

**REVISION
OF THE
MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF OHIO
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ON BEHALF OF
THE OHIO DEPARTMENT OF AGRICULTURE
AND
THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

Section I. Purpose and Responsibilities

I.A. Purpose.

On March 11, 1974, the Ohio Environmental Protection Agency (OEPA) and the United States Environmental Protection Agency (USEPA) entered into a Memorandum of Agreement (MOA) for the purpose of establishing procedures for implementing the NPDES permitting program in Ohio. Since March 11, 1974, the MOA has been modified four times to address (1) Federal Facilities (January 14, 1983), (2) Pretreatment (July, 27, 1983), (3) General Permits (August 17, 1992), and (4) Sewage Sludge (March 16, 2005).

This revision to the Memorandum of Agreement (Agreement/MOA) establishes revisions to policies, responsibilities and procedures pursuant to 40 CFR Part 123 and defines the manner in which the National Pollutant Discharge Elimination System (NPDES) will be administered by the State of Ohio through the Ohio Department of Agriculture (ODA) for concentrated animal feeding operations, including individual and general permits, including industrial and construction storm water permits, the discharging, transporting, or handling of process, wastewater, storm water, manure and litter from animal feeding operations, and those animal feeding operations designated as concentrated animal feeding operations (CAFOs) in accordance with 40 CFR 122.23 as reviewed and authorized by Region 5 and the Administrator of the United States Environmental Protection Agency (USEPA).

I.B. Responsibilities.

ODA has primary responsibility for implementing the NPDES program in Ohio as applied to animal feeding operations or "AFOs" and "CAFOs" (concentrated AFOs). Implementation will be done in accordance with this MOA and the Federal Clean Water Act (CWA), 33 U.S.C. §1251, *et seq.*, as applicable under state legal authority set forth in Chapter 903 of the Ohio Revised Code and regulations promulgated thereunder, the applicable requirements of 40 CFR Parts 122-125 and any other applicable federal regulations ODA storm water will also give consideration to USEPA Region 5 and national NPDES policies, goals, and objectives such as the annual State/USEPA Enforcement Agreement (SEA).

I.C. Scope of Authorization.

The NPDES program to be administered by ODA applies to NPDES individual permits and general permits, including industrial and construction storm water permits, for the discharging, transporting, or handling of process wastewater, storm water, manure and litter from animal feeding operations. OEPA retains jurisdiction for those industrial and construction storm water permits and industrial permits for agricultural activities that are not located on livestock and poultry farms, e.g., grain and cropping agricultural activities and for CAFOs that discharge to a publicly owned treatment works (POTW), cooling water and filter backwash at CAFOs/AFOs, as well as Grain Mills located at CAFOs/AFOs.

I.D. Additional Agreements.

Strategies and priorities for issuance, compliance monitoring and enforcement of NPDES permits are set forth in a Memorandum of Agreement between OEPA and ODA, August 12, 2002. In addition, there is a Memorandum of Agreement among OEPA, the Ohio Department of Natural Resources, Division of Soil and Water and ODA, August 29, 2005. Other agreements may be established from time-to-time in order to set forth in more detail the annual 106 State Program Plan or to otherwise establish subsequent working agreements. If requested by any party to this MOA, meetings will be scheduled at reasonable intervals between ODA, OEPA, and USEPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the NPDES program.

I.E. Withdrawal.

The USEPA may withdraw its approval and authority for the NPDES program from the ODA in the manner specified by federal law or regulation (Section 402(c)(3) of the CWA, 40 CFR 123.63, 123.64).

Section II. Program Responsibilities

II. Ohio Responsibilities.

In accordance with Ohio law, both the OEPA and ODA are authorized to participate in the NPDES program in accordance with the Federal Water

Pollution Control Act. Except for responsibilities transferred to ODA by statute, OEPA is responsible for and has the legal authority to carry out the NPDES requirements for permitting (40 CFR 123.25), for compliance evaluations (40 CFR 123.26), and for enforcement authority (40 CFR 123.27) with respect to all other point sources in Ohio, including the pretreatment program (40 CFR 403.10) and for the sewage sludge program (40 CFR 122.21, referencing 501.15(a)(2) and 123.27). The NPDES program to be administered by ODA applies to any NPDES permits for the discharging, transporting, or handling of process wastewater, storm water, manure and litter from animal feeding operations. These permits include NPDES individual and general permits, and industrial and construction storm water permits. OEPA retains jurisdiction for those construction storm water permits and industrial permits for agricultural activities that are not located on livestock and poultry farms, e.g., grain and cropping agricultural activities, CAFOs that discharge to a POTW, cooling water and filter backwash at CAFOs/AFOs, as well as Grain Mills located at CAFOs/AFOs.

The Ohio Environmental Protection Agency

OEPA is responsible for the annual 106 State Program Plan. OEPA is responsible for the issuance of all NPDES permits except those to be issued, denied, revoked, revised or modified by ODA as described below. OEPA's responsibilities include responsibility for processing new, modified, and renewed NPDES permits for non-domestic wastewater discharges, including industrial, commercial, and applicable silviculture discharges. OEPA is responsible for processing new, modified, and renewed NPDES permits for domestic wastewater discharges, including publicly owned treatment works and privately owned treatment works.

OEPA is responsible for sewage sludge management, including use, processing and disposal of sewage sludge.

OEPA is responsible for storm water discharges regulated under NPDES, including municipal separate storm sewer systems and storm water associated with industrial activity, except discharge, transport, or handling of storm water from an animal feeding facility as regulated by ODA.

OEPA is responsible for an enforcement program for unauthorized discharges from all but animal feeding facilities in its regulatory program and for pretreatment violations. OEPA shall take timely and appropriate actions in accordance with the CWA, National and Regional Guidance, applicable state laws (Chapters 3745 and 6111 of the Ohio Revised Code), the principles of this MOA, and the NPDES enforcement management system developed by OEPA for OEPA's use.

OEPA is responsible for the water quality standards adopted under section 6111.041 [6111.04.1] of the Revised Code, the antidegradation policy adopted under section 6111.12 of the Revised Code, which ODA shall adhere to in establishing terms and conditions of NPDES permits in accordance with section

903.08 of the Revised Code and rules promulgated thereunder.

The Ohio Department of Agriculture

ODA is responsible for and has the legal authority to carry out the NPDES requirements for permitting (40 CFR 123.25), for compliance evaluations (40 CFR 123.26), and for enforcement authority (40 CFR 123.27) with respect to NPDES permits for concentrated animal feeding operations, including animal feeding operations regulated in accordance with 40 CFR 122.23, and for NPDES permits for the discharge, transport, or handling of industrial and construction storm water from an animal feeding operation and of manure in Ohio. ODA is responsible for the enforcement program for unauthorized discharges of process wastewater, storm water, manure and litter from animal feeding operations in Ohio by taking timely and appropriate actions in accordance with the CWA, National and Regional Guidance, applicable state law (Chapter 903. of the Ohio Revised Code and rules promulgated thereunder), the principles of this MOA, and the NPDES enforcement management system (EMS) developed by ODA for ODA's use.

In accordance with the priorities and procedures established in this Agreement, the ODA will, with respect to all AFOs and CAFOs in Ohio:

II.A. Maintain the legal authority (including state regulations) and the resources required to carry out those aspects of the NPDES program for AFOs and CAFOs.

II.B. Process in a timely manner and propose to issue, reissue, modify, revoke and reissue, terminate, or deny all NPDES permits within the scope of ODA's jurisdiction. ODA will require that all Ohio facilities subject to NPDES requirements apply for and receive an NPDES permit.

II.C. Comprehensively evaluate and assess compliance with all State enforcement documents including permits, regulations, administrative orders, consent agreements, consent orders and court orders which deal with all applicable issues including compliance schedules, effluent limitations, operation and maintenance and storm water as well as other conditions in NPDES permits.

II.D. Maintain a vigorous enforcement program for NPDES permits and unauthorized discharges by taking timely and appropriate actions in accordance with all applicable state laws and regulations.

II.E. Maintain adequate public files at the central office (which must be easily accessible to USEPA for audit purposes) for each permittee. Such files must, at a minimum, be retained for a period of five years and shall include copies of all of the following documents within the possession of ODA:

- Permit applications
- Draft permits

- Proposed permits
- Issued permits
- Public notices and fact sheets (as applicable)
- All comments received during the public comment period
- Responses to comments
- Discharge monitoring reports for three (3) years
- All inspection reports
- All enforcement actions
- Construction reports
- Approved storm water construction reports
- Approved storm water program documents-
- Annual reports
- Requests for appeals, evidentiary hearings, stays of permit and/or specific permit
- Conditions, and other legal documentation
- All compliance and noncompliance documents
- Nutrient Management Plans
- Other pertinent information and correspondence

All of the above-listed documents pertaining to the NPDES program will be made available to the public in accordance with Ohio law as set forth in Section 149.43 of the Ohio Revised Code.

II.F. Submit to the USEPA Regional Administrator the information described in Section V. Reporting and Transmittal of Information of this Agreement, and applicable portions of 40 CFR Part 123. Additionally, ODA shall submit specific information and allow access to files necessary for evaluating administration of the NPDES program administered by ODA.

II.G. Assess and collect penalties appropriate to the violation for violations of those state laws and regulations enforced by ODA.

II.H. Within the scope of ODA's jurisdiction, provide timely input of NPDES permit and enforcement data into the National Permit Compliance System (PCS).

II.I. Within the scope of ODA's jurisdiction, ODA will be responsible for the conduct of state inspections and receipt and review of self-monitoring reports for all animal feeding operations that are not under the enforcement lead of USEPA.

II.J. USEPA will retain authority to administer the NPDES program in any Indian Country (as defined in 18 U.S.C. 1151) in Ohio.

Section III. Permit Review and Issuance

III. A. ODA Responsibilities.

For those permits within its jurisdiction, ODA is responsible for expeditiously drafting, providing public notice for, issuing, modifying, reissuing, revoking and reissuing, denying and terminating permits in accordance with Section V. Reporting and Transmittal of Information below, applicable provisions of 40 CFR Parts 122-125 and any other applicable regulations.

III.A.1.a. Consultation with OEPA.

ODA shall continue to coordinate with Ohio EPA as needed in furtherance of work completed pursuant to III.B of this Agreement.

III.A.1.b. Consultation with Agencies with Fish, Shellfish, and Wildlife Jurisdiction.

ODA shall provide notice to and consult with the appropriate agency having jurisdiction over fish, shellfish, and wildlife, and the U.S. Fish and Wildlife Service.

III.A.1.c Consultation with Agencies with Jurisdiction over Historic Preservation.

ODA shall provide notice and permit application information to, and consult with, the State Historical Office.

III.A.1.d Cooperation.

ODA and USEPA will cooperate to implement the applicable requirements of the Endangered Species Act and the National Historic Preservation Act. To this end, ODA will provide the U.S. Fish and Wildlife Service and the State Historical Office with the opportunity to comment on state drafted NPDES permits and/or applications in accordance with the agreements with these agencies. ODA will address and attempt to resolve any issues raised by these agencies. In the event that agreement is not reached on any issue raised by these agencies, then ODA shall notify USEPA in writing prior to permit issuance.

III. B. Application Review and Permit Development.

III.B.1. Receipt of New Permit Applications by the ODA.

ODA shall be responsible for the administrative review of all NPDES permit applications within its jurisdiction. ODA is responsible for timely review and entry of information into USEPA's National Permit Compliance System (PCS) for those NPDES permits related to animal feeding operations, including industrial storm water and construction storm water NPDES permits.

III.B.2. Permit Development.

For those permits within its jurisdiction, ODA will prepare a draft permit in accordance with applicable federal and state laws and regulations and this MOA. ODA will develop effluent limitations in accordance with state and federal standards and limitations including effluent guidelines, water quality standards, standards of performance, toxic effluent standards or prohibitions, best

management practices, and Ohio's Water Quality Management Plan under sections 301, 302, 303, 304, 306, 307, 308, and 402 of the CWA.

ODA will coordinate with OEPA to develop water quality based permits; any toxic effluent limited permits (or prohibitions) and any permits limited by Ohio's Water Quality Management Plan as follows:

III.B.2.a. General Information.

ODA will provide OEPA on a quarterly basis an updated list of pending and approved permit applications for both permits to install and NPDES permits within ODA's jurisdiction.

III.B.2.b. Consistency with areawide 208 Plans.

ODA will review any areawide 208 planning document and a copy of the OEPA Continuing Planning Process as updated. Prior to approval of a NPDES permit application; ODA will consult with OEPA on a permit-by-permit basis in order to maintain compliance with the Section 208 requirements. OEPA will decide if any proposed discharge would be in conflict with Ohio's areawide 208 plans and notify ODA of that decision.

III.B.2.c. Antidegradation and related wasteload allocations.

At least 14 days before ODA publishes public notice of receipt of an NPDES permit for which an antidegradation review is required, ODA will transmit copies to OEPA of the NPDES Part D permit antidegradation application and ODA's preliminary determination of:

III.B.2.c(1) whether the discharge or facility covered by the permit application or NOI meets an exclusion or waiver under the antidegradation policy in rule 3745-1-05(D) of the Ohio Administrative Code;

III.B.2.c(2) the preliminary wasteload allocation, based on water quality based effluent limits, for NPDES permits to be issued by ODA. OEPA shall endeavor to confirm the preliminary wasteload allocation and water-quality-based effluent limits proposed by ODA within 60 days of receipt of those proposed limits in order that ODA can conduct a public meeting on the antidegradation issues concurrently with the public meeting on the permit to install and NPDES permits and permit to operate as provided in section 903.09(C) of the Revised Code.

III.B.2.d. Adjudication cases and enforcement proceedings.

OEPA will provide technical assistance as needed and on a case-by-case basis in any legal matters concerning toxic effluent limitations, water quality based effluent limits (including a wasteload analysis in support of antidegradation review) for NPDES permits on appeal before the Environmental Review Appeals Commission, or NPDES permits subject to enforcement proceedings by ODA.

III.B2.e. General NPDES permits.

The ODA has the responsibility for developing and issuing NPDES general permits within the scope of its jurisdiction. After identifying discharges appropriately regulated by a general permit, ODA will collect sufficient information to develop permit conditions and requirements and prepare the draft general permit. General permits will require the same or similar effluent limitations, operating conditions and monitoring.

As required by rule 901:10-4-01 of the Administrative Code, General NPDES permits will not be issued for new discharges associated with CAFOs requiring an NPDES permit if the receiving waters are designated as outstanding national resource waters, outstanding high quality waters, superior high quality waters, or state resource waters, or to receiving waters that discharge to a water body with one of these designations within two stream miles of the discharge.

OEPA will notify ODA of any proposed changes to water quality use designations in Ohio. ODA will notify OEPA of any proposed changes with the scope, extent, and applicability of the NPDES general permit "Notification" means notice to each of the parties when preliminary work plans and schedules are in early stages of development. Each party shall allow the other meaningful time to examine and critique work proposed, in regards to any effect the proposed work may have on the other party's programs.

III.B2.f. Total maximum daily loads and watershed plans.

ODA and OEPA agree to meet at least annually to coordinate fieldwork for any TMDL work occurring where water bodies are potentially impacted by animal feeding operations. The parties will endeavor to plan the fieldwork so that ODA can support OEPA in sampling and monitoring in those watersheds where CAFOs are located or to be located.

OEPA will also conduct fieldwork and may discover animal feeding facilities or CAFOs that are unpermitted or that are discharging without the required permits. In either case, OEPA shall notify ODA of its findings and transmit information to ODA for ODA's use.

OEPA will notify ODA of the development of plans for TMDLs within any watershed where one or more CAFOs hold permits issued by ODA. ODA will coordinate with OEPA in monitoring, sampling, and surveillance and in the preparation of any reports for related TMDLs.

The parties agree to work together on TMDL implementation plans, including public participation and public meetings; discussion and development of load and wasteload allocations; strategies on NPDES permit development and issuance; and coordinated permit schedules with respect to the OEPA basin schedule of permit work.

As a result of fieldwork and related studies of water quality or TMDLs, OEPA may periodically notify ODA of any plans to recommend restricted use of, restrictions on the scope of, or applicability of, NPDES general permits, including both construction storm water and industrial storm water permits, for facilities regulated pursuant to Chapter 903 of the Revised Code.

III. C. USEPA Review of Draft Permits, Proposals to Deny Permits, and Permit Modifications.

III.C.1. Transmit Draft Permits to USEPA.

Except as provided in Section III.I. Permit Issuance or Notice of Intent to Deny a Permit, ODA shall consult with the USEPA Regional Administrator (or appropriate designee) before issuing public notice of a draft permit. The ODA shall transmit to the USEPA Regional Administrator appropriate portions of working documents in connection with the consultation.

III.C.2. Individual Permits.

III.C.2.a. Transmittal of draft permits.

USEPA will review draft permits rather than proposed permits as provided for in 40 CFR §123.44(j). Thirty days prior to issuance of a public notice of a permit action ODA shall send the USEPA one copy of the public notice, the application, the draft permit, and the fact sheet (if applicable) for each facility. If the permit is for a possible new source under CWA section 306, the submittal must be accompanied by a new source/new discharger determination.

III.C.2.b. USEPA review.

Upon receipt of the draft permit and the other information specified above, USEPA shall have 30 days to review, comment upon, provide a general objection to, or make recommendations with respect to the draft permit in accordance with 40 CFR §123.44.

III.C.2.c. USEPA Review Without Objection.

If no comments are made to the ODA within 30 days of receipt, and USEPA has not requested an additional 30 days to review the draft permit, then ODA may proceed with the issuance of the public notice. If no comments have been received by the close of the public comment period regarding any draft permit, then ODA may assume USEPA has no objection to issuance of the draft NPDES permit.

III.C.2.d. USEPA Review With Objections.

Within 30 days after receipt of a draft permit, if USEPA objects to the draft permit, USEPA shall notify the ODA of its objection. This notice shall set forth in writing the general nature of the objection.

III.C.2.d (1) The USEPA shall send a copy of any comment, objection or recommendation made by or transmitted to USEPA to the permit applicant, in accordance with 40 CFR 123.44(a)(1).

III.C.2.d (2) Within 90 days following receipt of a draft permit to which USEPA has objected and has filed a general objection, the USEPA shall set forth in writing and transmit to the ODA:

- (i) A statement of the reasons for the objections including the section of the CWA or regulations that support the objection, and

- (ii) The actions that must be taken by ODA to eliminate the objection.

III.C.2.d (3) If the initial permit information supplied by the ODA is inadequate to determine whether the draft permit meets the guidelines and requirements of the CWA, USEPA may file an "interim objection" under 40 CFR §123.44(d)(2) and request the ODA to transmit the complete record (or portion thereof) of the permit proceedings. The full period for USEPA review shall commence upon receipt of the requested information.

III. C.3. General Permits.

USEPA shall have 90 days from the date of receipt of a draft general permit from ODA to comment upon, object to, or make recommendations with respect to the draft general permit in accordance with 40 CFR §123.43 and §123.44. If USEPA fails to provide an objection to a draft general permit within 90 days from the receipt of the draft general permit, ODA may assume that U.S. USEPA has no objections to the draft general permit. In the event USEPA does object to a general permit, it will provide in writing, the reasons for its objection and the actions necessary to eliminate the objection. The state has the right to request a public hearing on the objection in accordance with 40 CFR 123.44(e). If USEPA's concerns are not satisfied and the state has not sought a hearing within 90 days of the objection, exclusive authority to issue the general permit passes to USEPA.

III. D. Comments in Response to Public Notices.

III.D.1. ODA shall provide USEPA copies of any and all significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permits (40 CFR 123.43(c)(2)).

III.D.2. ODA may issue the permit without further review by USEPA if (a) the permit to be finalized does not differ from the draft permit submitted to USEPA in accordance with **Section III. C.2.a.** of this MOA; (b) USEPA has not objected to

the draft permit; and (c) significant public comments have not been made (40 CFR 123.43(c)(2)).

III.D.3. Proposed Permits.

III.D.3.a. In all other cases, ODA will send one copy of the draft or proposed permit that is modified as a result of ODA changes or public comments and the information used in developing it to USEPA along with recommendations from any other affected state and any federal or state agencies, and copies of written comments and hearing records, including the response to comments prepared under 40 CFR §124.17 to USEPA for review. Whenever ODA prepares a written explanation to an affected state explaining the reasons for rejecting any of its written recommendations, ODA shall transmit a copy to the USEPA Regional Administrator.

III.D.3.b. USEPA will, within 45 days after receipt of the draft or proposed individual permit or within 90 days after receipt of the draft or proposed general permit, notify the ODA and any permit applicant of any formal objections authorized under 402(d) of the CWA. This notification shall set forth in writing the general nature of the objection.

III.D.3.c. Within ninety (90) days following receipt of the draft or proposed permit to which USEPA has objected, the USEPA shall notify the ODA in writing with a detailed statement of the reasons for the objections and the actions that must be taken to eliminate the objections.

III. E. USEPA Public Hearings.

ODA may request that a public hearing be held by the USEPA on the USEPA objections to draft or proposed permits. State requests for a hearing on the objection and the procedure for resolving the objection shall be governed by 40 CFR §123.44.

III. F. USEPA Assumes Permit Authority.

If EPA's concerns are not satisfied within the time limits set forth in 40 CFR §123.44, then ODA may not issue the permit and exclusive authority to issue the permit vests in USEPA.

III. G. Request for Permit Action by USEPA.

III.G.1. With respect to modifications or revocations and reissuances of permits by ODA, USEPA waives the right to review any permit that qualifies as a minor modification as defined in 40 CFR §122.63 or that qualifies as an operational change as listed in the appendix to rule 901:10-1-09 of the Ohio Administrative Code (OAC), except that USEPA does not waive its right to review when

operational changes result in changes in permit conditions derived from 40 CFR 122; provided, that if the change proposed by any permittee is not a modification and is not listed in rule 901:10-1-09 of the OAC, ODA will send to USEPA a copy of the Director's decision as to whether the change proposed is a modification or an operational change.

III.G.2. USEPA may request in writing that ODA issue, reissue or modify a permit. USEPA will provide to the ODA specific reasons why USEPA is requesting permitting action.

If within six months after the initial request the State has been unable to issue said permit, USEPA, at its discretion, will conduct a public hearing to review the facts surrounding the nonissuance of the subject permit.

III. H. Public Participation.

III.H.1. Permit applications, draft permits, public notices, and fact sheets prepared by ODA or statements of basis (when prepared by ODA) will be made available to any party upon request.

III.H.2. ODA will prepare and distribute copies of all public notices and fact sheets in accordance with 40 CFR Parts 124.8 and 124.10 unless otherwise waived by the specific organization.

III.H.3. All draft NPDES permits before the ODA shall be public noticed in a daily or weekly newspaper within the area affected by the activity in accordance with 40 CFR §124.10(c)(2)(i).

III. I. Permit Issuance or Notice of Intent to Deny.

III.I.1 If the final determination is to issue the permit, ODA shall issue a response to comments in accordance with 40 CFR §124.17 for NPDES permits. The final permit will be forwarded to the permit applicant and to anyone who commented during the public notice comment period, along with a response specifying which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes. A response to all significant comments on the draft permit raised during the public comment period or during a hearing will also be forwarded with the final permit. Also ODA shall forward a transmittal letter notifying the applicant that the permit is being issued. Copies of issued permits will be forwarded to USEPA in accordance with the schedule contained in Section V. Reporting and Transmittal of Information of this Agreement.

III.I.2. If the final determination is to deny the permit, the notice of intent to deny shall be given to USEPA and to the applicant in accordance with NPDES regulations applicable to ODA. (40 CFR 123.43(a)(2)).

III. J. Termination, Modification, or Revocation and Reissuance of Permits.

For those permits identified in III. C.2.a. Transmittal of Draft Permits, ODA shall notify USEPA whenever ODA intends to terminate an issued NPDES permit and shall transmit to USEPA a copy of any permit which it proposes to modify or revoke and reissue with the proposed changes clearly identified. The procedure set forth in III.C. USEPA Review of Draft Permits, Proposals to Deny Permits, and Permit Modifications shall be followed with respect to modifications by ODA of any issued permit and, for purposes of this agreement, each permit proposed to be modified or revoked and reissued shall be deemed to be a new draft permit.

III. K. Administrative or Court Action.

If the terms of any permit issued or modified by ODA, including any permit for which review has been waived pursuant to paragraph III. H. Request for Permit Action by USEPA are affected in any manner by administrative or court action, ODA shall transmit to USEPA a copy of the judicial or administrative decision and a copy of the permit that has been affected by the court action or the final disposition or any administrative appeal with changes identified. The procedures set forth for general and specific objections as found in 40 CFR §123.44 shall be followed with respect to permit issuance, modification, revocation and reissuance or termination as required by a judicial or administrative decision.

III. L. Variances.

ODA shall conduct an initial review of all requests for fundamentally different factors (FDFs) variances, for variances under §§301(c), (g), (k) and (n) of the CWA, and for modifications to federal effluent limitations established under section 302 of the CWA.

III.L.1. With regard to CWA §§301(i) and (k) variances, ODA may deny or approve the request. A copy of the determination shall be sent to the requester, USEPA and all other interested parties.

III.L.2. With regard to FDFs, CWA §301(c), (g), and (n) variances, and CWA §302 modifications, ODA may determine to deny the request, and such determination shall be forwarded to the requester and USEPA. If ODA determines that factors do exist that may warrant such a variance, the request and recommendation for approval shall be sent to USEPA. If USEPA denies a variance request, ODA shall so notify the requestor. If USEPA approves a variance request, then ODA will prepare a draft permit factoring in the variance.

III. M. Evidentiary Hearings.

ODA will provide USEPA with a copy of all precedent setting settlements and administrative decisions that adversely impact ODA's ability to implement the NPDES program in accordance with the federal requirements

III. N. Public Hearings.

ODA shall hold public hearings in accordance with 40 CFR §124.12 and rules set forth in Chapter 901:10-6 of the Ohio Administrative Code whenever it is determined that there is significant public interest in a draft permit.

Section IV. Enforcement.

IV. A. General.

ODA agrees to maintain a vigorous enforcement program, including a compliance assessment of all facilities and activities subject to the Department's jurisdiction and to take timely and appropriate enforcement actions for violations of program requirements. Discharges endangering public health shall receive immediate and paramount attention.

IV. B. Compliance Monitoring.

ODA shall operate a timely and effective compliance monitoring program including the input of appropriate data into the Permit Compliance System (PCS) for the purpose of determining compliance with conditions of NPDES permit issued by ODA. For purposes of this MOA, the term "compliance monitoring" includes all activities taken by ODA to assure full compliance with NPDES program requirements. ODA has monitoring programs that consist of two main activities: Compliance Review (including inspections) and Enforcement Response.

IV.B.1. Compliance Review.

ODA shall conduct timely and substantive reviews and keep complete records of all written and electronic materials relating to the compliance status of NPDES permittees under ODA's jurisdiction, including Compliance Schedule Reports, Discharge Monitoring Reports, Compliance Inspection Reports, Compliance Investigation Reports, and Annual Reports, and any other reports that permittees may be required to submit under the terms and conditions of an NPDES permit or administrative orders or court order.

IV.B.1.a ODA shall operate systems to determine if:

- The self-monitoring reports required by permit are submitted,
- The submitted reports are timely, complete and accurate,
- Records retained at the facility, such as operating records, are complete and accurate; and -The permit conditions are met.

IV.B.1.b ODA shall initiate appropriate enforcement actions for violations under ODA's jurisdiction, including whenever required performance is not achieved or when reports are not received or available for inspection. Priorities for reviewing these reports and for initiating enforcement actions are specified in the Enforcement Response Guide (ERG) contained in the Enforcement Management System.

IV.B.2. Compliance Inspection.

ODA shall conduct field activities to determine the status of compliance with program requirements under ODA's jurisdiction, including sampling and nonsampling inspections. Inspection procedures will be in accordance with applicable USEPA, Ohio EPA and Ohio ODA inspection guidance. For purposes of this MOA, the term "compliance inspection" includes evaluation inspections, USEPA performance audits, and sample inspections.

IV.B.2.a. Annually, the USEPA Regional Administrator and ODA will develop lists of permittees and other CAFOs to be the subject of state compliance inspections, pursuant to a neutral inspection scheme consistent with the annual 106 program. ODA shall also furnish an estimate of the number of other compliance inspections to be performed at CAFOs, and for NPDES storm water construction permits within ODA's jurisdiction issued during the year.

IV.B.2.b USEPA or ODA may determine that additional compliance inspections are necessary to assess permit compliance. If USEPA makes a determination that additional compliance inspections are necessary, it shall notify ODA as appropriate to each department's jurisdiction and may request ODA to conduct these inspections. USEPA retains the right to perform compliance inspections of any permittee or other CAFO at any time, but, unless circumstances warrant otherwise, will normally notify ODA in advance of the inspection to give the State an opportunity to participate and keep ODA informed of its plans and results.

IV.B.2.c Reports on compliance inspections conducted by ODA or USEPA shall be available for review by the other party, unless circumstances warrant otherwise. Reports prepared by ODA will be submitted to USEPA in accordance with Section V. of this MOA, Reporting and Transmittal of Information, within 30 days of the completion of the inspection including receipt of laboratory results. ODA shall thoroughly review each report to determine what, if any, enforcement action shall be initiated. ODA shall utilize its *Enforcement Response Guide* when reviewing the inspection and shall initiate the appropriate enforcement action as identified in its *Enforcement Management System*.

IV. B.3. Information Requests.

Whenever any party to this MOA requests additional information not listed under Section V., Reporting and Transmittal of Information, of this MOA concerning a specific discharger under ODA jurisdiction and the requested information is

available from ODA files, ODA will provide that information to the requesting party in a timely manner.

IV. C. Action Against Violators.

The ODA is responsible for taking timely and appropriate enforcement action against persons in violation of Chapter 903 of the Ohio Revised Code and supporting regulations, compliance schedules, effluent limitations, reporting requirements, any other permit conditions, and any other NPDES program requirements under ODA jurisdiction. This includes violations detected during state or federal inspections.

IV. C.1. Public Information.

The ODA shall maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations under ODA jurisdiction.

IV. C.2. Notice of Substantial Endangerment.

The ODA shall immediately notify the USEPA Regional Administrator by telephone, or otherwise, of any situation posing a substantial endangerment to health, welfare, or the environment resulting from the actual or threatened direct or indirect discharge of pollutants into waters of the state and the proposed response to the violations.

Section V. Reporting and Transmittal of Information

V.A. ODA Reporting and Transmittals.

The ODA will submit the following to USEPA:

-ITEM-	-DESCRIPTION- -	FREQUENCY
-V.A.1.-	-Copies of all preliminary draft NPDES permits, and draft permit modifications, including public notices, fact sheets and applications for those permits identified in III.C.2.a. Individual Draft Permits-	As issued
-V.A.2.-	-Copies of all public notices, except those for which USEPA has waived review	As issued
-V.A.3.-	-A copy of all NPDES permits. -	As issued
-V.A.4.-	-Copies of all NPDES permit applications and public notices for which USEPA has waived review -	Upon request

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

VI. B.

If an amendment, rescission, or repeal of any statute, regulation, or directive described in paragraph VI.A above shall occur for any reason, including action by the Ohio legislature or a court ODA shall, within 10 days of receipt by either, notify the USEPA Regional Administrator and shall transmit a copy of the text of such revision to the USEPA Regional Administrator.

VI. C.

Prior to the approval of any **test method** other than those specified as required for NPDES permitting, ODA shall notify the USEPA Regional Administrator and, where appropriate, seek U.S. USEPA approval.

VI. D.

ODA shall seek such legislation, adopt such regulations, provide Attorney General opinions, and take such further actions that may be necessary to preserve and maintain any compliance with NPDES program requirements.

VI. E.

ODA will keep the USEPA fully informed of any proposed modifications to the basic statutory or regulatory authority, the NPDES forms, and NPDES program procedures. Either ODA or USEPA may initiate program revision. Any revisions shall be made in accordance with 40 CFR 123.62.

Section VII. Independent USEPA Powers.

Nothing in this MOA shall be construed to limit the authority of USEPA to take action pursuant to any applicable federal laws or regulations including Sections 308, 309, 311, 402, 405, 504, or other sections of the CWA.

Section VIII. Computations of Time.

VIII. A.

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

VIII. B.

For the purpose of USEPA's review of permit applications, draft or proposed permits, or permit modifications, the period for review shall not commence until received by USEPA.

Section IX. Modification

This MOA shall take effect immediately upon approval by the USEPA Regional Administrator and Governor, State of Ohio. It shall be reviewed jointly and revised appropriately. ODA or USEPA may initiate action to modify this MOA at any time.

Section X. MOA Effective Date

This Memorandum of Agreement shall become effective when signed by both the USEPA Regional Administrator pursuant to 40 CFR §123.24(a) and the Governor, State of Ohio.

In witness whereof, the parties execute this agreement: