

5/5/98

**CHAPTER 1  
MEMORANDUM OF AGREEMENT  
BETWEEN THE  
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION  
AND THE  
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6  
CONCERNING THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**I. GENERAL**

The purpose of this Memorandum of Agreement, hereafter "MOA" is to establish policies, responsibilities and procedures pursuant to Title 40 Code of Federal Regulations (40 CFR) Parts 123, 501 and 503 for program commitments between the Texas Natural Resource Conservation Commission (TNRCC) and the Environmental Protection Agency, Region 6 (EPA) for assumption of the National Pollutant Discharge Elimination System (NPDES) program by the TNRCC. This MOA shall constitute the agreement between the TNRCC and EPA.

The TNRCC has primary responsibility for implementing the NPDES program for Texas, herein called the Texas Pollutant Discharge Elimination System (TPDES), for facilities within its jurisdiction. The TNRCC has authority under Section §26.121 of the Texas Water Code to regulate discharges from industrial facilities covered by all Standard Industrial Classification (SIC) codes except for those facilities classified as 1311, 1321, 1381, 1382, 1389, 4922, and 4925, which are regulated by the Texas Railroad Commission, as identified in §26.131 of the Texas Water Code. The TNRCC will not regulate those discharges under the Texas Railroad Commission jurisdiction, including oil and gas construction site runoff. Some activities within these SIC codes are regulated by the TNRCC, and a list of these activities is included in Appendix 2-A. The TNRCC has authority to regulate discharges from publicly owned and privately owned treatment works and concentrated animal feeding operations (Section §26.121 of the Texas Water Code). The TNRCC has authority to regulate discharges of storm water associated with industrial activity and discharges of storm water from municipal separate storm sewer systems, as identified in the Attorney General's Statement (Chapter 8). The TNRCC has primary responsibility for implementing a Pretreatment Program in accordance with §26.047 of the Texas Water

Code and TNRCC rules contained in Title 30, Chapter 315 of the Texas Administrative Code, and a Sewage Sludge Program in accordance with §§361.011 and 361.024, Texas Health and Safety Code and TNRCC rules contained in 30 TAC Chapter 312. TNRCC's authority for these programs is discussed in detail in the Attorney General's Statement (Chapter 8).

The TNRCC shall operate the TPDES program in accordance with the Clean Water Act as amended, applicable federal regulations, applicable TNRCC legal authority, Title 30 Texas Administrative Code, and taking into consideration published EPA policy. The TNRCC has the primary responsibility to establish the TPDES program priorities, so long as they are consistent with Clean Water Act and NPDES goals and objectives.

The strategies for issuance, compliance monitoring and enforcement of permits, as established by this MOA, may be set forth in more detail in the TNRCC Clean Water Act (CWA) Section 106 program grant and other TNRCC/EPA agreements. The CWA §106 program grant document contains terms and conditions regarding appropriate use of grant funds. This MOA and the TNRCC CWA §106 program grant shall be consistent with each other. Either the EPA or the TNRCC may initiate action to modify this MOA at any time, but this MOA may be modified only by the written consent of both agencies.

## **II. SCOPE OF AUTHORIZATION**

The TNRCC and the EPA agree that the TNRCC has requested EPA to grant the TNRCC authority to administer NPDES permitting, compliance monitoring and enforcement activities, NPDES pretreatment activities, and NPDES sewage sludge program activities in Texas. TNRCC is not seeking authorization to issue TPDES discharge permits in Indian Country (federally established Indian reservations, etc.).

### **III. STATE AND FEDERAL RESPONSIBILITIES**

The TNRCC program equivalent to NPDES under section 402 of the CWA is the TPDES, adopted under Chapter 26, Texas Water Code, and implemented through Chapter 26, Texas Water Code, Chapter 361, Texas Health and Safety Code, and applicable TNRCC rules contained in Title 30 of the Texas Administrative Code (30 TAC).

#### **A. TNRCC RESPONSIBILITIES**

TNRCC shall:

1. Exercise the legal authority through TNRCC regulations and the state statutes required by the CWA to carry out the TPDES, Pretreatment, and Sewage Sludge programs. The legal authority to carry out the requirements of permitting (40 CFR §123.25), for compliance evaluation (§123.26), for enforcement authority (§123.27), for the pretreatment program (§403.10), and for the sewage sludge program (40 CFR §§122.21, referencing 501.15(a)(2), and 123.27) are described in more detail in the Attorney General's Statement;
2. Process all incoming applications for new and amended TPDES permits in accordance with processing time standards as specified in 30 TAC Chapter 281; process all applications for renewals of existing permits in a manner which coincides with either the basin permitting rule (30 TAC §305.71) in accordance with §26.0285, Texas Water Code, or a five-year cycle of renewal for the following categories of applicants:
  - a. non-domestic wastewater discharges, including industrial, commercial, silviculture, concentrated animal production, and concentrated aquatic animal production activities;
  - b. domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works;
  - c. sewage sludge management, including use, processing and disposal; and
  - d. storm water discharges regulated under NPDES, including municipal separate storm sewer

systems and storm water associated with industrial activity, except that EPA shall process any necessary modifications for a storm water permit EPA issued.

3. Process an EPA request for issuance or reissuance of a specified permit that will be addressed by TNRCC within six (6) months of the written request;
4. Process Pretreatment program requests and modifications, including local limit modifications, and conduct pretreatment audits, performing technical evaluations of all pretreatment programs (described in detail in Section VI. of this MOA);
5. Evaluate and assess compliance with enforcement documents including permits, registrations, administrative orders, consent orders, and court orders which deal with CWA issues including effluent limitations reporting, compliance schedules, operation and maintenance, pretreatment, and sewage sludge, except as provided for by Section III.B.8. of this MOA;
6. Monitor compliance with approved pretreatment programs and with pretreatment standards, including industrial users outside approved POTW pretreatment programs;
7. Maintain an effective enforcement program by taking timely and appropriate actions for wastewater permit violations, unpermitted discharges, sewage sludge and pretreatment violations in accordance with Texas statutes, Title 30 of the Texas Administrative Code, federal NPDES requirements, and Clean Water Act. TNRCC will utilize EPA national and regional policies and guidance to the extent there is no conflict with Texas statutes, a specific state policy, or guidance adopted by TNRCC. TNRCC agrees to consider EPA national and regional policies and guidance when adopting corresponding or related state policies and guidance and will avoid state policies or guidance that would conflict with §402(b) of the CWA or applicable federal regulations or limit TNRCC's ability to implement the NPDES program;
8. Maintain adequate file information relating to each TPDES permit. This information will be readily available to EPA and shall include the following information:
  - a. Permit application;
  - b. Current issued permit;

- c. Draft permit submitted for public notice;
  - d. Public notice;
  - e. Public comments received orally and in writing;
  - f. Fact sheet or statement of basis, including effluent data;
  - g. Inspection reports and compliance information;
  - h. Enforcement orders and documents related to other enforcement actions;
  - I. Discharge monitoring reports, including whole effluent toxicity (WET) and toxicity reduction evaluation (TRE) information;
  - j. Documents related to pretreatment;
  - k. Sewage sludge related documents;
  - l. Storm water related documents, including Storm Water Management Plans (SWMPs) and Pollution Prevention Plans (SWPPPs) submitted to TNRCC;
  - m. Requests for hearing, motions for reconsideration and rehearing, and any order issued by the commission; and
  - n. Other pertinent information, memoranda, and correspondence;
9. Make available to the public all permit applications, permits, effluent data, inspection reports and other documents pertaining to the TPDES program consistent with the Texas Public Information Act (Local Government Code Chapter 552) and 30 TAC §§305.45 - 305.46 describing in detail the contents of applications and those materials which may be considered confidential;
  10. Except as identified in Section III.B.8. of this MOA, regulate by rule or general permit in accordance with §26.040 of the Texas Water Code certain categories of discharges, including concentrated animal feeding operations (as defined in 40 CFR §§122.23-122.24), while preserving the ability to require individual permits for particular facilities as needed;
  11. Direct input of permit and enforcement data into the National Permit Compliance System (PCS) in accordance with 40 CFR §123.26(e)(4);

12. Submit to EPA the information described in the CWA Section 106 program grant (Performance Partnership Grant or PPG) between the TNRCC and EPA or other related TNRCC/EPA agreements and submit information specified in applicable portions of 40 CFR Parts 123 and 503. Additionally, upon request by the EPA, the TNRCC shall submit information and allow access to files for evaluating the TNRCC administration of the TPDES program;
13. Provide statistical information needed by EPA for the Reporting for Enforcement and Compliance Assurance Priorities (RECAP) in accordance with 40 CFR §123.45;
14. Maintain an approved Continuing Planning Process (CPP) adopted by the Commission in accordance with 40 CFR §130.5(c). Within the CPP adopted by the Commission on October 15, 1997, is included a separate document describing how Texas water quality standards are implemented. This document is titled the Water Quality Standards Implementation Procedures (IPs), which is maintained consistent with 40 CFR §130.5(b)(6). The IPs are revised, as necessary, after triennial review of the Texas surface water quality standards and as needed between standards revisions;
15. Initiate procedures to amend, revoke, suspend, renew, or terminate permits upon the request of EPA. The TNRCC will process the request in a timely manner in accordance with applicable state law and 30 TAC Chapters 281 and 305 or may require the permittee to submit an updated application if further information is requested before proceeding;
16. Assess and collect administrative penalties, seek civil penalties, and criminal remedies as appropriate for noncompliance and take whatever steps are necessary to ensure a return to compliance within the shortest time possible;
17. Ensure new federal NPDES regulations are incorporated into state regulations within one year of federal promulgation or within two (2) years if a state statute must first be enacted; and
18. Not oppose intervention in a contested case enforcement hearing on a TPDES permit by a citizen who has standing to intervene pursuant to 30 TAC §80.109;
19. Ensure that the EPA is kept fully informed and up-to-date regarding:

- a. Draft and final policy and program development documents related to TPDES;
  - b. Draft, proposed, and final regulations related to TPDES;
  - c. New case law, settlement agreements, and remands of state regulations related to TPDES;
  - d. Draft, proposed, and final technical guidance and policies which pertain to TPDES; and
20. Provide the EPA with a timely opportunity for meaningful involvement and input in developing and establishing TPDES policies, rules, strategies, and guidance, as appropriate and practical; and
21. Administer the TPDES program in compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, §§42 USC 2000d et seq. All public comment regarding such compliance and received in accordance with Commission rules will be considered, responded to, and acted upon appropriately.
22. The regulatory flexibility authority in Senate Bill 1591 will not be used by TNRCC to approve an application to vary a federal requirement or a State requirement which implements a federal program requirement under §402(b) of the Clean Water Act, EPA regulations implementing that Section, or this MOA, including but not limited to inspection, monitoring or information collection requirements that are required under §402(b) of the Clean Water Act, EPA regulations implementing that Section or this MOA to carry out implementation of the approved federal program.

## **B. EPA RESPONSIBILITIES**

EPA shall:

1. To the maximum extent possible, provide funding to the TNRCC to support this effort. It is recognized that it is the TNRCC's responsibility after program approval to run and manage the TPDES, Pretreatment, and Sewage Sludge Programs with or without the assistance of federal funding;
2. Ensure that the TNRCC is kept fully informed and up-to-date regarding:
  - a. Draft and final policy and program development documents related to NPDES;
  - b. Draft, proposed, and final regulations related to NPDES;

- c. New case law, settlement agreements, and remands of federal regulations related to NPDES; and
  - d. Draft, proposed, and final technical guidance and policies which pertain to NPDES;
3. Provide the TNRCC with a timely opportunity for meaningful involvement and input in developing and establishing CWA policies, rules, strategies, and guidance, as appropriate and practical;
  4. Review and comment on draft permits, proposed permits, variance requests, pretreatment program actions, and any future TPDES program modifications in a timely manner in accordance with Section IV.C. of this MOA;
  5. Oversee the TNRCC administration of the TPDES, Pretreatment, and Sewage Sludge programs for consistency with the CWA, this MOA, any TNRCC/EPA agreements, EPA's National Oversight Guidance, the CWA Section 106 program grant (PPG) and all applicable federal regulations. Consistency includes meeting EPA's timely and appropriate criteria for initiation of formal enforcement actions, and the assessment and collection of penalties in formal enforcement actions, and the assessment and collection of administrative penalties and judicial actions. EPA shall consider, as part of its assessment of the TPDES program, reports and enforcement actions submitted by the TNRCC and may also consider comments from permittees, the public, and Federal and local agencies concerning the TNRCC's administration of TPDES. EPA shall promptly transmit to TNRCC substantial or unresolved comments that EPA receives from permittees, the public, and federal and local agencies. Any information obtained or used by the TNRCC shall be made available to EPA upon request by EPA without restriction to claims of confidentiality. If such information has been submitted to the TNRCC under a claim of confidentiality, the TNRCC shall inform EPA of that claim. Information claimed confidential which is used to develop permit conditions shall be treated in accordance with 40 CFR Part 2, Subpart B, 40 CFR §122.7, 30 TAC §1.5(d), and 30 TAC §305.46.
  6. Provide technical assistance regarding the interpretation of effluent guidelines for the development of draft and proposed permits within forty-five (45) days from receipt of a request. Mutually agreeable time extensions may be required.

7. Ensure that information relative to NPDES permittees including file information, names, addresses, and any known corresponding state permit information is submitted to TNRCC in a mutually agreed upon format and time frame upon assumption of the administration of the TPDES program by TNRCC.
8. Retain permitting and enforcement authority over CAFOs that are not subject to TNRCC jurisdiction.

### **C. JURISDICTION AND TRANSFER OF PERMITS AND ENFORCEMENT**

TNRCC and EPA recognize that one of the single most important goals of NPDES program assumption by Texas is to promote, facilitate, and expeditiously transform the federal NPDES and state permits into one TPDES permit. This section of the MOA describes the specific permits and permit applications which will be assumed by TNRCC upon assumption of the administration of the NPDES program and describes those specific permits and permit applications which will be administered by EPA and later transferred to TNRCC.

1. For those permits assumed immediately upon assumption of the program, EPA agrees to transmit file information to TNRCC within thirty (30) days following NPDES program assumption which includes the existing NPDES permits issued by EPA, including all support file information relevant to the permit's issuance and compliance reports and other related file materials. Additionally, EPA shall promptly transfer from EPA to TNRCC pending permit applications and other information relevant to the program operation not already in the possession of TNRCC. All information, necessary to administratively and technically review the application, must be provided in an orderly manner. Within thirty (30) days after program assumption, EPA shall provide an up-to-date and accurate listing which shows for all existing NPDES permits, pending permit applications, and general permits under development, the following information:
  - a. Date of receipt by EPA of any permit application from any existing permittee received before the date of program assumption, including a description of the type of application processed, issued, or returned as insufficient (i.e., new, major or minor modification, reissuance, etc.);
  - b. Date of receipt by EPA of any permit application from any existing permittee or new permit

applicant received before the date of program assumption but not yet issued or not yet acted upon, including a description of the type of application (e.g., new, major or minor modification, reissuance, etc.);

- c. For those applications pending, a description of the status of the application (including description of the current processing, such as milestones as: drafted, proposed, administratively continued, remanded to evidentiary hearing, suspended due to federal consultation, etc.);
- d. The most recent date of issuance of all existing permits;
- e. A reference for each existing permit or permit application to the permittee's name, EPA permit number, facility location or suitable identification.
- f. Other than those retained by EPA in accordance with this MOA, within thirty (30) days after program assumption, for each individual or general permit issued, file information from EPA shall also include:
  - 1) Permit application;
  - 2) Current issued permit;
  - 3) Draft permit submitted for public notice;
  - 4) Public notice;
  - 5) Public comments received orally and in writing;
  - 6) Fact sheet or statement of basis, including effluent data;
  - 7) Inspection reports and compliance information;
  - 8) Enforcement orders and documents related to other enforcement actions;
  - 9) Discharge monitoring reports, including whole effluent toxicity (WET) and toxicity reduction evaluation (TRE) information;
  - 10) Documents related to pretreatment;
  - 11) Sewage sludge related documents;
  - 12) Storm water related documents, including Storm Water Management Plans (SWMPs)

- and Pollution Prevention Plans (SWPPPs) in EPA's possession;
  - 13) Requests for hearing, appeals of permits, and any related information and written responses to these matters from EPA; and
  - 14) Other pertinent information, memoranda, and correspondence.
- g. For covered dischargers tracked in a database other than PCS, EPA will provide to TNRCC:
- 1) Current copies of the databases along with available documentation, within thirty (30) days of program assumption; and
  - 2) An updated copy of the database(s) tracking dischargers covered under the storm water from industrial activities general permits, every six months for the period after program assumption up to the date when the EPA-issued general permits expire.
2. Except as described below in this section (III.C.), TNRCC agrees to assume authority at time of NPDES program assumption over NPDES permits issued prior to the time of program assumption, including the functions of permitting, compliance monitoring, receipt of self-monitoring reports, and enforcement, in accordance with this MOA.
- a. Jurisdiction over the NPDES permits shall be assumed by the TNRCC, in accordance with Chapter 26 of the Texas Water Code and 30 TAC §305.533.
  - b. TNRCC wastewater discharge permits issued prior to TNRCC assumption of the administration of NPDES shall also remain effective until expiration, amendment, or renewal as TPDES permits. During the interim when both the state permit and a NPDES permit are effective for the same discharge, TNRCC shall enforce the provisions of the NPDES permit and any other state provisions which are more stringent than the NPDES permit. TNRCC will be ensuring through this administration of two permits that all NPDES provisions are enforced. When a new TPDES permit is issued by TNRCC, the TPDES permit shall replace the two previous permits. The TPDES permit issued by the TNRCC shall fulfill the requirements of federal regulations, the CWA, and state law.

- c. TNRCC will promptly process all requests for new TPDES permits and TPDES amendment applications received by TNRCC after the date of program assumption.
- d. Amendment of federal permits into TPDES permits by TNRCC after NPDES assumption:
  - 1) After NPDES program assumption, the TNRCC may amend an EPA-issued NPDES permit by order of the commission, by rule, or through individual permit actions, following public notice in the *Texas Register* and mailed notice in accordance with 30 TAC Chapter 39. This process will include an opportunity for public comment, for a period of at least thirty (30) days. In its public notice, TNRCC will solicit and consider comments relating only to the additional state conditions that will be incorporated into the TPDES permit. NPDES permits will be renewed or amended as TPDES permits and the state permit will be canceled, with the TNRCC ensuring that the TPDES permit includes all provisions required under the NPDES program. Under this process, the expiration date of the NPDES permit will not be modified to extend the term of the permit.
  - 2) In this process described in Paragraph 2.d.1) above, TNRCC will ensure against anti-backsliding.
  - 3) When TPDES permits with effluent limits based upon effluent limitation guidelines promulgated under Section 304(b) of the CWA are renewed or amended, the replacement permit may not contain effluent limits which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of either section 301(b)(1)(C) of the CWA, relating to timetables for achievement of water quality standards, section 303(d) of the CWA, relating to certain effluent limitations revision, and section 303(e) of the CWA, relating to a continuing planning process, a permit may not be renewed or amended to contain effluent limitations which are less stringent than the comparable effluent limitations in

the previous permit except in compliance with sections 303(d)(4) or 402(o) of the CWA. The exceptions to the general prohibition include changes to contain a less stringent effluent limitation applicable to a pollutant if:

A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation.

B) information is available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or the TNRCC determines that technical mistakes or mistaken interpretations of law were made in issuing the permit (However, this exception may not apply to water quality based effluent limitations, except where the cumulative effect of revised allocations results in a decrease in the amount of pollutants discharged into the water of concern and the revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the CWA or for other reasons otherwise unrelated to water quality).

C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy.

D) the permittee has received a permit modification under any of the following sections of the CWA:

i) 301(c), relating to modifications to timetables for attaining effluent limitations;

ii) 301(g), relating to modifications for certain nonconventional pollutants;

iii) 301(h), relating to modification of secondary treatment requirements

for a POTW discharging to marine waters;

iv) 301(i), relating to municipal time extensions pertaining to financial assistance;

v) 301(k), relating to innovative technology;

vi) 301(n), relating to fundamentally different factors; or

vii) 316(a), relating to a demonstration pertaining to a thermal discharge.

E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the reviewed, renewed, or amended permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or amendment).

F) in the case of section 303(d)(4) of the CWA where a water quality standard is not attained, a water quality based effluent limitation (necessary because technology based effluent limitations under section 301(b)(1)(A) or (B) are not stringent enough to implement any water quality standard) based on a TMDL or other waste load allocation may be revised only if:

i) the cumulative effect of all such revised effluent limitations based on such TMDL or waste load allocation will assure the attainment of such water quality standard, or

ii) the designated use or the in stream criterion which is not being attained is revised in accordance with 30 TAC Chapter 307, relating to the Texas Surface Water Quality Standards.

G) in the case of section 303(d)(4) of the CWA where a water quality standard is attained and where the quality of such waters equals or exceeds levels necessary to

protect the designated uses for such waters or otherwise required by 30 TAC Chapter 307, a water quality based effluent limitation (necessary because technology based effluent limitations under section 301(b)(1)(A) or (B) are not stringent enough to implement any water quality standard) may be revised only if such revision is subject to and consistent with the antidegradation policy established under 30 TAC Chapter 307. Such a water quality based effluent limitation must be based upon:

- i) a TMDL or other waste load allocation established under section 303(d) of the CWA;
- ii) any water quality standard established under 30 TAC Chapter 307;
- or
- iii) any other permitting standard.

In no event may a permit to which antibacksliding applies be renewed or amended to contain an effluent limitation which is less stringent than required by effluent guidelines (section 304(b) of the CWA) in effect at the time the permit is renewed or amended.

In no event may such a permit to discharge into waters be renewed or amended to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under 30 TAC Chapter 307 applicable to such waters.

- e. At time of renewal or amendment of an NPDES permit by TNRCC after program assumption, TNRCC may process a request for authorization of the discharge by rule or general permit instead of by individual permit, in accordance with authorizations by rule or general permits adopted or assumed by the Commission after program assumption to cover the category of discharges or sludge use or disposal practices within Texas. An NPDES application received by EPA prior to program assumption for an individual permit that has not been processed by EPA may be authorized by rule or general permit by the TNRCC. TNRCC may request the

applicant to seek authorization of the discharge by rule or general permit and to request cancellation of the individual permit instead of processing the application for an individual permit. If an NPDES permit contains limitations more stringent than in the TNRCC rule or general permit, the discharge will not be authorized in a manner which would constitute a violation of the anti-backsliding requirements of the CWA or Texas statute.

- f. EPA shall retain administration over all large and medium municipal separate storm sewer system (MS4) permits it has issued prior to program authorization and those NPDES permit applications or NPDES general permits that are in the public notice process but have not been issued as final at the time of program assumption. MS4s are described in 40 CFR §122.26. Administration by EPA shall include processing permit appeals, modification requests and variance requests, conducting inspections, and receiving and reviewing self-monitoring reports. TNRCC shall process any renewal applications it receives prior to expiration of each of these MS4 permits. Transfer of jurisdiction over each permit will occur the earlier of when the EPA-issued permit expires or when TNRCC issues a renewed, amended or replacement TPDES MS4 permit.

### 3. General Permits

- a. TNRCC has identified EPA-issued general permit, relating to:
  - 1) Petroleum bulk stations and terminals (PBSTs);
  - 2) Concentrated Animal Feeding Operations (CAFOs);
  - 3) Storm Water Multi-Sector Permit for Industrial Activities; and
  - 4) Phase I Storm Water Construction General Permit.
- b. TNRCC agrees to assume and administer the PBST general permit issued by EPA (*49 Fed. Reg. No. 35, July 12, 1984*). The EPA's PBST general permit will be assumed and enforced immediately after program assumption. TNRCC may modify this general permit to include state provisions which are more stringent than EPA general permit provisions.

- c. After program assumption, TNRCC agrees to assume and administer the Region 6 CAFO general permit. TNRCC may modify this general permit to include state provisions which are more stringent than EPA general permit provisions. CAFO facilities which file a NOI with TNRCC after program assumption will be required to seek either an individual permit or authorization by rule for discharges the TNRCC is unable to authorize under a general permit, as appropriate. Facilities covered under the NPDES-issued general permit will either be covered under a renewed or amended TPDES-issued general permit at that time or will be required to seek either an individual permit or authorization by rule if the facility is not included as part of the category of discharges allowed under the general permit. As discussed in Section III.B.8. of this MOA, EPA will retain jurisdiction over those CAFOs TNRCC does not have legal authority to regulate.
- d. EPA shall retain administration of all EPA issued stormwater general permits until the existing permit expires. Administration by EPA includes processing notices of intent (NOIs), permit appeals, modification requests, and variance requests, conducting inspections, and receiving and reviewing self-monitoring reports. Prior to expiration of each general permit, TNRCC may initiate procedures to adopt a corresponding state-issued general permit. At the time of issuance of a TPDES general permit, TNRCC shall assume jurisdiction of the discharges covered by it, including processing of notices of intent (NOIs), permit appeals, modification requests, or variance requests, the conduct of inspections, and the receipt and review of any self-monitoring reports. TNRCC may exclude certain categories authorized to discharge under an EPA-issued general permit from coverage under a TPDES-issued general permit (making the general permit less broad in coverage) or may elect to adopt a general permit for some discharges. TNRCC will authorize discharges of stormwater by individual permit where a TPDES general permit is not available or otherwise necessary to protect water quality.
- e. Within thirty (30) days of NPDES program assumption by TNRCC, issuance of a TPDES

individual permit for a facility, issuance of a TPDES general permit or authorization by rule replacing all or part of an EPA-issued general permit, or transfer of administration of a general permit (whichever comes later), EPA will promptly transmit all information on file, relating to those permittees covered under the EPA-issued general permits, carrying out the transfer in accordance with Section III.C. of this MOA, above. Relating to the CAFO General Permit, EPA will also furnish copies of any NOI it receives after the transfer of jurisdiction and other related information, such as correspondence from EPA to a discharger which requires an individual permit or excludes a person from coverage under the general permit.

4. Authorizations by Rule

TNRCC has promulgated several rules which authorize discharges into and adjacent to waters in the state, in accordance with §26.040 of the Texas Water Code. TNRCC agrees it will not authorize TPDES discharges into waters of the United States under these rules until they are amended to include all necessary NPDES requirements, in accordance with 30 TAC §321.141 and subject to public notice, opportunity for comment, TNRCC response to comments, and EPA review (as described in Section IV.C. of this MOA). These rules include:

- a. 30 TAC Chapter 321, Subchapter E, relating to Surface Coal Mining, Preparation & Reclamation Activities;
- b. 30 TAC Chapter 321, Subchapter F, relating to Shrimp Industry;
- c. 30 TAC Chapter 321, Subchapter G, relating to Hydrostatic Test Discharges;
- d. 30 TAC Chapter 321, Subchapter H, relating to Treatment of Petroleum Fuel Contaminated Waters;
- e. 30 TAC Chapter 321, Subchapter J, relating to Ready-Mixed Concrete Plants and/or Concrete Products Plants or Associated Facilities;
- f. 30 TAC Chapter 321, Subchapter L, relating to Motor Vehicle Cleaning Facilities; and
- g. 30 TAC Chapter 321, Subchapter O, relating to Discharges from Aquaculture Production

Facilities.

After program assumption each of these rules may be either repealed and replaced by a general permit issued by TNRCC, or amended to authorize discharges to water of the United States only in accordance with NPDES requirements. TNRCC regulates some CAFOs by rule under Chapter 321, Subchapters B and K. Subchapter K is the subject of litigation pending in state district court, and may be altered or invalidated by judicial decree. In that event, Subchapter B or K may be amended after program assumption to authorize discharges to water of the United States only in accordance with the Clean Water Act and NPDES requirements, subject to EPA review.

5. Permits for which variances or evidentiary hearings have been requested before the TNRCC assumes administration of the NPDES program shall be completed and issued by EPA. As each permit is issued, EPA will notify the TNRCC and transmit the authority to administer and enforce the permit to TNRCC. EPA will inform the permittee in writing upon transfer of the permit. Upon assuming the permit, the TNRCC will administer and enforce these EPA-issued permits until state issuance of a TPDES permit.
6. Enforcement lead over permittees (including persons covered under general permits) subject to on-going enforcement actions by EPA will be retained by EPA until final resolution of those enforcement actions. Final resolution can be accomplished by the permittee complying with the requirements of the NPDES permit or enforcement order. Alternatively, EPA's lead can be transferred to TNRCC when a state administrative order is issued covering the same violations. EPA will monitor permittee compliance with the on-going EPA enforcement actions. If a permittee fails to comply with the EPA Administrative Order, EPA will notify the TNRCC, and the TNRCC will issue an administrative order that addresses both the permit violation(s) and the EPA Administrative Order violation (equivalent state order). TNRCC and EPA may agree that an issuance of an equivalent state administrative order for certain permittees would be mutually beneficial, especially if the ongoing EPA enforcement action includes a protracted compliance schedule. TNRCC and EPA will evaluate the need for such action within six (6) months after program assumption. Within forty-five (45) days of permittee compliance with the EPA

enforcement action or TNRCC issuance of 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 TNRCC. EPA shall retain lead on all ongoing civil judicial actions. EPA shall retain all ongoing enforcement investigations.

7. After TNRCC assumption of administration of the NPDES program, EPA shall retain administration of the following permits only:
  - a. Wastewater discharge permits and sewage sludge permits jointly agreed upon by EPA and TNRCC, including those described above in Section III. of this MOA and those which are described or identified in the *Federal Register* after the joint agreement; and
  - b. Proposed NPDES general and individual permits pending before EPA that are in the public notice process but have not been issued as final at the time of program assumption.

EPA will inform the permittee and those covered under any general permit in writing upon the transfer of the permit. Upon assuming the permit, the TNRCC will administer and enforce these EPA-issued permits until state issuance of a TPDES permit. In the event EPA is unable to issue any of these individual or general permits, TNRCC agrees to expeditiously propose and issue permits with equivalent conditions allowed by state law.

8. Upon issuance by EPA of permits specified in 7.a. or b., above, the NPDES permit and relevant file information shall be promptly transmitted to TNRCC in accordance with Section III.C. above, for enforcement of all provisions, in accordance with state law.

#### **IV. PERMIT PROCESSING, REVIEW AND ISSUANCE**

The TNRCC is responsible for drafting permits, providing for public notice, providing for opportunity for public comment and hearings, issuing permits, amending (modifying) and renewing (reissuing) permits, and revoking permits in accordance with applicable State and Federal statutes, rules, and regulations and this MOA.

All TPDES permits will be developed in accordance with procedures established for TPDES/NPDES permits, and not under procedures established for pre-TPDES state permits.

##### **A. ADMINISTRATIVE REVIEW OF APPLICATIONS**

The TNRCC shall be responsible for the administrative review of all wastewater and storm water discharge permit applications within the TNRCC's jurisdiction. TNRCC will make completeness determinations and inform permittees of their application status, and that application information will be coded into PCS.

##### **B. PERMIT DEVELOPMENT**

A technical review will begin promptly after an application is administratively complete, and a draft permit will be developed in accordance with State and Federal statutes, official guidance, agency policies, and regulations. Technology based limits will be at least as stringent as Effluent Limitations and Standards specified for categorical industries as found in 30 TAC Chapter 305, Subchapter P or secondary treatment as found in 30 TAC §305.535 and in Chapters 309 and 319. Disposal or use of sewage sludge will be regulated in accordance with 30 TAC §305.531, 30 TAC Chapter 312, 40 CFR Parts 123, 501 and 503, and site specific Best Professional Judgement. Permit requirements will be considered on a case-by-case basis and on best professional judgment in accordance with 40 CFR §125.3 as adopted by 30 TAC §308.1, when specific regulations do not apply to a particular discharge. The TNRCC will include standard provisions in TPDES permits as described in detail in Chapter 3 of the Program description, and TNRCC agrees that it will not refer to the defense afforded in Code § 7.251 and 30 Texas Administrative Code §70.7 in TPDES permits.

Water quality based effluent limitations will be included in TPDES permits for all discharges to ensure

compliance with approved water quality standards. Water quality based effluent limitations are part of the federally approved program and the State will impose such limitations in TPDES permits unless technology-based effluent limitations are more stringent. Water quality based limitations and toxic controls will be developed in accordance with 30 TAC Chapter 307, §305.531(3), and Water Quality Standards Implementation Procedures which is maintained in a separate document within the Continuing Planning Process (Appendices 3-C and 3-D). The implementation procedures and 30 TAC Chapter 307 describe procedures for variances from surface water quality standards and the subsequent development of site-specific water quality standards. For purposes of development of TPDES permits after program assumption, the following specific procedures will supersede procedures described in the Water Quality Standards Implementation Procedures approved by the Commission and in effect on the date of program assumption:

1. Procedures to Suspend the Use of Biological Surveys in the Implementation Procedures. In the current Implementation Procedures (Implementation of the Texas Natural Resource Conservation Commission Standards via Permitting, TNRCC, RG-194, August 1995), there are two instances when instream biological surveys are used to evaluate the impact of wastewater discharges:
  - a. As one of the methods to assess and control total dissolved solids (TDS) in perennial unclassified waters (pages 28-30 of the Implementation Procedures); and
  - b. As a method to check for instream impacts when TDS in source waters causes failure of chronic or 48-hour acute whole-effluent toxicity testing (pages 50-53 of the Implementation Procedures).

As part of TNRCC development of TPDES permits, the use of instream biological surveys will be suspended until a revised methodology is approved by EPA Region 6 and incorporated into the Implementation Procedures in accordance with Series 23 of the Continuing Planning Process. Permit issuance will not be delayed by the suspension of biological surveys. Screening and controls for TDS (and individual components of TDS) for wastewater discharge permits will be the same as described in the existing Implementation Procedures (pages 28-30), except that the use of an in stream biological

survey to demonstrate “no impact” will not be allowed. For an unclassified perennial water body, ambient site-specific TDS data can still be used to establish a new screening criterion, which replaces the downstream segment criterion (Cc) in the screening equation. For a classified segment, the screening criterion (Cc) can only be changed by amending the Texas Surface Water Quality Standards (Title 30, Chapter 307 of the Texas Administrative Code). Procedures to address failure of whole-effluent toxicity testing due to source water TDS will be the same as described in the existing Implementation Procedures (pages 50-53), except that biological surveys will not be used to assess instream impacts after failure of chronic or 48-hour acute whole-effluent toxicity tests. Protection from potential instream impacts will be achieved in wastewater discharge permits by utilizing the screening and control procedures for TDS in pages 28-30 of the Implementation Procedures (as modified by this paragraph).

2. Cessation of Lethality (this provision supersedes the IPs on page 47 of that document). Permittees may cease TIE/TRE activities if they demonstrate to the Executive Director that the effluent ceases to cause lethality to the test organisms. Wastewater permits will define cessation of lethality as no significant lethality at the critical dilution for twelve consecutive months with at least monthly testing. This language accommodates situations where operational errors, plant upsets, spills, or sampling errors triggered the TIE/TRE, which differs from situations where effluent toxicity is persistent or intermittent. When permittees cease TIE/TRE activities under this provision, they must continue biomonitoring at the frequency required in their permit. This provision does not apply if lethality ceases for twelve consecutive months because of the permittee taking corrective actions. Corrective actions that may eliminate or reduce toxicity can include source reduction or elimination, process changes, housekeeping improvements, changes in chemical use, and/or modification to a treatment system. The TNRCC will allow permittees to use this provision only once. If lethality returns to the effluent, the permit will be modified to include a Whole-Effluent Toxicity (WET) limit and a compliance period. However, at the

end of the compliance period, the WET limit may be removed if the permittee identifies and confirms the specific toxicant and/or an appropriate control measure is available as described in the IPs, and the permittee applies for a permit amendment prior to the effective date of the WET limit.

3. **Alternate Test Species.** Permittees may substitute other EPA-approved tests and species if they obtain approval from the TNRCC during the permit application process. Permits which are drafted with a substitute test or species are subject to EPA review in accordance with procedures specified in Section IV.C. of this MOA. (See sections on *Toxicity Attributable to Dissolved Inorganic Salts* and *Site-Specific Total Toxicity Standards*.)
4. **Calculation of Dioxin/Furan Permit Limits.** For development of TPDES permits, TNRCC revises existing page 37 of the Implementation Procedures, as follows: Dioxin/Furan permit limits are calculated in the same manner as the method outlined previously (see, "Derivation of Permit Limits For Human Health Protection).
5. **Development of Water Quality-Based Effluent Limitations for Discharges into the Rio Grande.** Effluent limits will be derived using a methodology which allocates half the DO-related assimilative capacity of the river to Mexican discharges and half to Texas discharges. Each nation's discharges will be evaluated separately assuming that the 50% of assimilative capacity available in the river is apportioned to them. The model will use all of the appropriate headwater flow. This methodology would only be used when Texas and Mexican dischargers are in proximity to one another. Otherwise, standard modeling techniques will be used.
6. All final limitations in a TPDES permit will be consistent with the EPA-approved Water Quality Management Plan (including any applicable Total Maximum Daily Loads).
7. No variance from water quality standards will be used to establish an effluent limitation for a TPDES permit until the standards variance has been reviewed and approved by EPA.
8. TNRCC will evaluate TPDES general permits for compliance with water quality requirements, including whole effluent toxicity. Appropriate limitations will be included in general permits to ensure compliance

with water quality requirements. Endangered species concerns will be addressed through interagency coordination, as set out in Sections IV.C., D., and E. of this MOA, relating to EPA review of permits, coordination with federal agencies on draft permits, and public notice/public comment on draft permits.

9. Water Quality Standards Implementation Procedures will be subject to EPA review and approval after program assumption and while TNRCC is authorized to administer the NPDES program. Procedures for approval of the implementation procedures are described in the CPP, Series 23. TPDES permits will be developed and issued in accordance with the approved procedures. TNRCC typically revises its implementation procedures to accommodate major standards revision. Ideally, the revisions will be concurrent and EPA review of both of these co-dependent documents can be accomplished together. This may not occur at all times due to the extensive staff resources needed to complete the projects.

**C. EPA REVIEW OF DRAFT AND PROPOSED PERMITS, PERMIT REVOCATIONS AND ACTIVITIES AUTHORIZED BY RULE**

1. EPA waives the review of draft wastewater, storm water, or sewage sludge permits except for the following categories:
  - a. Discharges to territorial seas of the United States;
  - b. Discharges or sewage sludge management which may affect another state(s), the Republic of Mexico, or Indian Country (federally established Indian reservation, etc.) other than the one in which the discharge originates;
  - c. Discharges from POTWs with permitted daily average flows greater than 1.0 million gallons per day (MGD);
  - d. Discharges from POTWs with approved pretreatment programs;
  - e. Discharges of uncontaminated cooling tower blowdown with permitted daily average flows greater than 500 MGD;
  - f. Discharges from all designated major facilities;
  - g. Discharges from all categorical industries as listed in 40 CFR Part 122 Appendix A;
  - h. Discharges from other sources with permitted daily average flows greater than 0.5 MGD, except for those facilities that discharge only non-process wastewater may be waived regardless of flow;
  - I. Class I sludge management facilities as defined in Section VII.C. of this MOA;
  - j. Permits for the disposal of sewage sludge from other states;
  - k. Permits for municipal separate storm sewer systems (MS4s);
  - l. Permits which authorize a sanitary sewer overflow (SSO) or a combined sewer overflow (CSO);  
and
  - m. All general permits or authorizations by rule.
2. EPA waives review of minor amendments, permit endorsements, and ownership transfers as defined in

30 TAC Chapter 305. These type amendments are consistent with minor modifications, per 40 CFR §122.63.

3. Where EPA review is not waived, EPA agrees to review draft permits rather than proposed permits. For purposes of this MOA, a draft permit is a document indicating the executive director's tentative recommendation to issue or deny, amend, revoke, renew a permit. Such draft permits are subject to public notice. For purposes of this MOA, a proposed permit means a TPDES permit prepared after the close of public notice, a public meeting, or a contested case hearing, which will be forwarded for action by the Commission or the Executive Director. For those TPDES draft permits (listed in IV.C.1. above) subject to EPA review, EPA shall also review the proposed permit if the TNRCC proposes to issue a permit which differs from the draft permit it originally reviewed, if either the revised permit contains a less stringent numeric limitation, the revised permit contains an altered narrative provision or deletes a narrative provision from the draft reviewed by EPA, the revised permit adds a narrative provision that alters another provision from the draft reviewed by EPA, or EPA objected to the draft permit. EPA shall have the opportunity for re-review of the proposed permit and the ability to provide additional comments or objections within thirty (30) days after its receipt of the proposed permit.

TNRCC will transmit the draft permit to EPA at the same time as it issues the public notice. The public notice will be transmitted to EPA concurrently with mailing to the permit applicant. EPA may comment in writing on draft permits or proposed permits including amendments, as described below:

- a. The application package to be submitted to EPA for review of either draft or proposed permits shall include:
  - I. Draft or proposed permit;
  - ii. Permit application and all information submitted by the applicant relating to the draft or proposed permit, as applicable;
  - iii. Fact Sheet or Statement of Basis, as the case may be;

- iv. New Source determination, if applicable;
  - v. Water quality standards variance request/response, if applicable; and
  - vi. "Major" classification if applicable and the rationale for "Majors" which detail permit limit calculations.
- b. EPA shall provide written comments, objections (general or interim) to, or recommendations with respect to draft permits within forty-five (45) days from its receipt of a draft permit. Upon a written request by EPA, if a general or interim objection to a draft permit is made, EPA will have up to an additional forty-five (45) days to submit specific objections.
- c. If no interim or general objections are submitted by the EPA in writing within forty-five (45) days after EPA's receipt of a draft permit, the TNRCC may proceed with issuance of the permit in the form submitted to EPA.
- d. If EPA has made interim or general objections within the initial forty-five (45) day review period, but has not provided specific objections in writing within ninety (90) days from its receipt of a complete application package, the TNRCC may proceed with issuance of the permit as submitted.
- e. Where EPA has objected to a draft or proposed permit, EPA will set forth in writing its objections in accordance with the specific requirements of 40 CFR §123.44(c), also including in its objections all citations to the CWA and specific federal regulations that support the comment(s). EPA shall also include the specific action that the TNRCC must take to satisfy the objection including the specific effluent limitations and conditions which the permit would include if issued by EPA and any other action EPA requires TNRCC to take to satisfy the objection.
- f. Prior to notifying TNRCC of an objection, EPA shall consider all data transmitted in the permit application package, and may request all or portions of the information in TNRCC's files for review. Such requests must be made within forty-five (45) days from receipt of the permit

package and will be considered an interim objection. After receipt by EPA of the requested material or of notification that TNRCC does not have what was requested, EPA will have up to forty-five (45) days to provide any specific objections, as described above in IV.C.3.b.

- g. If EPA makes a specific objection to a draft permit under 402(b) of the CWA and 40 CFR §123.44(c) that is not resolved by TNRCC, exclusive authority to issue the NPDES permit passes to EPA. Upon notice by TNRCC that it will not comply with the objections raised by EPA, exclusive authority to issue the NPDES permit passes to EPA. During the interim between transfer of the application processing to EPA, the existing NPDES or TPDES permit shall remain in force until EPA issues a permit.
  - h. Where EPA has provided specific recommendations along with its objection, as described above in IV.C.3.e., and TNRCC has completely complied with those recommendations, TNRCC will transmit the proposed permit to EPA along with a transmittal letter stating it satisfies the objection. If EPA does not withdraw the objection by written notice to TNRCC within 21 days thereafter, authority to issue the permit will revert to EPA.
4. The EPA shall be notified whenever the TNRCC revokes any permit. If the terms of any permit are affected in any manner by court action or by the final disposition of an administrative appeal, the TNRCC shall promptly transmit to the EPA a copy of the amended permit and the supporting judicial or administrative decision.
  5. In the case of authorizations by rule or general permits, EPA agrees to review drafts prior to publication for public comment in the *Texas Register*. EPA shall have ninety (90) days from the date of receipt of the draft, prior to publication in the *Texas Register*, to comment, object, or make recommendations on the draft rule or general permit. If EPA fails to do so within ninety (90) days from receipt of the draft, the TNRCC may propose the rule or general permit in the *Texas Register*. The Director, Office of Water, or the appropriate officials at EPA Region 6 or Headquarters may comment, object, or make recommendations on any draft authorization by rule or general permit on behalf of EPA. If public

comments are received resulting in changes to the rule or general permit, EPA shall have the opportunity for re-review of the proposed rule or permit and the ability to provide additional comments or objections within thirty (30) days after its receipt of the proposed rule or permit. Re-review will be limited to those instances as described in Section IV.C.3. of this MOA.

6. When a request for an emergency order (EO) is filed with the Commission or the Executive Director, TNRCC shall transmit to EPA a facsimile copy of the draft EO, along with supporting information. EPA agrees to review and provide any comments or objections to the proposed action within twenty-one (21) days from receipt of the facsimile. EPA understands that its response may be received by TNRCC after approval of the EO by the Commission or Executive Director. Where EPA objects to the EO and has provided specific recommendations along with its objection, as described above in Section IV.C.3.e., the Executive Director or Commission will modify, set aside, or cancel the EO to satisfy the objection of EPA. Regardless of an EPA objection, the EO remains in effect until canceled or modified by the Executive Director or Commission.
7. When a temporary order (TO) request is filed with the Office of Chief Clerk for public notice, TNRCC shall transmit to EPA a facsimile copy of the draft TO, along with supporting information. EPA agrees to review and provide comments or object to the proposed action within twenty-one (21) days from receipt of the facsimile. Where EPA objects to the TO and has provided specific recommendations along with its objection, as described above in Section IV.C.3.e.2., the draft TO will be modified to satisfy the EPA objection prior to issuance of an order by the Executive Director or Commission.
8. Any waiver of EPA review shall not be construed to authorize the issuance of a permit by the TNRCC that does not comply with applicable provisions of federal or state statutes or rules. EPA does not relinquish the right to petition the TNRCC for review of a permit action or inaction because of possible violation of federal or state statutes, rules, and policies. The EPA may terminate a waiver as to future permit actions, in whole or in part, at any time, by sending the TNRCC a written notice of termination.
9. EPA shall not propose a hearing under 40 CFR §123.44(e) - (g) after it has filed objections to a draft

or proposed permit, including objections it raises under IV.D.4. of this MOA, until after TNRCC has had sixty (60) days to respond to the comments and objections EPA has raised. If TNRCC does not respond within sixty (60) days, then EPA may proceed with the hearing.

10. Within ninety (90) days from receipt of an objection from EPA to a draft or proposed permit, TNRCC (or any interested person) may request a public hearing on the objection. Upon such a request by the state (or significant public interest), EPA will hold a public hearing on the objection. Public notice of the hearing, the public hearing and the response from EPA shall be carried out in accordance with 40 CFR §123.44(e) - (g) and 40 CFR §124.10.

#### **D. STATE & FEDERAL AGENCY COORDINATION**

TNRCC will involve federal and state agencies including the United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and Texas Parks and Wildlife Department (TPWD) during the permitting process to address endangered species issues in TPDES permits. Additionally, notice will be sent to the state historical preservation officer (SHPO) in an attempt to address any potential impacts on properties listed or eligible for listing in the National Historic Register of Historic Places. TNRCC will address effects on endangered species and historic properties through setting and enforcing water quality standards, which undergo EPA approval with USFWS, NMFS, SHPO, and TPWD consultation. TNRCC will also consider endangered species and historic preservation issues identified by NMFS, USFWS, or the SHPO. Although it is not authorized to enter into any formal agreement with NMFS, USFWS, or the SHPO, TNRCC agrees there is benefit in exchanging information and meeting informally with these agencies on a periodic basis to discuss upcoming applications TNRCC projects it will process. TNRCC agrees to the following process while evaluating TPDES wastewater and sewage sludge permit applications:

1. Prior to December 1 of each calendar year TNRCC will provide TPWD, NMFS, SHPO and USFWS (collectively “the Services”) with a list of all TPDES permits expiring during the following calendar year, identifying them by stream segment.

2. Except for those classes and categories of permits for which a Service waives notice, TNRCC will mail notice and a copy of all draft permits to each of the Services, together with a copy of the permit application. Upon request by a Service, TNRCC will furnish copies of the draft permit and permit application for any permit in a class or category of TPDES permits for which the Service has waived notice.
3. If any Service comments during the public comment period in accordance with procedures set out in TNRCC's public comment rules to express endangered species or historical preservation concerns, TNRCC will coordinate with that agency in an attempt to resolve the relevant issue(s). If TNRCC does not change the draft permit in response to the responding Service's comments, EPA will be notified and provided the opportunity to review the draft or proposed permit following the procedures set out in Section IV.C.3. The time periods provided in that section will begin when EPA receives notice from TNRCC that the permit has not been changed in response to a Service's comment.
4. EPA may provide general or specific objections to the proposed permit as described in Section IV.C.3., within the time limits specified there. In its objection, EPA shall include a statement of the reasons for the objection (including the section of the CWA or regulations that support the objection). EPA's objection must be based on one or more of the grounds for objection at Section 402(d)(2) of the CWA.
5. If TNRCC does not revise the permit to comply with the objection, EPA shall assume jurisdiction and issue the NPDES permit to the extent so authorized under Section 402(d)(2) of the CWA.
6. Notification, receipt of comments, or discussion with the various agencies over endangered species or historical preservation issues shall not automatically result in a TNRCC or SOAH hearing on a permit application or entitle the NMFS, USFWS, or SHPO or other persons to become a party to any hearing convened. Determinations related to granting hearing requests are solely within the jurisdiction of the commission.
7. This MOA sets forth procedures under which the EPA and TNRCC will coordinate their actions, consistent with their respective legal obligations and authorities, in the administration of the Clean Water

Act, §402. Nothing herein shall be construed as expanding the respective authority of either agency or as requiring or authorizing TNRCC to implement or administer any federal law, including the Endangered Species Act, other than those portions of the Clean Water Act EPA may and has authorized TNRCC to implement and administer pursuant to the Clean Water Act, §§402(b) and 402(n)(3).

**E. PUBLIC NOTICE**

The TNRCC shall prepare public notice as required in 30 TAC Chapter 39. Public notice of new, renewal, and major amendment applications will be mailed to the applicant with instructions to publish it in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located, and in each county affected by the discharge. The notice shall be mailed concurrently to EPA, U.S. Fish and Wildlife Service, the Advisory Council on Historical Preservation, Texas Historical Commission, an affected State or federally established Indian reservation, the U.S. Army Corps of Engineers, National Marine Fisheries Service (for discharges to coastal or estuary areas, or territorial seas), any industrial user identified in the permit application of a publicly owned or privately owned treatment works, the designated 208 planning agencies, other persons who request notice, or who are otherwise on the TNRCC mailing list or who in the judgment of the TNRCC may be affected. TNRCC will also provide a copy of the draft permit and the permit application to the U.S. Fish and Wildlife Service (USFWS), the State Historical Preservation Officer (SHPO), the Advisory Council on Historical Preservation, an affected state or federally established Indian reservation, the U.S. Army Corps of Engineers, or National Marine Fisheries Service for all permits for which such notice or copies have not been waived. Personal service or electronic transfer may be substituted for mailing if agreed upon by the TNRCC/EPA permit program managers.

The public notice for draft permits shall set a deadline in which to file public comments or requests for public meetings or contested case hearings. The public comment period for draft permits will be not less than thirty (30) days. In addition to the above notices, for new and major amendment applications, affected landowners named in the permit application will receive mailed notice of the application when it is declared administratively

complete and an additional mailed notice after the draft permit has been filed with the Commission's Chief Clerk. The contents of all notices prepared by the TNRCC will include at a minimum those items specified in 30 TAC Chapter 39.

#### **F. PUBLIC COMMENTS AND HEARINGS, PERMIT ISSUANCE AND APPEALS**

Public comments and requests for hearing are accepted, considered and responded to, and public meetings and hearings are conducted pursuant to Chapters 39, 50, 55 and 80 of Title 30 of the Texas Administrative Code and Chapters 2001, 2003 and 551 of the Texas Government Code. Appeals are governed by those Chapters and by Section 5.351 of the Texas Water Code.

State law requires the Commission to act as the final administrative authority on contested proposed permits. The Commission may act to adopt the proposed permit, to adopt the proposed permit with changes, or to deny the permit application. A person affected by a final decision by the Commission on a permit may file a petition for judicial review; however, a motion for rehearing is a prerequisite to an appeal. If such a motion is timely filed relating to a permit application subject to EPA review, TNRCC shall notify EPA of such filing, and furnish a copy of any Proposal for Decision (PFD) or altered permit issued in response to the motion. EPA shall have thirty (30) days to comment on a revised PFD or permit before the record is closed on a proposed permit which contains provisions which differ from the draft or proposed permit reviewed by EPA, as specified in Section IV.C.3. of this MOA, relating to re-reviews. EPA may object in accordance with the grounds and procedures set out in Section IV.C.3 of this MOA. TNRCC staff will transmit to the Commissioners and place into the record of the contested case, if any, all EPA comments and objections on a proposed permit prior to their decision. TNRCC shall promptly transmit the Commission's decisions regarding the final disposition of the application to EPA. If the final decision by the Commission does not satisfy EPA's objection, EPA will assume jurisdiction and issue the permit. For draft permits subject to EPA review, TNRCC shall notify EPA of judicial appeals of permit decisions when the petitions are served and shall promptly transmit decisions of the court in regard to such appeals.

**G. ACTION ON APPLICATIONS IN UNCONTESTED CASES**

The Executive Director may sign, approve, and issue permits where there are no requests for contested case hearings. In addition to providing notice of a final permit decision, the Executive Director responds to all written comments received during the comment period and to oral comments received during a public meeting, (Title 30 TAC §55.25). For draft permits subject to review by EPA, if public comment result in change to a permit provision making the proposed permit different from the draft permit, EPA shall have the opportunity to review the proposed permit pursuant to Section IV.C.3. of this MOA, relating to re-reviews. Title 30 TAC Chapter 50, Subchapter C prescribes procedures and permit actions that may be taken by the executive director and the procedures for invoking commission review of the Executive Director's actions.

**H. NOTIFICATION OF PERMITTEES**

To ensure immediate notification of the assumption of NPDES authorization by TNRCC, EPA agrees to notify all NPDES permittees of the transfer of enforcement responsibility to TNRCC. EPA will provide a copy of this correspondence to TNRCC. To ensure that clear instructions and complete information is provided, EPA and TNRCC will collaborate on the language of the letter.

## **V. COMPLIANCE MONITORING AND PERMIT ENFORCEMENT**

### **A. BACKGROUND**

The TNRCC has been authorized by EPA to administer a partial NPDES program and retain lead responsibility for the Clean Water Act (CWA) in the State with respect to sources, activities and facilities with TNRCC's jurisdiction. EPA has continuing responsibility for oversight of the TPDES program in Texas in order to assure adherence to federal statutory and regulatory requirements implementing the CWA and to maintain national consistency. This section of the MOA provides a set of criteria for evaluating and overseeing the TPDES Enforcement Management System (EMS). Specifically, this agreement discusses two operational elements of the TPDES EMS: compliance monitoring (including inspections) and enforcement response. In addition, it covers program authority, penalty policy, conflict resolution, and overriding federal interest.

Should it become necessary to make modifications to this MOA in order to reflect program changes, any TNRCC/EPA Agreement will serve as the mechanism to complete such an action until the MOA can be adjusted accordingly.

### **B. COMPLIANCE MONITORING**

For purposes of this MOA, the term "compliance monitoring" includes all activities taken by the TNRCC to assure full compliance with TPDES program requirements.

1. Preparation of Manuals: The TNRCC agrees to implement compliance procedures as described in Chapter 6 of the Program Description in the application for delegation. These procedures shall also be contained in a Compliance Procedures Manual (CPM) and enforcement procedures will be contained in the Enforcement Guidelines (EG). The CPM will be review and approved by EPA annually.
2. Review of Discharge Monitoring Reports (DMRs):
  - a. The TNRCC shall use EPA approved DMRs and enter self-reported data into the Permit Compliance System (PCS). The TNRCC will develop a PCS quality assurance/quality control

(QA/QC) manual containing procedures that will ensure a data accuracy rate of 95%. The QA/QC manual will be submitted to EPA for review and approval within six (6) months after program assumption.

- b. The TNRCC shall conduct reviews of DMRs to determine if the required reports are submitted in a timely manner and are complete and accurate. All reports shall be reviewed and evaluated to determine a permittee's compliance status.
  - c. The TNRCC will enter the reported data directly into PCS for major permittees, 92-500 minor and other significant minor permittees within thirty (30) days from receipt of the DMR forms. Enforcement responses to non-receipt, incomplete, or unacceptable DMR forms shall be consistent with the time frames established in the CPM. Failure to submit DMR forms within thirty (30) days of the required date, or submittal of incomplete or unacceptable DMR forms without subsequent submittal of acceptable revisions within thirty (30) days of the required date will result in referral for enforcement where appropriate action will be taken to resolve the violation.
  - d. The EPA shall perform routine reviews of a random sample of DMR forms and PCS entries during periodic audits of the TNRCC program. These audits will not normally exceed two per year.
3. Review of Compliance Reports: The TNRCC shall conduct timely and substantive reviews and maintain complete records of all written material relating to the compliance status of TPDES permittees, including compliance schedule reports, compliance inspection reports, and any other reports that a permittee may be required to submit under the terms and conditions of a TPDES permit, approved pretreatment program, or Enforcement Order to ensure that the permit conditions and pretreatment requirements have been met. The TNRCC shall follow the Enforcement Response Guide in the evaluation of possible enforcement actions.
4. Preparation of Quarterly Noncompliance Reports (QNCRs): The TNRCC shall generate and submit for

all required facilities a QNCR consistent with the requirements and time frames outlined in accordance with 40 CFR 123.45. The TNRCC shall prepare the QNCR from PCS by using Discharge Monitoring Report data and other compliance data that are entered into PCS. The TNRCC shall use Category II violations (40 CFR Part 123.45) in the preparation of the QNCR when such violations result in an enforcement action. EPA will verify the accuracy and completeness of the QNCR quarterly.

### **C. INSPECTIONS FOR TPDES ENTITIES**

1. TNRCC shall conduct scheduled compliance inspections and follow-up inspections for TPDES entities to monitor compliance with applicable federal and state requirements for wastewater treatment plants (WWTPs), pretreatment standards, sewage sludge management facilities, CAFOs and storm water discharges.
2. Scheduled compliance inspections will include compliance evaluation inspections (CEI), compliance sampling inspections (CSI), compliance biomonitoring inspections (CBI), performance audit inspections (PAI), sludge compliance inspections, and pretreatment compliance inspections (PCI). In addition, inspections of industrial users (IUs) for POTWs with approved pretreatment programs will be conducted routinely as part of a pretreatment audit and on an as-needed basis as part of a PCI if the PCI findings indicate a problem or concern which would warrant IU inspection(s). Inspections will also be conducted as necessary for categorical IUs of POTWs without approved pretreatment programs.
3. TNRCC shall use risk-based inspection targeting strategies as outlined in Chapter 6 of the Program Description to select TPDES entities for scheduled compliance inspections. Factors that will be taken into account will include: watershed impairment, severe and/or chronic effluent noncompliance, prior compliance history, and time since the last scheduled compliance inspection. TNRCC will also consider EPA inspection guidance, the watershed strategy and the annual Office of Enforcement and Compliance Assurance MOA guidance when targeting TPDES permittees for scheduled compliance inspections.
4. TNRCC has the procedures and ability for inspecting the facilities of all major dischargers and all Class

I sludge management facilities where applicable at least annually. TNRCC will inspect 100% of the majors and Class I sludge facilities on an annual basis, or a universe of majors/minors agreed upon annually by EPA and TNRCC. EPA and TNRCC are committed to a process for targeting inspections according to the priorities established by TNRCC to protect the waters of Texas. TNRCC will develop an annual plan which establishes these priorities, lists the major and minor dischargers to be inspected under the plan and demonstrates that the plan is substantially equivalent to the annual inspection of all major dischargers and Class I sludge management facilities where applicable. EPA is committed to review TNRCC's annual inspection priority plan and upon the determination that it is substantially equivalent to the inspection of the facilities of all major dischargers and all Class I sludge management facilities, approve it. The inspection priority plan will be negotiated annually in the timeframes and under the procedures specified for the TNRCC/EPA multimedia, multi-year enforcement MOU, and when approved by EPA, the inspection priority plan will become part of the enforcement MOU.

5. In the first year under this Memorandum of Agreement, should EPA and TNRCC not reach agreement on TNRCC's proposed annual inspection priority plan within 90 days of its submittal, TNRCC agrees to perform inspections in accordance with the currently existing inspection priority plan approved under the 106 grant for the remainder of TNRCC's fiscal year. In subsequent years, should EPA fail to act on TNRCC's proposed annual inspection priority plan within 90 days of its submittal, TNRCC agrees to perform inspections in accordance with the last approved inspection priority plan until the end of that fiscal year. In any year, if EPA disapproves the proposed annual inspection priority plan, it shall notify TNRCC of specific reasons the plan does not, in EPA's opinion, describe the substantial equivalent of the inspection of all major dischargers and Class I sludge management facilities. If no agreement is reached on EPA's objection(s) by December 31st, the disagreement will be referred to the Regional Administrator and the Executive Director of the TNRCC. In all years, if there is no agreement on an annual inspection priority plan by the beginning of the following fiscal year, TNRCC agrees to inspect all major dischargers and all Class I sludge management facilities where applicable.

6. TNRCC shall notify TPDES entities in writing of the findings of scheduled compliance inspections. When violations are noted, TNRCC will pursue necessary action to ensure resolution of noncompliance.
7. In addition to compliance inspections, TNRCC shall conduct complaint investigations in accordance with the procedures for prioritizing and processing complaints which are outlined in Appendix 6-5 of the Program Description. If a written complaint is filed with the Commission, TNRCC shall provide quarterly responses to parties to the complaint regarding the status of the complaint until the time of final disposition of the complaint, in accordance with Texas Water Code §5.177.
8. TNRCC will provide EPA with copies of compliance inspection reports and inspection letters for major and minor WWTPs that are selected for mandatory inspection under TNRCC's inspection targeting strategy. The inspection reports/letters will be sent to EPA within 35 days of completion of the documents. The number of majors selected for mandatory inspection will be equal to the number of inspections for majors that TNRCC negotiates with EPA as described in Section V. C. 4 of this MOA. Copies of inspection reports and inspection letters for other TPDES entities will be provided to EPA on a case-by case basis at the request of EPA. Inspection data will also be available to EPA through PCS and through review of TNRCC files during TNRCC program audits. TNRCC shall be responsible for entering TNRCC compliance inspection data into PCS and for preparation of reports required under 40 CFR 123.45.
9. EPA may participate in joint compliance inspections with TNRCC and may conduct independent compliance inspections in order to assess the effectiveness of TNRCC activities and assess compliance of the permittee. EPA will normally provide TNRCC with advance notice seven days prior to conducting compliance inspections and provide copies of the results to TNRCC. When EPA provides advance notice of an inspection, TNRCC will not inform the permittee of the impending inspection without EPA's prior approval.

**D. ENFORCEMENT RESPONSE**

The CWA §309 requires the EPA, or NPDES Program delegated states, to respond to unpermitted discharges, violations of the CWA and NPDES violations (including, but not limited to pretreatment standards and requirements, compliance schedules, effluent limits and reporting requirements and all other permit conditions) by initiating appropriate enforcement action(s). The TNRCC shall hold primary responsibility for these activities in Texas except for those facilities detailed in Section III.C.6. of this MOA when it assumes administration of the TPDES Program.

Enforcement response involves a series of actions, starting with the initial reaction to the identification of a violation and ending with the permittee's return to full compliance and formal close out of any enforcement action taken.

1. The TNRCC shall use, as stated in the CPM and EG, pre-enforcement procedures that are consistent with the principles in the EPA's National EMS and NPDES oversight criteria including the Violations Review Action Criteria (VRAC) and the Enforcement Response Guide. The procedures shall include:
  - a. application of VRAC for screening Discharge Monitoring Report (DMR) data and inspection findings to determine the significance of the violations;
  - b. procedures and time frames for applying appropriate initial response options to identified violations; and
  - c. procedures for maintaining a chronological summary of all violations.
2. The TNRCC shall screen all DMR forms from permittees to determine the level and frequency of violations and shall evaluate instances of noncompliance by all major permittees, 92-500 minor and other significant minors within thirty (30) days from the identification of a violation. The TNRCC shall determine the appropriate initial response, consistent with the CPM and EG, and document any action taken or not taken (including the technical reason).
3. The TNRCC shall maintain current enforcement procedures consistent with the EG. The procedures should set forth:
  - a. an analytical process for determining the appropriate level of action for specific categories of

- violation;
  - b. procedures for preparing and maintaining accurate and complete documentation that can be used in future formal enforcement actions; and
  - c. the time frames for escalating enforcement responses where the noncompliance has not been resolved.
4. The TNRCC will be able to demonstrate that its enforcement procedures result in:
- a. appropriate initial and follow-up enforcement actions that are applied in a uniform, consistent, and timely manner;
  - b. a formal enforcement action put in place in accordance with all TNRCC requirements that requires actions to achieve compliance, specifies a timetable, contain consequences for noncompliance that are independently enforceable without having to prove the original violation, and subject the violator to adverse legal consequences for noncompliance;
  - c. the assessment of an administrative or judicial penalty, when appropriate (penalties will be developed based upon the TNRCC Penalty Policy, effective October 1, 1997, as generally described in Chapter 6 of the Program Description) and the amount appropriate to the violation;
  - d. opportunity for the public to comment on the proposed TNRCC order prior to consideration by the Commissioners;
  - e. opportunity for permissive intervention in administrative hearings under 30 TAC §80.109, under which the Executive Director agrees he will not oppose intervention by persons having a justiciable interest in circumstances that do not, in his opinion, present a risk of undue delay or prejudice to the original parties; and
  - f. compilation of complete and accurate permanent records that can be used in future formal enforcement actions.
5. TNRCC will take timely and appropriate enforcement actions to implement TPDES. In cases where TNRCC cannot meet the criteria in EPA's oversight guidance, TNRCC agrees to notify EPA 45 days

prior to the facility appearing on the Exceptions List. EPA will then initiate formal enforcement action in order to ensure that the violations are addressed in a timely and appropriate manner. EPA may also initiate enforcement action at the request of the TNRCC. During semi-annual audits of the TPDES program, EPA will assess the frequency with which TNRCC meets timely and appropriate criteria (this includes assessment of adequate penalties). The results of these audits will be used to evaluate the program against the criteria in 40 CFR 123.63 (3) and (4).

6. The TNRCC shall prepare and submit to the EPA semi-annually an enforcement activities report in accordance with the terms of the TNRCC/EPA Multi-media, Multi-year Enforcement Memorandum of Understanding (MOU); the report shall summarize enforcement activities for the preceding six months. Included in this report will be an update of the TNRCC's actions relating to Administrative Order (AO) issuance, AO closeouts, civil or criminal actions, penalties assessed/collected, judicial decree data, and other required information.
7. The EPA shall verify the timeliness and appropriateness of the TNRCC's enforcement actions through periodic audits and meetings as described in this MOA and TNRCC/EPA Multi-media, Multi-year Enforcement MOU. The TNRCC shall develop enforcement actions in accordance with the ERG and adopted policies related to enforcement.
8. The TNRCC will evaluate noncompliances disclosed by permittees under the Texas Environmental, Health and Safety Audit Privilege Act, as amended, as described in Chapter 6 of the Program Description and ensure that noncompliances are appropriately addressed in a reasonable amount of time. The TNRCC may choose not to issue an administrative order but will monitor the permittee to ensure final resolution of the noncompliance. However, the TNRCC will issue an AO order if circumstances warrant (e.g., the permittee requires a lengthy compliance schedule to achieve final resolution and issuance and tracking of interim limits are needed to ensure the facility is operated as efficiently as possible during the compliance schedule period). Immunity from penalties will not apply if the noncompliance has resulted in substantial economic benefit which gives the permittee a clear advantage over its business

competitors.

**E. EPA ENFORCEMENT ACTIONS**

If EPA determines that the TNRCC has not taken 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 Clean Water Act after notice to and consultation with the TNRCC. Prior to proceeding with an enforcement action, EPA shall give the TNRCC thirty (30) days to initiate such enforcement action. This notification shall be made through written communication in accordance with the TNRCC/EPA Multi-media, Multi-year Enforcement MOU. Such notification shall not be required when EPA is exercising its emergency power under Section 504 of the Clean Water Act.

**F. CONFLICT RESOLUTION**

Specific actions that shall be coordinated or discussed with the TNRCC prior to EPA action are: results of joint inspections or parallel inspections of the same permittee; permit/compliance audits; and unresolved violations which will result in issuance of a CWA §309 NOV letter. Participants in this information exchange will normally be the EPA Compliance Section and/or Branch Chiefs and corresponding individuals from TNRCC. If decisions are required where there are significant differences of opinion, the EPA and the TNRCC participants should present the divergent viewpoints to their respective Branch Chief or Division Directors, who will make the ultimate decision in discussions with each other. Decisions should be escalated to the Branch Chief/Division Director level as the exception rather than the rule.

## **VI. PRETREATMENT PROGRAM**

### **A. PROGRAM REQUIREMENTS**

The TNRCC pretreatment program shall include responsibility as an Approval Authority for Publicly Owned Treatment Works, (POTWs) as defined by 40 CFR §403.3(o) and adopted by 30 TAC Chapter 315, and as a Control Authority for Industrial Users (IUs) for non-pretreatment POTWs. The TNRCC shall operate the program consistent with 30 TAC Chapter 315. All sections of 40 CFR Part 403 referenced in this Section VI. of the MOA are adopted by reference in 30 TAC Chapter 315.

Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users, pollutants which may cause pass through or interfere with the operation of the POTW will be required to develop and implement a POTW Pretreatment Program. TNRCC may require that a POTW with a design flow of five (5) MGD or less develop a POTW Pretreatment Program in order to prevent interference with the POTW or pass through. TNRCC would do so if it finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant such an action. POTWs that do not have pretreatment programs will be re-evaluated during each reissuance of the facility's TPDES permit. The TNRCC shall implement a program that may require a POTW to develop and implement a pretreatment program if it receives wastewater from categorical IUs and significant non-categorical IUs which contribute process waste streams which makes up 5% of a POTWs dry weather hydraulic or organic capacity, which have known toxic in the discharge, or which have the potential to interfere, pass through, or contaminate the sludge of a POTW. The Texas Water Code, Section 26.047, provides TNRCC with the authority to require a pretreatment program for any POTW and require an IU to obtain a permit to discharge into a POTW.

**B. PRETREATMENT PROGRAM REVIEW AND APPROVAL**

1. Once a new pretreatment program is submitted and complete, the TNRCC will review it, with the goal of completing the review within ninety (90) days. Substantial modification requests to existing programs will be reviewed, with the goal of completing the review within ninety (90) days. The POTW shall notify the TNRCC of any non-substantial modification at least forty-five (45) days prior to implementation by the POTW. Non-substantial (minor) modifications to existing programs will be reviewed with the goal of completing our decision to approve or disapprove the non-substantial modification within forty-five (45) days. If the TNRCC does not notify the POTW within forty-five (45) days of its decision to approve or deny the modification, or to treat the modification as substantial under this section, the POTW may implement the modification. (Processing times are non-jurisdictional) Substantial modifications include the following:

- a. Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under 40 CFR §403.5(c);
- b. Changes that relax POTW's legal authority, except for modifications that directly reflect a revision to 40 CFR Parts 403 to 471 and are reported pursuant to approval procedures for nonsubstantial modifications;
- c. Decreases in required IU self reporting/monitoring;
- d. Decreases in IU inspections or sampling by a POTW;
- e. Changes in confidentiality procedures;
- f. Changes to POTW control mechanisms as described in 40 CFR §403.8(f)(1)(iii); and
- g. Other modifications designated as substantial modifications by the TNRCC on the basis that

the modification could:

1) have a significant impact on the operation of the POTW's Pretreatment Program such as significant reductions in POTW and pretreatment program resources (including personnel commitment, equipment, funding levels, etc.);

2) result in an increase in pollutant loadings at the POTW; or

3) result in less stringent requirements being imposed on Industrial Users of the POTW;

and

h. Changes in POTW sewage sludge disposal and management criteria.

2. Minimum Requirements. The TNRCC shall review all program submissions in accordance with 40 CFR §§403.11 and 403.18 to determine that they meet the pretreatment requirements. At a minimum, all pretreatment program submissions for approval shall contain the items required in 40 CFR §403.9(b) or such other documents the TNRCC determines to be necessary under the circumstances.

3. Additional Requirements. In addition to these minimum requirements, the TNRCC will review pretreatment program procedures to evaluate the proper calculation of Equivalent Limits (40 CFR §403.6(c)) and the proper use of the Combined Waste Stream Formula (40 CFR §403.6(e)) during on-site inspections. Dilution will not be allowed as a substitute for proper pretreatment (40 CFR §403.6(d)). The TNRCC will reevaluate existing approved programs for the proper calculation of Local Limits. POTWs will be required to develop Local Limits, or to recalculate local limits as necessary, as required by 40 CFR §403.5(c)(1). Removal Credits will be processed and granted in accordance with 40 CFR §403.7. Pretreatment programs must be consistent with any Water Quality Management Plans before they can be approved (40 CFR §403.10(g)).

4. Variance and Categorical Determinations. As an Approval Authority, the TNRCC will also make written determinations on all category classification requests made in accordance with 40 CFR §403.6(a) from either IUs or POTWs. TNRCC will forward its determination with a copy of the request and supporting information to EPA for concurrence. If EPA does not object or modify the TNRCC

determination within 90 days of receipt, the determination is final. If EPA modifies the decision, then EPA's decision is final, and a copy of the final decision will be sent to the applicant and the TNRCC. EPA shall be responsible for processing all requests for hearings, pursuant to 40 CFR §403.6(a)(5). EPA shall provide the TNRCC with its determination after acting on petitions contesting a final decision. The TNRCC will also review requests by IUs or POTWs for Fundamentally Different Factor (FDF) variances as allowed by §301(b) of the CWA. FDF variance requests will be reviewed and denied by the TNRCC, but must be forwarded to EPA for final approval. EPA shall review the FDF request and prepare and transmit a response within 60 days in accordance with 40 CFR §403.13(l). EPA shall provide for a hearing on the FDF decision in accordance with 40 CFR §403.13(m).

5. Notice, Hearings, and Issuance. When the TNRCC has preliminarily determined that a submission meets the requirements of 40 CFR §403.9(b), and where a removal allowance approval is sought in accordance with 40 CFR §§403.7(d) and 403.9(d), a public notice will be developed and sent to the POTW for publication in a newspaper regularly published and generally circulated within the county and area wherein the POTW discharge is located and within each county and area wherein persons reside who would be affected by the discharge. Public notice is not required for a non-substantial modification.

When public notice and opportunity for public comment are required, it will be provided in accordance with 40 CFR §403.11 as referenced in 30 TAC Chapter 315. Mailed notice will be provided to EPA, the designated 208 planning agencies, National Marine Fisheries Service (for discharges to coastal or estuary areas, or territorial seas), U.S. Fish and Wildlife Service, and Texas Parks and Wildlife Department (unless such agencies have asked not to be sent the notices). Mailed notice will also be provided to other persons required by the TNRCC rules or who in the judgment of the Commission, may be affected, including those persons requesting to be on the mailing list. Notices will provide for a thirty (30) day comment period and notice will be provided at least thirty (30) days prior to any public meeting which may be held. A public meeting, if held, will be conducted by an attorney from the Commission. All comments will be considered in the decision whether or not to approve the submission. All written

comments shall be retained by TNRCC. The Commission staff will schedule the submission for final decision by the Commission or the Executive Director and, as necessary, will incorporate the program or modification into the TPDES permit as a minor amendment in accordance with 30 TAC §305.62(c)(2)(D).

For those program requirements, EPA will be afforded the opportunity for re-review if TNRCC proposes to approve a program (or revised TPDES permit), in that EPA shall also review the proposed permit or program requirements if either the TNRCC proposes to issue one which contains different provisions than the draft information reviewed by EPA, as specified in Section IV.C.3. of this MOA, relating to re-reviews.

The TNRCC will transfer copies of the approved or modified pretreatment programs and modified permits to EPA within thirty (30) days of the final decision on approval/issuance. TNRCC need not publish a notice of decision under 40 CFR §403.11(e) provided: the notice of request for approval under 40 CFR §403.11(b)(1) states that the request will be approved, if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change. Notices required by 40 CFR §403.11 may be performed by the POTW provided that the TNRCC finds that the POTW notice otherwise satisfies the requirements of 40 CFR §403.11.

6. EPA Review of Program Submittals. EPA may provide written objections within thirty (30) days from receipt of the public notice, as a result of the public notice. The TNRCC shall not approve any pretreatment program, or significant modification thereof, if EPA has objected under 40 CFR §403.11(d).
7. Transfer of Approved Programs. Except as detailed in Section III.C.6. of this MOA, within thirty (30) calendar days of TNRCC's assumption of the administration of the NPDES program, the EPA shall transfer all approved pretreatment program files to the TNRCC and provide to TNRCC, for each approved pretreatment program, either a summary of the approved program or a duplicate copy of the

approved pretreatment program to be used by field staff in conducting pretreatment compliance inspections (PCIs). Pretreatment programs or modification requests that were submitted to EPA prior to TPDES program approval shall be transmitted to the TNRCC only after review and approval by the EPA, unless otherwise agreed upon by EPA and TNRCC program managers. Pretreatment programs or modifications submitted to EPA after TNRCC's assumption of the administration of the NPDES program, shall be transferred to the TNRCC within seven (7) days. EPA shall maintain pretreatment enforcement jurisdiction over any approved program where there is an on-going EPA enforcement action on the date TNRCC assumes administration of the NPDES program. Once an EPA enforcement action is resolved, the enforcement file shall be promptly transferred to the TNRCC within thirty (30) days. EPA shall ensure that all files are complete prior to delivery to the TNRCC.

### **C. PRETREATMENT ENFORCEMENT**

This section of the MOA defines the TNRCC's responsibilities for the implementation and enforcement of the National Pretreatment Program in accordance with §§307 and 403(b) of the Clean Water Act, and as described in Chapter 6 of the Program Description.

1. TNRCC Responsibilities for Enforcement of Pretreatment. The TNRCC will have primary responsibility for:
  - a. enforcing the National prohibited discharge standards established in 40 CFR §403.5;
  - b. enforcing the National categorical pretreatment standards established by the EPA in accordance with Section 307(b) and (c) of the CWA, and established as separate regulations under 40 CFR Parts 403 to 471;
  - c. review, approval, or denial of POTW Pretreatment Programs in accordance with the procedures discussed in 40 CFR §§403.8, 403.9, and 403.11;
  - d. requiring a Pretreatment Program as an enforceable condition in TPDES permits as required in 40 CFR §403.8;

- e. requiring POTWs to develop and enforce local limits as set forth in 40 CFR §403.5(c);
  - f. overseeing POTW Pretreatment Programs to ensure compliance with requirements specified in 40 CFR §403.8;
  - g. performing monitoring activities which will determine, independent of information supplied by the POTW, compliance or noncompliance by the POTW with pretreatment requirements incorporated into the POTW permit; and
  - h. applying and enforcing all other pretreatment regulations as required by 40 CFR Part 403.
2. Pretreatment Compliance Monitoring Activities:
- a. The TNRCC will establish procedures and time frames for:
    - (1) reviewing monitoring reports, including annual reports submitted by POTWs and semi-annual reports submitted by categorical users in areas without local programs;
    - (2) establishing and maintaining a complete inventory of POTWs with pretreatment programs;
    - (3) conducting pretreatment audits for approved pretreatment programs. TNRCC will perform audits for approximately 20% of approved pretreatment programs each year to attain the goal of auditing each approved pretreatment program at least once in the five year cycle of the permit. Audit coverage may be less, as described in the CWA Section 106 program grant (PPG);
    - (4) conducting pretreatment compliance inspections (PCIs) for a selected number of POTWs with approved pretreatment programs using the risk-based inspection targeting strategy outlined in Chapter 6 of the Program Description. The number of PCIs to be conducted will be negotiated annually as described in Section V.C. of this MOA.
    - (5) conducting inspections of industrial users (IUs) of POTWs with approved pretreatment programs; these inspections will be conducted routinely as part of a pretreatment audit and on an as-needed basis as part of a PCI if the PCI findings indicate a problem or

- concern which would warrant IU inspection(s);
  - (6) monitoring significant categorical and non-categorical industrial users of POTWs without approved pretreatment programs;
  - (7) conducting compliance inspections as necessary for categorical industrial users of POTWs without approved pretreatment programs;
  - (8) entering data from audits or PCIs into the Pretreatment Permits and Enforcement Tracking System (PPETS) data system within thirty (30) days of completion of these reports.
- b. Pretreatment audits shall be reported pursuant to the schedule of reporting identified in the CWA §106 program grant (PPG) provided by the TNRCC to EPA.
  - c. The TNRCC will have oversight as Control Authority of categorical and significant non-categorical IUs in areas without local pretreatment programs (until a local program is required by the TNRCC), modeled after current EPA practices, which will include:
    - (1) review and evaluate semi-annual monitoring reports and any other applicable reports required under 40 CFR §403.12 submitted by categorical users to ensure compliance with the National categorical pretreatment standards;
    - (2) review various sources of information, which may include the *Directory of Texas Manufacturers* and the TNRCC enforcement case list, to identify categorical and significant non-categorical IUs in areas outside the jurisdiction of approved pretreatment programs;
    - (3) determine whether any Existing Source or New Source categorical IU (as defined in 40 CFR §403.3 (k)), identified outside the jurisdiction of approved pretreatment programs, is in violation of the reporting requirements established under 40 CFR §403.12.
- 3. Integration of Pretreatment Enforcement Activities into the Established TPDES Program:
    - a. The TNRCC will have procedures and time frames for tracking compliance and initiating

appropriate enforcement action where POTWs:

- (1) fail to meet milestone dates in enforceable schedules for submitting approvable pretreatment programs;
- (2) have violations of effluent limits;
- (3) fail to implement approved pretreatment programs; and/or
- (4) fail to submit annual reports or submit delinquent annual reports.

b. The TNRCC shall also have procedures and time frames for evaluating whether POTWs are initiating timely and appropriate enforcement responses to violations by industrial users consistent with their established procedures. The TNRCC is expected to initiate timely and appropriate enforcement action against permittees having pretreatment programs that are listed on the QNCR and are in significant noncompliance. This applies to failure to:

- (1) meet milestones in enforceable schedules for submitting required local pretreatment programs and for implementing that program;
- (2) respond to violations of effluent limits;
- (3) submit POTW pretreatment reports in accordance with permit provisions; ( 4 )

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(5) act, or where POTW enforcement actions have been determined to be either untimely or inappropriate.

- c. In addition, the TNRCC shall conduct audits and pretreatment compliance inspections (PCIs) of local pretreatment programs to ensure that POTWs comply with their approved program procedures for taking action against significant violations by industrial users. The criteria for an industrial user found to be in significant noncompliance is described below. In accordance with the terms and conditions of its pretreatment program, the POTW shall provide for annual public notification of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements in the largest daily newspaper published in the municipality in which the POTW is located.
- d. **Criteria for Significant Noncompliance.** By authorizing POTWs to operate approved pretreatment programs, EPA and TNRCC place primary responsibility for enforcement standards on the POTW (TPDES permittee). Only when the POTW has failed to take appropriate action to ensure compliance by industrial users should TNRCC, as the approval authority, intervene, and then only as prescribed in §309(f) of the CWA. The criteria listed below apply to all significant industrial users. The POTW or Control Authority may, at its own discretion, apply this criteria to any other industrial user including retail establishments. Also, at its own discretion, the POTW may use more stringent criteria to identify significantly

violating industrial users in its municipality. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC ( TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (4) discharged a pollutant to the POTW which has caused an "imminent endangerment" to the human health, welfare and/or to the environment; or has resulted in the POTW's exercise of its emergency authority under 40 CFR §403.8 (f)(1)(vi)(B) to halt or prevent such a discharge;
- (5) failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90)-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

- (7) failed to accurately report a noncompliance;
  - (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program; or
  - (9) caused or substantially contributed to any violations of the POTW's TPDES permit requirements or has impaired the use or disposal of the POTW's sewage sludge.
- e. A significant industrial user is defined as any industry which discharges to a POTW that:
- (1) is subject to categorical standards;
  - (2) discharges a process wastestream of 25,000 gallons per day (0.025 MGD) or more;
  - (3) contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW; or
  - (4) has a reasonable potential, in the opinion of the POTW, to adversely affect the POTW (inhibition, pass through of pollutants, sludge contamination, endangerment of POTW workers, or known toxic in discharge) pr for violating any pretreatment standard or requirement.
4. Transfer of Information. Upon TNRCC assumption of the administration of the NPDES program, EPA shall transfer all information it has collected in identifying IUs in non-pretreatment cities. EPA reserves the right to continue enforcement initiated on IUs prior to the date TNRCC assumes NPDES. Insofar as information may be needed for such enforcement, the EPA will retain such information and transmit it to TNRCC within thirty (30) days after the enforcement action is closed.

## **VII. SLUDGE MANAGEMENT PROGRAM**

TNRCC is responsible for drafting sewage sludge permits and registrations, providing for public notice of permits and registrations, and amending (modifying), renewing (reissuing), and revoking these authorizations. TNRCC is responsible for a program of monitoring compliance with sewage sludge permits. The sludge management program will include procedures for taking appropriate enforcement actions to ensure resolution of compliance issues. The sludge management program will be carried out in accordance with applicable state and federal statutes, regulations, and this MOA.

### **A. SEWAGE SLUDGE PERMITS**

TPDES permits will authorize the use and disposal of sewage sludge and will comply with all applicable provisions of Section 405 of the Clean Water Act and will be issued to all treatment works treating domestic sewage as defined at 40 CFR §122.2. Requirements will be included in such TPDES permits which require compliance with federal sewage sludge requirements as found in 40 CFR Part 503 and all TNRCC sewage sludge requirements as found in 30 TAC Chapter 312. TPDES permits will also be issued to all treatment works treating domestic sewage including sewage sludge processors, blenders, and surface disposal facilities that do not allow discharge to waters in the state of a wastewater effluent. Specific sewage sludge provisions are included in each TPDES permit issued to a permittee generating, processing, using, or disposing of sewage sludge. All TPDES permittees must comply with the TNRCC sewage sludge regulations in its management of sewage on-site at the POTW, as well as any management of sewage sludge at a sludge-only facility not holding a TPDES permit. These permits will include the following requirements, as applicable to the permittee, in accordance with 40 CFR Part 503, 30 TAC Chapter 312 and other TNRCC regulations:

1. Permit conditions governing land application of sewage sludge for a beneficial use, including management practices, record keeping, and notification;
2. Monitoring requirements and permit limitations for heavy metals, hazardous waste toxic characteristics (TCLP), and pathogen testing (for both Class A and Class B quality) of sewage sludge generated or

- otherwise managed by the permittee, including monitoring frequency;
3. Permit conditions governing Processes to Significantly (or Further) Reduce Pathogens (PSRP or PFRP) and vector attraction reduction;
  4. Permit conditions governing sewage sludge metal concentration and loading limits onto beneficial use sites;
  5. Permit conditions governing disposal in municipal solid waste landfills, sewage sludge monofills, or surface disposal sites under methods which prevent significant contamination of ground water, in accordance with 30 TAC Chapters 330 and 312;
  6. Permit conditions governing marketing and distribution of exceptional quality sewage sludge to the public;
  7. Special requirements which authorize processing of sewage sludge; and
  8. Record keeping, certifications and reporting related to sewage sludge handling.

Each permit will be processed to allow for public notice and opportunity for hearing. The procedures followed in the development and issuance of these permits will be the same as described in this MOA in Section IV. above.

TPDES processing permits will be issued to all treatment works treating domestic sewage, which specifically will include activities where sludge is prepared for final use or disposal, including but not limited to thickening, stabilization, composting, and dewatering of sewage sludge.

#### **B. REGISTRATION FOR BENEFICIAL USE OF SEWAGE SLUDGE**

TNRCC may issue state registrations to persons who land apply sewage sludge for beneficial use. EPA agrees that registration of land application sites for beneficial use are administered solely under state authority and are not sewage sludge permits required under the TPDES program and is a greater scope of coverage consistent with the scenario described in 40 CFR Section 501.1(j). In all instances, the quality of the sewage sludge must meet the quality standards specified under 30 TAC Chapter 312, consistent with and more stringent

than NPDES requirements.

**C. EPA REVIEW OF DRAFT AND PROPOSED PERMITS**

1. EPA waives its review of draft or proposed TPDES permits for all classes and categories of permit applications which authorize sewage sludge management, except for a draft permit for a Class I sludge management facility. All procedures for submittal of application information to EPA relating to TPDES sewage sludge permits. The categories of TPDES permits subject to EPA review or objection of sewage sludge permits will be the same procedures as described in Section IV.C of this MOA.
2. Definition of Class I Sludge Management Facilities. Class I sludge management facilities shall be considered as:
  - a. A POTW or combination of POTWs operated by the same authority with a design flow greater than 5.0 MGD and receiving from industrial users pollutants which pass through or interfere with the operation of the treatment plant as being required to have an approved pretreatment program or are otherwise subject to pretreatment standards; and
  - b. Any other treatment works treating domestic sewage classified as a Class I Sludge Management Facility by Regional Administrator in conjunction with TNRCC because of the potential for its sludge use and disposal practices to adversely affect public health or the environment.

**D. ENFORCEMENT AND COMPLIANCE MONITORING OF THE SEWAGE SLUDGE PROGRAM**

The enforcement procedures, compliance monitoring activities, and inspection sections, and all agreements contained therein, within this MOA shall also apply to sludge uses and disposal practices. Additionally, the following provisions have been agreed upon:

1. The TNRCC and the EPA shall coordinate formal enforcement activities involving violations of sludge requirements. Specifically, the TNRCC shall provide notification to EPA of all pending formal

enforcement actions.

2. The EPA shall have the opportunity to independently initiate a formal enforcement action involving violations of sludge management rules and/or regulations using the EPA enforcement action criteria stated in Section V. of this MOA.
3. TNRCC shall inspect Class I sludge management facilities that are associated with a wastewater treatment facility that is selected for a scheduled compliance inspection using the TNRCC inspection targeting strategy outlined in Chapter 6 of the Program Description. The number of Class I sludge management facilities to be inspected will be negotiated annually as described in Section V.C. of this MOA.
4. EPA may participate in joint inspections with the TNRCC or conduct independent inspections of sewage sludge management facilities.

#### **E. TRANSFER OF SLUDGE PERMIT FILES TO TNRCC**

Upon the date of TNRCC assumption to administer the NPDES program, EPA shall only retain sewage sludge permitting jurisdiction as stated section III.C.7. of this MOA. Section III.C.1. of this MOA also applies to sewage sludge permits. Within thirty (30) days of issuance of NPDES permits by EPA, all application materials, the issued permit and associated fact sheet or statement of basis, file information, and any other information relevant to program operation concerning the permit action shall be transferred to TNRCC. The NPDES permits will be assumed by the TNRCC, in accordance with 30 TAC §305.533 and the procedures in Section III.C.1. of this MOA shall apply to such permits.

#### **F. SUBMITTAL OF SLUDGE MANAGEMENT INVENTORY**

As appendices to Chapter 5 of the Program Description of this application, TNRCC has provided a partial inventory of all POTWs and other treatment works treating domestic sewage and a plan for completing the inventory, pursuant to 40 CFR §501.12(f)(3)(ii). A detailed plan for completion of the inventory is provided

in Chapter 5 of the Program Description. TNRCC agrees to complete the inventory and submit it to EPA in accordance with the requirements of 40 CFR §501.12(f) by no later than five (5) years from the date of program assumption.

**VIII. TRANSMITTAL OF INFORMATION**

The TNRCC and EPA agree to transmit information in accordance with the schedule listed below. Both agencies also agree to transmit other general information requested in writing as soon as possible. Information obtained or used by the TNRCC in the administration of the TPDES program shall be available to EPA upon request, and information in EPA's files which the TNRCC needs to implement its program shall be made available to the TNRCC upon request.

Whenever either party furnishes information to the other that has been claimed as confidential, the party furnishing the information will also furnish the confidentiality claim and the results of any legal review of the claim. Information which is confidential in nature shall be transmitted as confidential and handled in accordance with 40 CFR Part 2, 40 CFR §122.7, 30 TAC §1.5(d), and 30 TAC §305.46. The TNRCC and EPA will deny all claims of confidentiality for self-reported effluent data, permit applications, and the name and address of any permittee.

**A. SUMMARY OF TRANSMITTALS FROM TNRCC TO EPA**

As prescribed in the preceding sections of this MOA, the following information shall be transmitted to EPA from the TNRCC:

<b>DESCRIPTION OF TRANSMITTAL</b>	<b>FREQUENCY OF TRANSMITTAL</b>
1. For all permits for which EPA has not waived review, a copy of the draft permits and permit applications (and supplemental information as specified in this MOA), including the Fact Sheet or Statement of Basis (details further described above in Section IV.C. of this MOA)	At time of completion of draft permit, simultaneous to filing of the draft permit for public notice
2. For all permits for which EPA has not waived review, a copy of public notices	As issued
3. For all permits for which EPA has not waived review, a copy of any proposal for decision or settlement agreement	As made
4. For all permits for which EPA has not waived review, a copy of all motions for rehearing and judicial appeals	As made

5. A copy of every TPDES permit issued along with a letter of transmittal (including TPDES permit number, name, location, date issued, and date of expiration); permits including sewage sludge permits and permits with pretreatment program modifications	Monthly, to be mailed by the fifth day of the month
6. For all permits which EPA has waived review, copies of the application, draft permit, final permit, or any other documents related to the permit	Within 10 days as requested by EPA
7. Copies of proposed and modified permits with associated documentation, for all permits which EPA has not waived review and in accordance with Sections IV.C.3. and VI.B.5. of this MOA	At time of completion
8. For major permittees, a quarterly noncompliance report as specified in CFR 123.45(a) and further qualified in EPA guidance	Quarterly, by the tenth calendar day of the month the QNRC is due to EPA's headquarter office
9. Report summarizing TRE activities or similar activities for each of these permittees and a report showing all permittees that have failed biomonitoring tests in the previous quarter	Quarterly
10. For major permittees and Class I sludge management facilities, summary information for those permittees with two or more violations of the same monthly average permit limitation in a six month period	Semi-annually, along with the first and third quarter QNCRs, as specified in 40 CFR Section 123.45(e)
11. Semi-annual enforcement activities report, including sludge enforcement activities as specified in this MOA	Semi-annually
12. Annual noncompliance report, per 40 CFR Section 123.45(c)	December 31 of each year
13. Submission of the exceptions list	Quarterly, by the 15th calendar day of the month the QNCR is due to EPA's headquarter office
14. 92-500 municipal facilities report for compliance statistics	Semi-annually
15. Summary of RECAP report statistics	Quarterly
16. A list of major facilities and Class I sewage sludge management facilities scheduled for inspection	Annually, by September 1
17. Draft authorizations by rule or general permit packages	At least 90 days prior to official publication in the <i>Texas Register</i>

18. Proposed authorizations by rule or general permits, where public comment resulted in a less stringent permit or rule	At least 30 days prior to adoption by the Commission
19. Copies of public notices for pretreatment removal allowances, pretreatment program approvals, substantial modification approvals, and other program submittals	Concurrent with the public notice
20. Pretreatment audit reports and correspondence associated with processing pretreatment program submittals	As requested by EPA
21. Copies of TNRCC compliance inspection reports and transmittal letters for all major permittees, Class I sludge management facilities, and mandatory minors which were inspected as agreed upon between EPA and the state	Within 35 days of completion of the document
22. Decisions on variance and categorical determinations, with supporting information	At time of completion
23. Temporary order and emergency order packages recommended for approval	By facsimile, at time of recommendation
24. Copies of final enforcement orders and judicial actions	Within 10 days of the effective date
25. Annual Report of sludge activities, including inventory information updates, per 40 CFR §501.21(b)	Annually, on December 31

**B. TRANSMITTALS FROM EPA TO TNRCC:**

<b>DESCRIPTION OF TRANSMITTAL</b>	<b>FREQUENCY OF TRANSMITTAL</b>
1. General written comments, recommendations, and objections to draft or proposed permits	Within 45 days from receipt of the draft or proposed permit.
2. Specific written objections to draft or proposed permits, along with CWA and federal regulation citations supporting the objection, and specific actions TNRCC must take	Within 90 days from receipt of draft or proposed permit, or 45 days after receipt of general objections.
3. Written withdrawal of objection, following receipt from TNRCC of draft permit and letter specifying all EPA recommendations have been met	Within 21 days from receipt of draft or proposed permit
4. Written comments or objections to a Proposal for Decision (PFD) by an administrative law judge	Within 30 days from receipt of the PFD

5. Written comments or objections to a temporary or emergency order (TO or EO)	Within 21 days from receipt of a facsimile of the EO or TO package
6. Notification to all permittees and those covered under any general permit of a change in jurisdiction	In writing upon the transfer of the permit
7. Transmittal of all file information relating to existing permits (relevant to permit issuance, compliance reports, and other related file information)	Within 30 days of program assumption, except for permits which EPA will retain administration over, in which case, the information shall be transmitted one year (365 days) prior to the permit's expiration
8. Transmit copies of NOIs and other related information pertaining to administration of the EPA CAFO General Permit	Monthly
9. Transmittal of all file information relating to permit applications pending at time of program assumption (information relevant to permit processing and issuance, compliance reports, and other related file information)	Within 30 days of program assumption, except for permits which EPA will complete processing until issuance, in which case the information shall be transmitted within 10 days of issuance
10. Listing or table(s) of permits and permit application information, as described in III.C.1.a. - e. of this MOA	Within 30 days of program assumption
11. All approved pretreatment program files and related information, in duplicate or one complete file along with a summary of the approved program	Within 30 days of program assumption
12. Notification that enforcement actions are finalized	Upon occurrence
13. Draft, proposed, and final technical guidance which pertains to the NPDES program	Within 10 working days of issuance.
14. Draft, proposed, and final regulations, including general permits	Within 10 working days of issuance.
15. New case law, settlement agreements, and remands of Federal regulations	Within 30 calendar days of issuance.
16. Copies of EPA compliance inspection reports	At time of report completion.

## **IX. TPDES PROGRAM REVIEW BY EPA**

EPA is responsible for verifying that the TPDES program is consistent with all federal regulations, EPA policies and guidance, all requirements of this MOA, the TNRCC Clean Water Act (CWA) Section 106 program grant (PPG), and applicable sections of 40 CFR Parts 40, 122-125, Parts 401-471 (Subchapter N), and 503. To fulfill this responsibility, EPA shall:

1. Review all information submitted by the TNRCC regarding TNRCC administration of the TPDES program.
2. Meet with TNRCC officials for semi-annual records audits, quarterly program reviews, and on an as needed basis to discuss or evaluate data handling, permit processing and development, compliance monitoring, pretreatment processes and enforcement procedures, and PCS.
3. Examine in detail the TNRCC files and documentation of selected facilities to determine:
  - a. whether permits are processed and issued consistent with federal requirements;
  - b. whether the TNRCC maintains a system allowing for discovery of permit violations as they occur;
  - c. whether TNRCC reviews meet timeliness requirements specified in this MOA and the Program Description; and
  - d. whether TNRCC initiated enforcement actions are appropriate, effective, and timely as specified in EPA National Oversight Guidance and in Chapter 6 of the Program Description.
  - e. whether penalties and penalty amounts for violations are appropriate and are collected.

The EPA shall in all cases notify the TNRCC at least two weeks in advance of any review under this paragraph so that TNRCC officials may be available to discuss individual case circumstances and problems. The EPA shall provide to the TNRCC at least five (5) working days in advance a list of permits to be examined.

4. In the event EPA determines that elements of the TNRCC's TPDES Program are in any way deficient and/or inconsistent with this MOA, the State Program Plan, or applicable federal and state regulations

and/or statutes, EPA shall notify the TNRCC in writing of these inconsistencies or other deficiencies. The TNRCC shall respond in writing within 30 days of this determination, indicating whether noted inconsistencies and/or deficiencies have been rectified. If they have not been corrected, EPA may proceed in accordance with §402(c) of the CWA.

5. Review, on an annual basis, the legal authority upon which the TNRCC's TPDES program is based, including State statutes and regulations.
6. When appropriate, upon introduction of a new program or major modification of an existing program, hold public hearings on the TNRCC's TPDES program.
7. Review, on an annual basis, if necessary, the TNRCC's public participation policies, practices, and procedures.
8. Review a representative sample of permits waived from permit issuance review during the annual program reviews.

## **X. AMENDMENTS TO BE APPROVED BY EPA**

- A. Prior to initiating any action to propose or effect any substantial amendment, recision or repeal of any statute, or regulation, which had been previously approved by either the TNRCC or EPA, and prior to the adoption of any new statute, or regulation, the agency proposing/recommending the change (either the TNRCC or EPA) shall notify the designated official of the affected agency and shall transmit the text of any such change (see 40 CFR §123.62 which provides that the change may result in a program review, which will not become effective until approved by EPA).
- B. If an amendment, recision, or repeal of any statute, or regulation, described in paragraph (B) above shall occur for any reason, including action by the State or Federal legislature or a court, the affected agency shall be notified as soon as possible of such event and a copy of the text of such revision will be transmitted to the designated official of the affected agency.
- C. Prior to the approval of any test method as an alternative to those specified as required for TPDES permitting, the TNRCC shall obtain the concurrence of EPA. EPA shall review requests for alternate test methods as soon as possible.

## **XI. APPROVAL, EFFECTIVE DATE AND TERM OF THE MOA**

- A. This MOA shall be reviewed by the EPA and the TNRCC, and revised as appropriate at least within five (5) years of its effective date.
- B. Either the EPA or the TNRCC may, at any time, initiate action to modify the MOA pursuant to the following guidelines:
1. No modification to this MOA shall become effective without the concurrence of both agencies.
  2. Time frames stated in Section VIII, Transmittal of Information, of this MOA may be changed by the written consent of the appropriate TNRCC and EPA managers.
  3. Any revisions or modifications to this MOA must be in writing and must be signed by the Executive Director and the Regional Administrator with prior concurrence by the Director, EPA Office of Water Enforcement and Permits and EPA Associate General Counsel for Water.
  4. All modifications to this MOA determined by the EPA to be substantial in nature shall be subject to public notice and comment in accordance with the requirements of 40 CFR §123.62 before being approved.
- C. Either the TNRCC or the EPA may terminate this MOA upon appropriate notice to the other party pursuant to 40 CFR §123.64.
- D. Nothing in this MOA shall be construed to limit the authority of the EPA pursuant to Sections 308, 309, 311, 402, 504 and other applicable sections of the CWA.
- E. Nothing in this Memorandum of Agreement should be construed to constitute or create a valid defense to regulated parties in violation of National or State environmental statutes, regulations, or permits.

F. This agreement shall become binding when the TNRCC's program authorization takes effect, which shall be the date set out in the *Federal Register* announcing EPA's decision to grant such authorization to the TNRCC when TNRCC assumes administration of the authorized TPDES program.

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Dan Pearson  
Executive Director,  
Texas Natural Resource Conservation Commission

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Jerry Clifford  
Acting Regional Administrator  
U.S. Environmental Protection Agency,  
Region 6

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_