFR Parts 122-125, to the extent these regulations are applicable to States.

A. TRANSFER OF FILES FROM EPA TO DEQ

1. Upon approval of the DEQ OPDES Program by the Regional Administrator, EPA will deliver within 30 days to the DEQ all project files for pending permit applications proposed for issuance/reissuance. Project 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 pending permit. EPA will ensure all project files are as complete as possible from available in-house information.

If the Executive Director finds that any DEQ file is incomplete with respect to any EPA-issued permit

where jurisdiction has been transferred to DEQ, the Executive Director shall so notify the Regional Administrator, and he/she shall ensure that a copy of the final permit (including all changes, modifications and corrections thereto) or other missing materials shall be furnished to DEQ within 60 days of such notification.

2. No later than 30 days after the date of EPA's approval of DEQ's OPDES program, the Regional Administrator shall submit to the Executive Director a complete list of all non-filers and potential non-filers known to the Regional Administrator within the State of Oklahoma. This list shall include the name and address of the non-filer, any information available which is relative to the non-filer's type of operation, steps taken by the Regional Administrator to obtain OPDES and Sewage Sludge Disposal permit applications from said non-filer, and the current status of each non-filer.
3. In accordance with a mutually agreed upon schedule, EPA will deliver files for all other permits to the DEQ. Files shall contain all relevant information pertaining to the issuance of the permit as well as copies of all Discharge Monitoring Reports (DMRs), all compliance reports, all enforcement actions, and other pertinent information and correspondence. EPA will ensure all files are complete as possible from available in-house information prior to delivery to the DEQ.

B. RECEIPT OF PERMIT APPLICATIONS BY THE DEQ

Within thirty (30) working days of the receipt of a complete permit application, the DEQ will enter all Water Enforcement National Data Base (WENDB) data into EPA's National Permit Compliance System (PCS).

C. PERMIT REISSUANCE

All expiring OPDES and Sewage Sludge Disposal permits shall be reissued on or before their date of expiration. In the case of expiring general permits, they will be issued within sixty (60) days of EPA approval and Program assumption. If such timely reissuance is not possible, the DEQ will notify the Regional Administrator of the reasons for delay. In no event will permits which have expired be modified or revised to reflect less stringent conditions or limits.

D. TECHNICAL REVIEW AND PERMIT DRAFTING

Once an application has been deemed complete, the permit writer will begin a technical review of the application and drafting of the permit, fact sheet and public notice.

A. Draft Permit Preparation

Both the Clean Water Act and the Oklahoma Environmental Quality Code prohibit any point source discharge which is not authorized by permit. These permits must assure that such discharges are required to receive an appropriate level of treatment prior to discharge, and that the receiving stream is protected for appropriate beneficial uses, as designated in the Oklahoma Water Quality Standards (OWQS, OAC:785, Chapter 45) applicable to waters of the United States. Once an application has been deemed complete, the permit writer will prepare a draft joint permit and accompanying documentation to meet these requirements. In addition to any appropriate numerical limitations, the permits will state all monitoring, reporting, as described in federal (BMPs) and other appropriate requirements, as described in federal and state regulations and/or officially promulgated policies.

1. Permit Limits for Industrial Facilities

Permits for existing industrial facilities and new industrial dischargers will contain permit conditions reflecting application of the Best Conventional Pollutant Control Technology (BCT), and/or Best Practicable Technology (BPT), and/or the Best Available Technology Economically Achievable (BAT), as contained in the applicable Federal Effluent Guidelines (40 CFR Subchapter N). If no Effluent Guidelines are applicable for a particular facility, permits must contain permit conditions equivalent to BCT/BPT/BAT based on Best Professional Judgment (BPJ). Permits for new sources will contain permit conditions reflecting the applicable New Source Performance Standards (NSPS) contained in the Federal Effluent Guidelines. Additional or more stringent effluent limitations may be included based on BPJ.

2. §208 Water Quality Management Plan, Water Quality-based Permit Limits and Water Quality Certification Permits for all facilities will be written to comply with the requirements of the OWQS and the §208 Water Quality Management Plan, including any effluent limitations required by the §208 basin Plan and Section 301 of the CWA. Any technology-based permit limits will be reviewed to assure that they comply with all such requirements. In performing this water quality review, DEQ will follow procedures described in the State's Continuing Planning Process (CPP) Document and any appropriate OWQS implementation documents. DEQ will perform a water quality screen to determine the need, if any, for water quality-based permit limits for whole effluent toxicity; limits on toxic substances; acute, chronic and human health criteria; and oxygen-demanding substances. Any needed limits will be calculated in accordance with these documents.

Any needed changes in the §208 Water Quality Management Plan identified during this process will be made using procedures described in the CPP. These changes will be made prior to final permit

drafting and issuance.

The certification will be based on the condition and requirements listed in the draft permit and shall meet all requirements of 40 CFR 124. Any changes to the conditions and requirements in the permit prior to issuance will require a reevaluation and may require re-certification from the Director that the new permit meets the requirements of the OWQS before the permit may be issued.

3. Monitoring and Reporting Requirements

Permits will contain monitoring and reporting requirements pursuant to 40 CFR 122.44(i). Such requirements will be in accordance with Federal and State regulations and guidance.

4. Standard Permit Conditions

Permits will include standard permit conditions as necessary to conform to state and federal regulations and/or officially promulgated policies.

5. Special Conditions

Additional conditions will be added to permits as necessary to address circumstances at a specific facility and to implement state and federal policies and requirements. Some common special conditions are discussed below.

a. EPA considers biomonitoring to be a standard permit condition required of all major discharges and those minors with potential for toxicity.

b. Storm Water Controls Conditions will be included in permits to assure that all "storm water discharges associated with industrial activities" are controlled in a manner consistent with federal regulations and EPA policies. In addition, conditions will be added to assure that facilities comply with the requirements of any applicable local Storm Water Management Program implemented under the city's NPDES permit for operation of a Municipal Separate Storm Sewer System (MS4). Other storm water controls may be added, as deemed necessary by the permit writer.

c. State-only Requirements Additional Conditions may be included in permits to comply with requirements of State law and DEQ regulations. Such conditions will be identified as State-only requirements. Examples of such conditions include requirements for surface impoundments and land application of wastewater, etc.

d. Toxics Reopener Clause

All permits with biomonitoring requirements will contain a toxics reopener clause. Upon findings of persistent lethality, DEQ will modify permits to include WET limits upon the advice of EPA. If DEQ agrees, DEQ will prepare appropriate documents as discussed in this section (letters, fact sheets, response to comments, etc.) for draft and final permit modification.

e. Toxicity Reduction Evaluations Permits may contain requirements for Toxicity Reduction Evaluations (TRE). However, it is not required that such requirements be included. This is optional based on facility information and prior TRE activities.

f. Sludge

All municipal (SIC code 4952) NPDES permits will contain 40 CFR Part 503 requirements. DEQ will incorporate these conditions into the appropriate permits based on advice/guidance provided by EPA.

Other permits including permits issued to "treatment works treating domestic sewage" may also be issued to implement the requirements of and/or to facilitate facility compliance with 40 CFR Part 503. DEQ will prepare the appropriate documents as discussed in this Section (including letters, fact sheets, Response to Comments, etc.) for draft and final permit issuance based upon the advice of EPA.

g. Municipal Water Pollution Prevention

All municipal NPDES permits will contain MWPP requirements. DEQ will incorporate these conditions into the appropriate permits based on guidance provided by EPA.

6. Content of Fact Sheet and/or Statement of Basis

DEQ will prepare a fact sheet which meets applicable state and EPA requirements for the draft permit for each major industrial facility and each major or minor POTW. A fact sheet or statement of basis will be prepared for other facilities as appropriate. Fact sheets will set forth the significant factual, legal methodological and policy questions considered in preparing the draft permit. This includes showing all the calculations of permit limitations; explaining the regulatory basis including specific citations to the CWA, 40 CFR, or state regulations as appropriate; as well as explaining all the monitoring requirements and their regulatory basis. Fact sheets will fully show and explain all OWQS screenings and explain the inclusion of limitations which may result if any parameter fails the screenings. The fact sheets will also include EPA human health screenings and explain inclusion of reporting requirements for parameters which fail the human health screenings along with a reopener

notice explanation. Statement of basis, to briefly describe the derivation of the permit conditions, will be prepared for all other draft permits. The fact sheet or statement of basis, as applicable, will note any conditions which are necessary to meet the requirements of the OWQS. Contents of fact sheets shall be fully explained in order to meet the requirements of 40 CFR 124.8. The fact sheet shall include an administrative record citing applicable CWA, CFR, letters, memoranda, records of communications, and any other miscellaneous items necessary to meet all legal requirements.

7. Public Notice Summary and Public Notice

The DEQ will prepare a Public Notice. It will consist of the "facility" description: and "standard" public notice language. The facility description will briefly describe significant elements of the proposed discharge(s) such as the applicant's mailing address, name and beneficial uses of the receiving stream, location of the point(s) of discharge and information about disposal of sludge. The standard language will describe comment and hearing procedures and contact persons for additional information. It will also include information concerning the ending of the comment period. The notice will contain a statement that the permit will become effective within thirty days (or on another specified date) after the close of the comment period if no comments are received requesting a change in the draft permit.

E. EPA REVIEW OF DRAFT PERMITS AND PERMIT MODIFICATIONS

1. DEQ shall periodically consult with the Regional Administrator before issuing public notice in connection with the development of draft permits to insure that the permits will comply with federal guidelines and requirements. The DEQ shall transmit to the Regional Administrator appropriate portions of working documents in connection with the consultation. Additionally, within 10 working days of the approval of its DEQ OPDES Program, the DEQ shall provide to the Regional Administrator a computer listing of all facilities by name and corresponding NPDES permit numbers within the scope of DEQ's jurisdiction.
2. Unless otherwise waived, EPA will review in a timely manner all draft permits rather than proposed permits as provided for in 40 CFR §123.44(j). Forty-five days prior to issuance of a public notice of a permit action, the DEQ shall send the EPA one copy of the public notice, the application, the draft permit, and the fact sheet or statement of basis and any permit rationale for each facility. If the permit is for a possible new source under CWA Section 306, the submittal must be accompanied by a new source/new discharger determination. Upon receipt of the draft permit and the other information specified above, EPA shall review and submit to the DEQ its approval, comments, objections, or make recommendations with respect to the draft permit as in accordance with 40 CFR 123.44. All comments submitted to the DEQ shall include a statement of the reasons for the comments or objections and the

section of the CWA, regulations and/or policies which support the comments. If no comments are made to the DEQ within 30 days of receipt, and EPA has not requested an additional 30 days to review the proposed draft permit, the DEQ may proceed with the issuance of the public notice. If no comments have been received within 90 days of EPA's receipt of the draft permit package, the DEQ may assume EPA has no objection to the issuance of the OPDES permit.

EPA may make a general objection in the initial time period by written notice to the DEQ. Such notice shall include a statement setting forth the grounds for objection to the permit. A request by EPA during the initial time period for more information from DEQ constitutes an interim objection to the draft permit. On the date that EPA receives the information necessary to satisfy its query, the initial time period for EPA review recommences. A written request from EPA for additional time to review an individual draft permit submitted during the initial time period shall constitute a general objection.

Whenever EPA files a general objection to a draft permit within the initial time period, the EPA shall have additional time, but not more than 90 days from the date of receipt of the draft to supply the specific reasons for objections in accordance with 40 CFR §123.44(c)(1) to (8), and the actions that must be taken by the DEQ to eliminate the objections. If the EPA fails to provide a written objection to a draft permit within the initial time period or fails to provide a timely written notice of the specific grounds for objection to a draft permit after making a general objection, EPA shall be deemed to have waived its right to object to the permit terms and conditions.

EPA shall have 90 days from the date of receipt of a draft general permit to comment upon, object to or make recommendations with respect to the draft general permit in accordance with 40 CFR §123.43 and §123.44. If EPA fails to provide an objection to a draft general permit within 90 days from the receipt of the draft permit, EPA shall be deemed to have waived its right to object to permit terms and conditions. The Director of the Office of Wastewater Management or the appropriate official in EPA Headquarters may comment, object to, or make recommendations with respect to any draft general permits on EPA's behalf.

After the public notice period has expired, the DEQ shall consider all comments received as a result of the public notice, including those comments from EPA, and may revise the draft permit as it considers appropriate. Public hearings may be held as provided in 40 CFR §124.12. If a public hearing is held, the DEQ shall consider all comments and may revise the draft permit as it considers appropriate, and prepare a proposed final permit. If (a) the proposed final permit is the same as or more stringent than the draft permit submitted to EPA, (b) EPA has not objected to such draft permit, and (c) valid and significant public comments have not been made, the DEQ may issue the permit without further review

by EPA. In all other cases, the DEQ shall send one copy of the proposed final permit and the information used in developing it to EPA. The EPA will, within 30 working days after receipt of the proposed final permit, notify the DEQ and the permit applicant of any formal objections authorized under §402(d) of the CWA. This notification shall set forth in writing the general nature of the objection. Within 90 days following receipt of the proposed final permit to which EPA has objected, the EPA shall notify the DEQ in writing with a detailed statement of the reasons for the objections and the actions that must be taken to eliminate the objections. EPA objections must be based upon one or more of the criteria identified in 40 CFR §123.44(c). State requests for a hearing on the objection and the procedure for resolving the objection shall be governed by 40 CFR §123.44.

If EPA has a specific objection to a draft or proposed permit and that objection is not resolved within the time limits set forth in 40 CFR §123.44(h), DEQ may not issue the permit and exclusive authority to issue the permit passes to EPA.

3. DEQ shall provide for transmission to EPA copies of any and all significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permits, except those comments regarding permits for which permit review has also been waived and for which EPA has not otherwise requested receipt, if (a) the Regional Administrator requests this information, or (b) the proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit, or (c) significant public comments objecting to the tentative determination and draft permit have been made at the hearing or in writing pursuant to the public notice.

In all other cases, the DEQ will send a copy of the proposed final permit recommendations to any other affected State and copies of written comments and hearing records, including the response to comments prepared under 40 CFR §124.17, to EPA for review. Whenever the DEQ prepares a written explanation to an affected State explaining the reasons for rejecting any of its written recommendations, the DEQ shall transmit a copy to the Regional Administrator.

In accordance with 40 CFR §123.43(a)(3), the DEQ shall transmit a copy of every final issued permit to EPA no later than 30 days after final issuance of a permit. All data related to the public notice, issuance, effective and expiration dates of all issued permits shall be entered into PCS within 30 days of issuance of the final permit.

F. WATER QUALITY BASED PERMITTING

DEQ will follow approved permit development and standards implementation for water quality based permitting.

G. WAIVER OF PERMIT REVIEW BY EPA

1. EPA will, in implementing an effective overview role, review all permit applications, draft permits, proposed final permits, and final (issued) permits for all discharges or proposed discharges subject to jurisdiction of the DEQ, except as provided in the annual State Program Plan. The annual State Program Plan allows the EPA to waive certain categories of permit applications, draft permits and proposed final permits with the exception of the following:
 - a. Discharges which may affect the waters of another State or Indian Country;
 - b. Discharges proposed to be regulated by general permits;
 - c. Discharges from publicly owned treatment works with a daily average discharge exceeding one million gallons per day;
 - d. Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;
 - e. Discharges from any major dischargers;
 - f. Discharges from any discharger within any of the industrial categories listed in Appendix A to 40 CFR Part 122;
 - g. Discharges from any other sources with a daily average discharge exceeding 0.5 million gallons per day, except discharges of non-process waste water;
 - h. Discharges into the territorial sea or contiguous zone;
 - i. POTWs required to have a pretreatment program (40 CFR Part 403);
 - j. Discharges from Municipal separate storm sewer systems;
 - k. Class I Sewage Sludge Management facilities as defined in 40 CFR 503.9; and
 - l. Discharges which are likely to adversely affect sites listed or eligible for listing in the National Register of Historic Places.

The foregoing does not include waiver of receipt of copies of all final permits issued, or any notices required under this MOA.

2. The DEQ shall notify the EPA of any final permit action with regard to a proposed modification, revocation and reissuance, or termination of a permit for those categories of discharges where the Regional Administrator has waived the right to review, comment upon, or object to the permit. In addition, the DEQ shall notify the Regional Administrator whenever the DEQ proposes to modify,

revoke and reissue, or terminate any permit for those categories of discharges where the Regional Administrator has not waived the right to review, comment upon, or object to the permit. Notification shall include a description of the final action and a copy of the final permit, if applicable. EPA does, however, waive the review of minor modifications as defined in 40 CFR Part 122.63.

3. EPA specifically waives its right to review, object to, or comment on the DEQ issued permits listed below:
 - a. permits for other than Class I sewage sludge facilities
 - b. minor modifications of permits as defined by 40 CFR 122.63
4. EPA reserves the right to terminate any waivers contained within this MOA at any time. Any such termination shall be made in writing to the DEQ, in whole or in part. This waiver does not affect the duty of DEQ to transmit a copy of every issued final discharge permit to EPA. Any such termination shall be made in writing to the DEQ.
5. Nothing in this MOA shall be construed to authorize the issuance of permits which do not comply with applicable provisions of Federal, State or local laws, rules, regulations, policies or effluent guidelines nor to relinquish the right of EPA to petition the DEQ for review of any action or inaction because of violation of Federal, State or local regulations, or effluent guidelines.
6. EPA may request, in writing, that the DEQ issue, reissue or modify a permit. EPA will provide to the DEQ specific reasons why EPA is requesting permitting action. If within six months after the initial request the DEQ has not issued, reissued or modified the said permit, EPA, at its discretion, will conduct a public hearing to review the facts surrounding the nonaction by the DEQ.

H. PUBLIC PARTICIPATION

1. Permit applications, draft permits, public notices, fact sheets, and statements of basis will be made available to any party upon request.
2. In addition to general public notices required by 40 CFR §124.10(c), the DEQ will provide copies of all public notices and fact sheets when prepared in accordance with 40 CFR §§124.8 and 124.10 to the applicant and the following organizations, unless otherwise waived by such organization:
 - a. U.S. Army Corps of Engineers

- b. U.S. Fish and Wildlife Service
 - c. National Marine Fisheries Service
 - d. Other appropriate State and Federal Agencies
 - e. Adjacent States (only for permits which affect them) including Indian Tribes
 - f. Major commands of the Department of Defense (DOD) for DOD permits
 - g. Advisory Council on Historical Preservation
 - h. State Historical Preservation Officer
3. All draft general permits, major OPDES permits and pretreatment program approvals and modifications shall be public noticed in a daily or weekly newspaper within the area affected by the activity, in accordance with 40 CFR §124.10(c)(2)(i).

I. PUBLIC HEARINGS

The DEQ shall hold public hearings in accordance with 40 CFR §124.12 whenever it is determined a significant public interest in a draft permit(s)

J. PUBLIC MEETINGS

The DEQ may hold a public meeting whenever it is determined that a face-to-face explanation of the laws, rules, regulations, proposed permit, fact sheet, statement of basis, etc. might clarify permitting issues. As contrasted to a public hearing, a public meeting is an informal procedure not requiring a presiding officer and a court reporter.

K. ISSUANCE OF PERMITS OR NOTICE OF INTENT TO DENY

1. If the final determination is to issue the permit, the DEQ shall issue a response to comments and a final public notice in accordance with 40 CFR §124.17. The final permit will be forwarded to the permit applicant, and to anyone who commented during the public notice comment period, along with a response specifying which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes and describe and respond to all significant comments on the draft permit raised during the public comment period or during a hearing. Copies of issued permits will be forwarded to EPA in accordance with the schedule contained in 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 OPDES regulations.

3. Time frames for permitting are found at the OAC 252:002-15.

L. TERMINATION, MODIFICATION, REVOCATION AND REISSUANCE OF PERMITS

Except as waived in Paragraph F.2 above, the DEQ shall notify EPA whenever it intends to terminate an issued OPDES permit. In addition, DEQ shall transmit to EPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedures set forth in paragraphs D.2 and 3 above shall be followed with respect to modifications or revocation and reissuance by the DEQ of any issued permit, and for purposes of this agreement each permit proposed to be modified or revoked and reissued shall be deemed to be a newly proposed draft permit, except for minor modifications as described in 40 CFR §122.63.

M. MAJOR DISCHARGER LIST

There shall be included as a part of the State annual program plan a "major dischargers" list. Industrial major dischargers are based on a point rating work sheet or applicable definitions. Any additional dischargers that, in the opinion of the DEQ or EPA, have a high potential for violation of water quality standards, or have the potential to cause other significant environmental problems may also be designated by EPA as a major discharger. Municipal majors are those POTWs with design flows of 1.0 MGD or greater. The major discharger list, including Federal facilities, shall be determined by EPA. In addition, the annual State Program Plan shall require a watershed protection approach. This includes identification of the numbers and types of dischargers in each basin, ranking of basins to facilitate an evenly distributed permit workload and synchronization of permits by basins for issuance. The DEQ shall include all majors and minors expected to pose a threat or contribute to water quality degradation in watersheds. Finally, EPA retains authority to submit all final agreed upon major discharger changes to EPA Headquarters.

N. VARIANCES

The DEQ shall conduct an initial review of all requests for fundamentally different factor variances, for variances under §§301(c), (g), (i), (k), and 316(a) and (b) of the CWA, and for modifications to federal effluent limitations established under Section 302 of the CWA.

1. With regard to §§301(i) and (k) and 316(a)(b) variances, the DEQ may deny or approve the request. A copy of the determination shall be sent to the requester and the EPA and all other interested parties.
2. With regard to Fundamentally Different Factors (FDFs) and 301(c) and (g) variances, and §302

modifications, the DEQ may determine to deny the request, and such determination shall be forwarded to the requestor and EPA. If the DEQ determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to EPA. If EPA denies a variance request, the DEQ shall so notify the requestor. If EPA approves a variance request and DEQ concurs that the same is allowed by state law, the DEQ will prepare a draft permit factoring in the variance.

3. The DEQ shall conduct review of all requests for removal credits as specified at 40 CFR 403.7. EPA will retain the right of review of the tentative determination done by DEQ before a final decision is made.

O. ADMINISTRATIVE OR COURT ACTION

If the terms of any permit, including any permit for which review has been waived pursuant to paragraph E above, are affected in any manner by administrative or court action, the EPA may object to said terms pursuant to §402(d)(2) of the CWA. The DEQ shall immediately transmit a copy of any permit which has been affected in any manner by court action or by the final disposition of any administrative appeal to EPA, with changes identified, and supporting judicial or administrative decision. The procedures set forth for general and specific objections as found in 40 CFR §123.44 shall be followed with respect to permit issuance modification, revocation and reissuance or termination as required by a judicial or administrative decision.

P. EVIDENTIARY HEARINGS

1. EPA will retain responsibility over permit appeals which are pending at the time of program approval.
2. The DEQ will provide EPA, and the EPA will provide the DEQ, with a copy of all precedent setting settlements and administrative decisions which impact the DEQ's ability to implement the OPDES program in accordance with the federal requirements.

Q. ENDANGERED SPECIES PROTECTION AGREEMENT

1. Each year, by October 1, the Fish and Wildlife Service (Service) will provide DEQ with the names of all the federally-listed threatened, endangered and proposed, as well as designated or proposed critical habitat, that occur in Oklahoma and that are dependent upon aquatic habitats for their existence. EPA may review or waive review of draft State permits as described in Part III. F of this MOA. However, if EPA finds that the issuance of a permit, as drafted, has reasonable potential to jeopardize the continued existence of a listed species, or adversely modify critical habitat, and review of that permit has been

waived, EPA will withdraw this waiver. If EPA finds that the issuance of a permit, as drafted, may adversely affect a listed species, and review of that permit has been waived, EPA may withdraw this waiver [40 CFR 123.24(e)(1)].

2. DEQ permit writers will use the information submitted by the Service to identify sensitive waters. When a new OPDES permit application, or an application for a modification of an existing permit, is received by DEQ for a sensitive water, DEQ will forward the following information to the Service for review via certified mail: (1) the facility name; (2) the location, including county and legal description; (3) the receiving waters to be affected by the permitted activity; (4) the standard industrial classification of the permit, describing the type of facility and discharge expected; and, (5) available data on the physical, chemical, and biological characteristics of the receiving waters.

Within 30 days after submission of the above information to the Service, DEQ will determine whether the proposed permit "is not likely to adversely affect" or "may affect" a federally-listed species, designated critical habitat, jeopardize a proposed species, or adversely modify or destroy a proposed critical habitat, and convey that determination to the Service in writing via certified mail. Should the Service disagree with DEQ's determination, the Service will then provide written nonconcurrency via certified mail or electronic transmission within 30 days. If DEQ does not receive a response within the allotted 30-day time period, this will constitute an agreement with the DEQ's determination. If DEQ or the Service determines that a proposed permit is likely to adversely affect a listed species, a designated critical habitat, jeopardize a proposed species, or adversely modify or destroy a proposed critical habitat, then DEQ and the Service will work together to modify the permit application to avoid the adverse effect. In these cases, additional information may be requested of the applicant.

If DEQ and the Service cannot reach agreement on modifications to the permit to avoid the adverse effect, DEQ will notify EPA. EPA may make a formal objection to the permit application in accordance with 40 CFR 123.44 if the Service or DEQ determine that the action may adversely affect listed species or critical habitat. EPA will formally object to the issuance of the draft permit and assume permitting authority as a Federal action if the Service determines that the action is likely to jeopardize the continued existence of a listed or proposed species or destroy or adversely modify designated or proposed critical habitat. If EPA assumes permitting authority as a Federal action, the EPA will then initiate consultation with the Service under authority at 50 CFR 402.14. The permit action or variance will be held in abeyance by EPA until the consultation process is completed. EPA will work with the State and the U.S. Fish and Wildlife Service to resolve issues of concern. Should EPA be able to resolve the issues that prompted the formal objection, the formal objection may be withdrawn by EPA, and the State may proceed with issuance of the permit.

3. Each year, by November 1, DEQ will compile and provide to the Service a list of existing permits which DEQ anticipates will be resubmitted for renewal in the upcoming year. If an anticipated application for renewal appears to be located in a sensitive water identified by the Service, the Service can request additional information on that permit. DEQ will also submit a computer printout of: (1) the alphabetical discharge permit status report for municipal wastewater and industrial discharges; (2) the discharge limits for sewage treatment plants and industrial effluents; (3) the location of wastewater and industrial discharges by county; and, (4) the location of discharging facilities by basin number. DEQ will also provide, when possible, early notification of any new permit applications or modifications which it anticipates will be received.
4. Upon receipt by DEQ of each Notice of Intent (NOI) to be covered by a General Permit for a new discharge which occurs in sensitive waters, a copy of the NOI shall be sent via electronic transmission to the Service for review and comment on permit coverage for the applicant facility.

R. HISTORIC PRESERVATION AGREEMENT

1. EPA Region 6 will oversee activities conducted by the DEQ to ensure that the conditions in this MOA are followed. Among these are:
 - a. DEQ shall submit a list of all previously issued permits that will be renewed or reissued within the fiscal year to the Oklahoma State Historic Preservation Office and the Oklahoma Archeological Survey offices no later than November 1 of that fiscal year. The list will consist of the facility/permittee name; the location; the date of permit expiration; and date application was received (if applicable).
 - b. DEQ shall provide the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices copies of the renewal application information for those facilities identified by the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey as they are received by DEQ. Review and comment procedures outlined below shall be followed.
 - c. Upon approval of the general permitting authority, the DEQ shall provide upon receipt of each Notice of Intent (NOI) to be covered by a General Permit for a new discharge, a copy of the NOI to the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices for their review and comment on general permit coverage for the applicant facility. The DEQ shall allow the State Historical Preservation Officer and the Oklahoma Archeological Survey offices 15 calendar days after receipt of NOI to provide comments on general permit coverage for the discharge. If no comments are

- received by DEQ within the 15 day comment period, DEQ may consider that the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices have waived their rights to provide comments.
- d. Upon receipt of each individual application for new discharge permits, a copy shall be sent to the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Preservation Survey offices for their review and comment. The State Historic Preservation Officer and the Oklahoma Archeological Survey offices shall have 30 days after receipt of application to provide comments on the development of a permit for the discharge. If no comments are received by DEQ within the 30 day comment period, DEQ may consider that the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices have waived their rights to provide comments.
 - e. DEQ shall work with the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices to address and resolve, to the maximum extent possible, areas of concern identified by those offices. DEQ shall require an archeological survey in conjunction with the permit application process for facilities as requested by the Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey.
 - f. The DEQ drafted permit package submitted for EPA to review shall include any comments from the Oklahoma State Preservation Officer and the Oklahoma Archeological Survey, and/or a statement that the 30 days have passed and that those offices have waived comment.
2. The Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices have agreed to provide DEQ with the permit renewals that those offices will want to review during that fiscal year. This shall be provided to DEQ within 30 days of the receipt of the list from DEQ (no later than November 30).
 3. The Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices have agreed to review all permit applications sent to them by DEQ; and to provide the State with appropriate historic site classification information needed to develop permit conditions within 30 days of receipt of the application.
 4. The Oklahoma State Historic Preservation Officer and the Oklahoma Archeological Survey offices have agreed to work with DEQ in the development of the draft permit to address the areas of concern that have been identified.

5. If the State Historic Preservation Officer and the Oklahoma Archeological Survey offices and DEQ have not been able to address all historic preservation issues identified by those offices, and the State Historic Preservation Officer and the Oklahoma Archeological Survey offices have further objection to the public proposal of a permit, they shall make their objections known to EPA and DEQ within the 45 day EPA review period.
6. EPA shall then determine whether to make a formal objection in accordance with 40 CFR 123.44.
7. If EPA makes a formal objection to the permit, the procedures contained in this MOA shall be followed.
8. EPA will work with DEQ and the State Historic Preservation Officer and the Oklahoma Archeological Survey offices to resolve issues of concern. Should EPA be able to resolve the issues that prompted the formal objection, the formal objection may be withdrawn by EPA, and DEQ may proceed with issuance of the permit.
9. If EPA determines to issue the permit, they will consult with the State Historic Preservation Officer and the Oklahoma Archeological Survey offices in accordance with Section 106 of the Historic Preservation Act as appropriate prior to permit issuance.

S. OTHER ISSUES

In the case of development of draft permits for new sources, there shall be continuing coordination between the DEQ and EPA throughout the permitting process. The coordination will include the DEQ keeping EPA informed of important issues relating to the development of the permit and EPA assisting the DEQ when requested, in assessing the impact of the new source on the environment.

V. ENFORCEMENT

The Clean Water Act (CWA) authorizes EPA and approved states to administer the NPDES Program, which is the basic regulatory mechanism for ensuring that dischargers and sewage sludge management facilities meet the requirements of the CWA. The DEQ has been authorized by EPA to administer a partial NPDES program and retains lead responsibility for the CWA in the State with respect to sources, activities and facilities within DEQ's jurisdiction.

EPA has continuing overall responsibility for oversight of the NPDES program in Oklahoma in order to promote the achievement of national program goals and objectives, to ensure adherence to Federal and State statutory and

regulatory requirements implementing the CWA, and to maintain national consistency. Should it become necessary to make modifications to the MOA in order to reflect program changes, the annual program grant and State/EPA Enforcement Agreement will serve as the mechanisms to complete such action until the MOA can be adjusted accordingly.

This section of the MOA provides a set of criteria for evaluating and providing oversight to the Oklahoma PDES enforcement program. It defines the respective roles and responsibilities of EPA Region 6 and the Oklahoma Department of Environmental Quality in carrying out the NPDES program, as well as, areas where specific items need to be included in the annual program plans. Specifically, this section discusses two operational elements of the OPDES program: compliance monitoring and tracking, and enforcement response. In addition, this section discusses program authority and conflict resolution.

The DEQ agrees to operate and maintain a vigorous enforcement program. At a minimum, this program shall include receipt and review of required reports and other information from direct and indirect dischargers, on-site inspections, compliance evaluations, and timely and appropriate enforcement actions, and escalation of enforcement actions consistent with procedures outlined in the Department of Environmental Quality PDES Enforcement Management System manual and/or any modifications thereto. Special attention shall be given to any dischargers which may pose an imminent and substantial endangerment to human health and/or the environment.

A. COMPLIANCE MONITORING AND TRACKING

Compliance monitoring and tracking is essential to maintaining the overall integrity of the OPDES permit program and for identifying instances of noncompliance so that the DEQ can initiate appropriate and timely action as needed. The DEQ shall operate a timely and effective compliance monitoring program including an automatic data processing (ADP) for the purpose of determining compliance with permit conditions, pretreatment requirements, sludge requirements, storm water requirements, and unauthorized discharges. For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the DEQ to assure full compliance with OPDES program requirements.

1. THE DEQ WILL MAINTAIN A WRITTEN ENFORCEMENT MANAGEMENT SYSTEM (EMS)

DEQ will have procedures for timely receipt and review of accurate and complete self-monitoring reports and maintenance of complete and accurate records.

As part of its EMS, the DEQ will have procedures and time frames for review of DMRs and

maintenance of complete and accurate data. At a minimum, the approved EMS will be reviewed by Region 6 annually along with any needed changes submitted by DEQ for review and approval.

The DEQ shall operate a system to determine if:

- a. The self-monitoring reports required by permit, sludge regulations or pretreatment regulations are submitted;
- b. The submitted reports are complete and accurate; and
- c. The permit conditions, pretreatment requirements (when applicable) sludge requirements and storm water requirements are met.

Implementation of the above described system shall be the subject of the semi-annual records and audits and the quarterly program review meetings between DEQ and EPA Enforcement personnel.

DEQ will enter the reported data into PCS for all major and minor permittees within 30 days of receipt of the DMR. Response to nonreceipt or unacceptable DMRs should be consistent with the time frames in the regulation and the EMS; failure to submit DMRs within 30 days of the required date, or submittal of unacceptable DMRs without subsequent submittal of acceptable revisions within 30 days of the required date are instances of significant noncompliance.

The Region will perform routine reviews of a random sample of DMRs and PCS entries during periodic audits of the DEQ program. These audits will not normally exceed two per year.

The DEQ shall conduct timely and substantive reviews and keep complete records of all written material relating to the compliance status of OPDES 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 an OPDES permit, approved pretreatment program, sludge requirements, storm water requirements, or court order.

2. MAINTENANCE OF A REPORTING SYSTEM THAT CONTAINS ACCURATE, UP-TO-DATE, ACCESSIBLE INFORMATION ON CURRENT COMPLIANCE STATUS

The DEQ will prepare and submit this Quarterly Noncompliance Report consistent with the requirements and time frames in the NPDES regulations and national guidance. The DEQ will prepare the QNCR automatically by using DMR data and other compliance data that is entered into PCS and update PCS at regularly scheduled intervals according to established procedures. The DEQ will also

include Category II violations in the preparation of the QNCR when such violations result in a formal enforcement action.

The Region will verify the accuracy and completeness of both the QNCR and the data in PCS at periodic intervals.

3. TIMELY CONDUCT OF APPROPRIATE AND EFFECTIVE COMPLIANCE INSPECTIONS

The DEQ shall conduct field activities to determine the status of compliance with permit requirements including sampling and non-sampling inspections. The DEQ will conduct routine and special inspections in accordance with NPDES regulations and the EPA Compliance Inspection Manual, 1976, update 1994, and the NPDES Compliance Inspection Strategy and Guidance. For purposes of this MOA, the term Compliance Inspections includes compliance evaluation inspections, performance audits, compliance sampling inspections, compliance biomonitoring inspections, toxic sampling inspections, diagnostic inspections and pretreatment compliance inspections, sewage sludge and storm water compliance inspections. The DEQ shall also conduct, at a minimum, 20% of the approved pretreatment program audits each year, which can provide valuable information on the implementation of a POTW's pretreatment program.

The DEQ shall conduct compliance inspections of all of the major permittees on at least an annual basis pursuant to a neutral inspection scheme. The DEQ is responsible for completing the required reports on findings. Annually, the DEQ shall furnish an estimate of the number and types of other state compliance inspections to be performed during the year. The DEQ will give EPA adequate notice and opportunity to participate in its inspection activities.

EPA or the DEQ may determine that additional compliance inspections are necessary to assess permit compliance. If EPA makes a determination that additional compliance inspections are necessary, it shall notify the DEQ and may request the DEQ to conduct these inspections. EPA retains the right to perform compliance inspections of any permittee at any time, but will notify the DEQ in advance to give DEQ an opportunity to participate and will otherwise keep the DEQ informed of its plans and results.

The DEQ shall also be responsible for entering all inspection data into the PCS and preparing a list of

all noncomplying major permittees in accordance with the regulations at 40 CFR §123.45.

Reports on compliance inspections for major permittees shall be available for review by the DEQ or the Regional Administrator, as appropriate, within 45 days of the date of the inspection. The DEQ shall thoroughly review each report to determine what, if any, enforcement action shall be initiated.

The DEQ is also responsible for taking proper action in cases where permittees fail to respond to DMR Quality Assurance (QA) requirements and for initiating appropriate follow-up to DMR QA results. The DEQ will document its actions for each case. Finally, the DEQ will plan and initiate a program for the inspection of contract laboratories serving the wastewater treatment facilities in the state.

4. EFFECTIVE INTEGRATION OF PRETREATMENT COMPLIANCE MONITORING ACTIVITIES

The DEQ will establish procedures and time frames for: reviewing monitoring reports, including annual reports submitted by POTWs and semi-annual reports submitted by categorical users in areas without local programs; establishing and maintaining a complete inventory of POTWs with pretreatment programs, as well as a plan for completing an inventory of all categorical users and significant industrial users; conducting annual inspections of categorical users of POTWs without local programs; and conducting annual inspections of POTWs with approved programs, as well as inspecting a sampling of the industrial users of these POTWs. The number of industrial users to be inspected will be negotiated annually in the 106 grant annual plan until it is replaced by the Performance Partnership Agreement. Pretreatment inspection data shall be reported in the Quarterly Enforcement Activities report discussed in II.B.2. Pretreatment inspections include Pretreatment Compliance Inspections (PCI) and Pretreatment Audits as described in the Pretreatment Compliance Inspection and Audit Manual for Approval Authorities (May 2, 1986).

B. ENFORCEMENT RESPONSE

The CWA (§309) requires EPA or NPDES delegated states to respond to unpermitted discharges, violations of the CWA and NPDES permit violations (including, but not limited to, pretreatment requirements, compliance schedules, effluent limitations and reporting requirements) by initiating appropriate enforcement action(s). The DEQ has assumed primary responsibility for specified activities in Oklahoma. This includes violations detected by state or federal surveys. Enforcement response involves a series of actions, starting with the initial reaction to the identification of a violation and ending with the discharger's return to full compliance and formal closeout of any enforcement actions taken. Where the results of the inspection(s) indicate that the

discharger is in violation, the DEQ shall initiate enforcement action within thirty (30) days of the date of the inspection(s) or make a written or computerized record reflecting the DEQ's preliminary determination to postpone or forego all or specific types of enforcement actions or to otherwise exercise DEQ's enforcement discretion. Priorities for the review of these inspection reports and for initiating enforcement action will be specified in the Enforcement Response Guide. The following are therefore important to a credible enforcement program and will be achieved as indicated:

1. TIMELY EVALUATION AND APPROPRIATE INITIAL RESPONSE TO IDENTIFIED VIOLATIONS

The DEQ will continue to use, in a state EMS, pre-enforcement procedures that are consistent with the principles in EPA's National EMS and NPDES oversight criteria including the Significant Non-Compliance (SNC) and the Enforcement Response Guide (ERG). The procedures should include: application of a state SNC for screening DMRs to determine the significance of the violations; procedures and time frames for applying appropriate initial response options to identified violations; and procedures for maintaining a chronological summary of all violations. The DEQ will screen all DMRs from permittees to determine the level and frequency of all violations and will evaluate instances of noncompliance by all major permittees, and all minor permittees within an average of 30 days from the identification of a violation; determine the appropriate initial response, consistent with the EMS timely and appropriate action criteria, and document any action taken/not taken (including the technical reason). The DEQ will enter a record of the violation on the Violation Summary Log maintained by the compliance staff. Remaining general permittees will be evaluated as resources permit.

The Region will verify the timeliness and appropriateness of DEQ's DMR evaluation and its initial enforcement responses through periodic audits. These audits will normally not exceed two per year.

2. TIMELY AND APPROPRIATE ENFORCEMENT RESPONSE, FOLLOW-UP AND ESCALATION UNTIL COMPLIANCE IS OBTAINED

The DEQ will maintain current enforcement response procedures that are consistent with the Enforcement Response Guide (ERG) Section of the State EMS, as well as an up-to-date strategy for addressing instances of significant noncompliance consistent with National and State priorities. The procedures should set forth: an analytical process for determining the appropriate level of action for specific categories of violation; procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and time frames for escalating

enforcement responses where the noncompliance has not been resolved.

The DEQ should be able to demonstrate that its enforcement procedures result in: appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent and timely manner; formal enforcement actions that clearly define what the permittee is expected to do by a reasonable date; the assessment of a civil penalty, when appropriate, and an amount appropriate to the violation; and, compilation of complete and accurate permanent records that can be used in future formal enforcement actions. In the case of major permittees, by the time a permittee appears on the QNCR and is determined to be in significant noncompliance, the DEQ is expected to have already initiated enforcement actions to achieve compliance. Prior to a permittee appearing on the subsequent QNCR for the same instance of significant noncompliance, the permittee should either be in compliance or the DEQ should have taken formal enforcement action (within 60 days of the first QNCR) to achieve final compliance. These formal actions are identified as administrative orders, civil actions and criminal action.¹

If EPA determines that the DEQ has not initiated timely and appropriate enforcement action against a violator and has not properly escalated enforcement action or has not assessed and collected an adequate penalty, EPA may proceed with any or all of the enforcement options available under Section 309 of the CWA after notice to and consultation with the DEQ. Prior to proceeding with an enforcement action, EPA shall give the DEQ 30 days to initiate such enforcement action. This notification may be made either at the periodic enforcement meetings, by telephone or through written communication. Such notifications shall not be required when EPA is exercising its emergency power under Section 504 of the CWA.

The DEQ will prepare and submit to EPA a Quarterly Enforcement Activities Report in accordance with the terms on the annual Enforcement Agreement summarizing enforcement activities for the preceding quarter. Included in this report will be an update of the State's actions related to enforcement orders, enforcement order closeouts, civil actions, penalties assessed/collected, and other information required by RECAP.

The Region will verify the timeliness and appropriateness of DEQ's enforcement actions through periodic audits and meetings as described in the annual State/EPA Enforcement Agreement.

¹A formal enforcement action is defined as one that requires actions to achieve compliance, specifies a timetable, contains consequences for noncompliance that are independently enforceable without having to prove the original violation, and subjects the person or entity to adverse legal consequences for noncompliance.

3. EFFECTIVE INTEGRATION OF PRETREATMENT ENFORCEMENT ACTIVITIES INTO THE ESTABLISHED NPDES PROGRAM

The DEQ will have procedures and time frames for initiating appropriate enforcement action where POTWs: fail to meet milestones in enforceable schedules for submitting approvable pretreatment programs; have violations of categorical industrial effluent limitations; fail to implement approved pretreatment programs; and fail to submit annual reports or submit delinquent annual reports. The DEQ shall also have procedures and time frames for evaluating whether POTWs are initiating timely and appropriate enforcement responses to significant violations by IUs consistent with their established procedures; and, where POTWs are not the primary control authorities, the DEQ is directly responsible for having these procedures in place for categorical and noncategorical industrial users. The DEQ is expected to initiate enforcement response against permittees having pretreatment programs that are listed on the QNCR and are in significant noncompliance consistent with the criteria and time frames for the OPDES program; this applies to: failure to meet milestones in enforceable schedules for submitting required local pretreatment programs and for implementing that program; violations of effluent limits; and delinquent POTW pretreatment program reports. In addition, the DEQ will conduct inspections of local pretreatment programs to ensure that POTWs comply with their approved program procedures for taking action against significant violations by IUs. The criteria for significant violation is contained in 40 CFR §403.8. In accordance with the terms and conditions of their permit, the POTW will provide for annual public notification of such violations in the largest daily newspaper published in the municipality in which the POTW is located.

Also, where POTWs are not the primary control authorities, the DEQ will initiate appropriate enforcement actions in accordance with their procedures against industrial users who are violating categorical standards. The Pretreatment/Storm Water/Planning Unit of the PDES section of the DEQ will review draft permits prepared by OOWA. The Chief Engineer of the PDES Section will issue these permits. If enforcement actions are necessary, the Municipal/Industrial Unit of the Field Inspection and Compliance Section of the DEQ will initiate it. All orders issued to OOWA will be signed by the Chief Engineer of this section.

4. SHARING OF INFORMATION ON THE STATUS OF THE PROGRAM AND THE IMPROVEMENT OF COMPLIANCE RATES

The DEQ will prepare and submit to EPA Region VI information on the operation of the OPDES program in the manner prescribed by national guidance.

5. CONFLICT RESOLUTION

The effectiveness of environmental programs is best served by a free and frequent exchange of information between the States and EPA. Examples of general information are special problems or policy changes in compliance, and enforcement; budget information; press releases; and, trends in program operations. Specific actions that will be coordinated or discussed with the State prior to EPA action are joint/independent inspection requirements, permit/compliance audits, and unresolved violations which will result in issuance of a Notice of Violation. Participants in this information exchange will normally be the EPA Compliance Section and/or Branch Chiefs and corresponding individuals from the State. If decisions are required where there are significant differences of opinion, DEQ and the State participants should present the divergent viewpoints to their respective Branch Chiefs or Division Directors, who will make ultimate decisions in discussion with each other. Decisions should be escalated to the Branch/Division Directors as the exception rather than the rule.

6. DEQ PENALTY POLICY

The DEQ understands, supports and agrees to employ the spirit of the EPA Clean Water Act Civil Penalty Policy as established in the Memorandum of the Assistant Administrator for Enforcement (February 11, 1986), and its current amendments. The DEQ adopted EPA's civil penalty policy prior to program assumption. The amount of penalty sought by DEQ for permit or CWA violations will be consistent with the Clean Water Act Penalty Policy. The DEQ must calculate, document and collect penalties that remove any economic benefit derived by a facility for violations of the law, regulations or permit plus some appropriate amount for gravity and recalcitrance. The DEQ shall document its penalty calculations and have them available for EPA review, upon request.

7. VALID DEFENSE

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.

VI. REPORTING AND TRANSMITTAL OF INFORMATION

Submission of information and reports from the DEQ to the Regional Administrator shall be accomplished in a manner consistent with this MOA, any working agreement between EPA and DEQ, 40 CFR §§123.43, 123.44 and other agreed upon procedures. DEQ shall allow EPA to review DEQ's records, reports and files relevant

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to the administration and enforcement of the permit program at least quarterly and more frequently if determined necessary by either party to this MOA, in a manner jointly agreed upon by both EPA and DEQ.

Whenever either party requests information concerning a specific discharger and the requested information is available from the files, that information shall be provided within 20 days of receipt of the request. If the requested information is not available, the party to whom the request was directed shall promptly notify the requestor.

A. THE DEQ WILL SUBMIT THE FOLLOWING TO EPA:

ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
1.	A copy of all permit applications except those for which EPA has waived review.	Within 5 days of receipt.
2.	Copies of all final draft OPDES permits, general permits and permit modifications including fact sheets or statement of basis, and priority pollutant data, screening calculations and any other supplemental application information, except those for which EPA has waived review.	45 days prior to public notice.
3.	Copies of all public notices, except those for which EPA has waived review.	As issued.
4.	A copy of all final issued, proposed and modified OPDES permits, and associated documentation for wastewater discharge and sewage sewage sludge facilities.	As issued.
5.	Copies of all permit applications and public notices and draft permits for which EPA has waived review.	Upon request
6.	A letter of transmittal by listing OPDES permit number, permittee's name, facility location, date signed, effective date, and expiration date.	Monthly-5th working day of each month.
7.	A copy of settlements and decisions in permit appeals.	As issued.
8.	A list of major facilities and Class I sewage sludge facilities scheduled for compliance inspections to be	With submission of the annual 106 work plan

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ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
	completed by 6/30 each year.	
9.	Proposed revisions to the scheduled compliance inspections.	As needed.
10.	A list of compliance inspections performed during the previous quarter.	Quarterly.
11.	Copies of all compliance inspection report forms, data, and transmittal letters to all major permittees and Class I sewage sludge facilities.	Within 45 days of inspection.
12.	Copies of all compliance inspection reports and data transmittal letters to all other permittees.	As requested.
13.	For major dischargers, a quarterly noncompliance report as specified in 40 CFR §123.45(a) and further qualified in EPA Guidance. Submission of the exception list.	Quarterly, due to EPA no later than the 10th calendar day of the month the QNCR is due to headquarters. Quarterly, due to EPA no later than the 15th calendar day of the month the QNCR is due to headquarters.
14.	For minor dischargers, an annual noncompliance report as specified in 40 CFR §123.45(c).	Within 60 days of the end of the calendar year as specified in 40 CFR §123.45(c).
15.	Copies of all enforcement actions against major OPDES wastewater and Class I sewage sludge permit violators (including notices of violations, administrative orders, administrative fines, initial determinations, processing for judicial action and referrals to the Attorney General or District Attorney).	As issued.
16.	Notification of all permit appeals and receipt.	Within 10 days of requests for stays received by DEQ.
17.	Copies of all noncompliance notification from major permittees and Class I sewage sludge facilities.	Within 10 days of receipt.
18.	92-500 municipal facilities report for compliance statistics.	Within 30 days semi-annual of receipt.

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ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
19.	A copy of all draft permits, including permits for MS4 facilities and industrial model storm water discharge permits.	At least 90 days prior to public notice.
20.	A summary of RECAP Report Statistics.	Quarterly.
21.	A noncompliance report for Class I sewage sludge permittees.	Semi-annually, as specified in 40 CFR 123.45(e).
22.	For sewage sludge disposal permittees, an annual report specified in 40 CFR 123.45(e), indicating the status of the Sewage Sludge Management Program updates, the inventory of sewage sludge generators and disposal facilities, and reports on incidents of noncompliance.	Within 60 days of end of the calendar year.
23.	Copies of correspondence required to carry out the pretreatment program or regulated industrial users including performance compliance inspections, pretreatment audits and formal enforcement actions.	As issued or received.
24.	Copies of correspondence pertaining to administration of the Sewage Sludge Management Program.	As issued or received.
25.	Quarterly Enforcement Activities Report	Quarterly as specified in Section V of this MOA.
26.	A copy of MS4 annual reports, audits/ inspections and storm water management program revision requests.	As requested.
27.	Information to assess the status of actions on facilities conducting biomonitoring or TRE.	Monthly.
28.	Any other pertinent information as requested by EPA.	As requested.
29.	Tentative removal credit are decisions prior to finalization processed.	As requested
30.	List of current ongoing, pretreatment activities including Pretreatment Program modifications, PCIs, audit and audit reports, categorical determinations and removal credit applications.	Quarterly

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ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
31.	PCS QA/QC manual required in the State/EPA Enforcement Agreement.	Six months after the program is delegated to DEQ.

B. EPA SHALL TRANSMIT THE FOLLOWING INFORMATION TO THE DEQ:

ITEM	DESCRIPTION	FREQUENCY OF SUBMISSION
1.	A list of compliance inspections EPA intends to conduct jointly with the DEQ as part of its State Overview Plan.	Annually.
2.	Proposed revisions to the schedule of compliance inspections.	As needed.
3.	Copies of all EPA compliance inspection reports of inspection, and data.	Within 45 days
4.	Copies of all EPA enforcement actions against all permitted facilities, OPDES violators (including notices of violation, administrative orders, proposed and final consent orders and settlements, court decisions, and other administrative decisions).	As performed or as indicated in Section V of this MOA.
5.	A review of the DEQ administration of the OPDES Permit Program, and the Sewage Sludge Management Program based on DEQ reports, meetings with DEQ officials, and file audits.	As performed.

C. DEQ SHALL TRANSMIT:

The DEQ shall transmit a copy of every issued OPDES, Sewage Sludge Disposal and Storm Water permit to each affected State no later than 30 days after its issuance.

VII. PROGRAM REVIEW

A. CONSISTENCY WITH FEDERAL REGULATIONS

EPA is responsible for assuring that Oklahoma's OPDES program is consistent with all federal regulations, EPA policies and guidance, requirements of this MOA, the State Program Plan, and applicable sections of 40

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CFR Parts 122 through 125; Subchapter N; Part 133; Part 403; Part 503; and Part 40. To fulfill this responsibility, EPA shall:

1. Review the information submitted by the DEQ to assure that all the requirements of this MOA are met.
2. Meet with DEQ officials for semiannual records audits, quarterly program reviews and on an ad hoc basis, as needed; to discuss and/or observe the data handling, permit processing and development, compliance monitoring, pretreatment processes and enforcement procedures, including both manual and automated data processing utilizing the Permit Compliance System (PCS) data system.
3. Examine in detail the DEQ files and documentation of selected facilities to determine whether:
 - a. Permits are processed and issued consistently with Federal requirements;
 - b. A system is maintained to facilitate discovery of permit violations when they occur;
 - c. Compliance reviews meet timeliness requirements specified in this MOA and the Program Description;
 - d. Initiated enforcement actions are appropriate, effective and timely as specified in EPA National Guidance and the DEQ EMS;
 - e. Penalties and penalty amounts are appropriate for violations and penalties are collected.

These detailed file audits shall be conducted by EPA in the appropriate DEQ office. The DEQ shall be notified fifteen days in advance of the audit so that appropriate DEQ officials may be available to discuss individual circumstances and problems with EPA. A copy of the audit report shall be transmitted to the DEQ when available.

4. Review, on an annual basis, the legal authority upon which the DEQ's program is based, including State statutes and regulations.
5. When appropriate, upon introduction of a new program or major modification of an existing program, hold public hearings on the DEQ's OPDES program with respect to adequacy of the program.
6. Review, on an annual basis if necessary, the DEQ public participation policies, practices and procedures.
7. Conduct overview inspections.

B. AMENDMENTS TO BE APPROVED BY THE EPA

Prior to taking any action to propose or effect any substantial amendment, rescision, or repeal of any statute, regulations, directive, or form which has been approved by EPA; and prior to the adoption of any new statute, regulations, directive or form, the DEQ shall notify the Regional Administrator and shall transmit the text of any such change or new form to the Regional Administrator (see, 40 CFR §123.62 which provides that the change may trigger a program revision, which will not become effective until approved by EPA).

If an amendment, rescision, or repeal of any statute, regulations, directive, or form described in paragraph (B) above shall occur for any reason, including action by the Oklahoma legislature or a court, the DEQ shall within 14 days of such event, notify the Regional Administrator and shall transmit a copy of the text of such revision to the Regional Administrator.

Prior to the approval of any test method as an alternative to those specified as required for OPDES permitting, the DEQ shall obtain the approval of the Regional Administrator.

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

The DEQ shall seek legislation, adopt such regulations, provide Attorney General opinions, and take such further actions which may be necessary to preserve and maintain any compliance with OPDES Program requirements and maintain consistency with national goals and program requirements.

In the event EPA determines that elements of the DEQ's OPDES Program are in any way deficient and/or inconsistent with this MOA, the State Program Plan, applicable federal and state regulations and/or statutes, EPA shall notify the DEQ in writing of these inconsistencies or other deficiencies. The DEQ shall respond in writing within 30 days of this determination, whether noted inconsistencies and/or deficiencies have been rectified. If they have not been corrected, EPA may proceed in accordance with §309 and §402(c) of the CWA.

Review on an annual basis the legal authority upon which the DEQ's OPDES program is based, including state statutes and regulations.

VIII. COMPUTATION OF TIME

In computing any period of time prescribed by this MOA, 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 a legal holiday, in which case the period extends until the end of the next day which is not a Saturday, Sunday, or a legal

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holiday. When the period of time is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

For the purpose of EPA review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until receipt by EPA.

IX. MODIFICATION TO THIS MOA

This MOA shall take effect immediately upon approval by the Regional Administrator. It shall be reviewed jointly, and revised as appropriate, at least within five (5) years of its effective date. Either the DEQ or EPA may initiate action to modify this MOA at any time. If the Regional Administrator of EPA determines that any modification to the MOA initiated by the DEQ does not conform to the requirements of §402(b) and §405(f) of the CWA, or to the requirements of 40 CFR Parts 122-125 and 40 CFR Part 503 or any other applicable Federal regulation, as amended, or National Guidance, the Regional Administrator or Administrator of EPA shall notify the DEQ in writing of any proposed revision, or modifications which must be in this agreement. All modifications to this Agreement must be in accordance with 40 CFR 123.62. Before this agreement may be modified, proposed amendments or revisions must be put in writing and signed by the DEQ Executive Director and the Regional Administrator, with the concurrence of the Administrator of the EPA and EPA Associate General Counsel for Water.

X. PUBLIC ACCESS TO INFORMATION

All claims for confidentiality for information submitted to DEQ shall be subject to 40 CFR §122.7 and OAC 252:605-1-5(c)(3)(F). Any information obtained or used by DEQ regarding its authorized OPDES permitting program, pretreatment program or its sewage sludge program shall be made available to EPA on request without restrictions. The DEQ will notify the applicant when confidential information is requested by EPA. If the information has been submitted to DEQ under a claim of confidentiality, DEQ must inform EPA of the claim. Any information obtained from DEQ shall be treated by EPA in accordance with 40 CFR Part 2. If EPA obtains information from DEQ that is not claimed to be confidential, EPA may make that information available to the public without further notice. DEQ will not accept a claim of confidentiality for any information required to be submitted as part of the OPDES permit application. All effluent data, permits and permit applications submitted for an OPDES permit will be made available to the public without restrictions, and other relevant OPDES data will be made available to the public consistent with 40 CFR §122.7 (payment of any applicable state duplicating fees shall not be deemed to be a restriction to the public) and applicable provisions of Oklahoma regulations.

XI. INDEPENDENT EPA POWERS

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to any applicable

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Federal laws or regulations including Sections 308, 309, 311, 402, 405, 504, or the sections of the Clean Water Act.

XII. INCORPORATION BY REFERENCE

Whenever the DEQ is required to adopt Federal standards or requirements, it may do so by reference. Unless permissible under State law, the DEQ will not prospectively incorporate regulations by reference.

XIII. MOA EFFECTIVE

This Memorandum of Agreement shall become effective when approved by the Regional Administration pursuant to 40 C.F.R. § 123.24(a).

In witness whereof, the parties execute this agreement

FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY:

Mark S. Coleman
Executive Director

(Date)

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Jerry Clifford
Acting Regional Administrator
Region 6

(Date)