



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
SOLID WASTE AND
EMERGENCY
RESPONSE

OFFICE OF
ENFORCEMENT AND
COMPLIANCE
ASSURANCE

MEMORANDUM

SUBJECT: Involvement of Employees and Employee Representatives in CAA Section 112(r)
On-site Compliance Evaluations – INTERIM GUIDANCE

FROM: Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response

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Cynthia Giles
Assistant Administrator
Office of Enforcement and Compliance Assurance

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TO: Superfund Division Directors, Regions I-X
Enforcement Manager, Office of Environmental Stewardship, Region I
Director, Air, Pesticides and Toxics Management Division, Region IV
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Air and Waste Management Division, Region VII
CAA Section 112(r) Implementation Officials in Delaware, Florida, Georgia,
Kentucky, Mississippi, New Jersey, North Carolina, Ohio, South Carolina,
Allegheny County, Pennsylvania, Jefferson County, Kentucky, and Forsyth,
Mecklenburg & Buncombe Counties, North Carolina

Purpose:

The purpose of this memorandum is to establish interim EPA policy on involvement of facility employees and employee representatives in EPA and delegated Agency on-site compliance evaluations conducted under Clean Air Act (CAA) section 112(r).

Background:

CAA section 112(r)(6)(L) provides employees and employee representatives with the same rights to participate in EPA CAA section 112(r) compliance evaluations as provided in the

Occupational Safety and Health (OSH) Act. The specific policies and procedures for OSH Administration (OSHA) Compliance Safety and Health Officers to follow when involving employees and employee representatives in on-site OSHA evaluations are codified at 29 CFR 1903.8, and further detailed in an OSHA Field Operations Manual (OSHA Directive CPL 02-00-148). While EPA staff may already engage employees and employee representatives during CAA section 112(r) on-site compliance evaluations, to date the Agency has not established formal guidance in this area. Recently, we met with representatives of labor and environmental groups to discuss the EPA approach to this provision of the CAA, and there was strong agreement among all parties on the importance of engaging employees and employee representatives during CAA section 112(r) on-site compliance evaluations.

Action:

Effective immediately, EPA staff conducting CAA section 112(r) on-site compliance evaluations should offer facility employees and employee representatives the opportunity to participate in any such evaluations. The Office of Enforcement and Compliance Assurance (OECA) and the Office of Solid Waste and Emergency Response (OSWER) are working together to develop final guidance to implement the CAA section 112(r) statutory requirement, and plan to issue such guidance later this year. Until final EPA guidance is developed, the OSHA Field Operations Manual is available as a reference tool. Based on an initial review of the Manual, we believe that many of the implementation issues that may arise in the context of an EPA CAA section 112(r) on-site compliance evaluation have been addressed in the OSHA Manual, and can potentially be applied directly by EPA in final guidance. In particular, EPA staff may find information on the following pages of the Manual useful: 3-4, 3-9 to 3-13, 3-15, 3-19 to 3-20, 3-28 to 30, and 3-35. The Manual is available at: http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-148.pdf.

Additionally, EPA staff should document the EPA offer to participate and summarize the nature, extent, and substance of the employee and employee representative involvement during the on-site compliance evaluation in the required compliance evaluation reports for CAA section 112(r) on-site compliance evaluations.

Finally, EPA will request that State and local agencies that have accepted delegation of the CAA section 112(r) program adopt similar procedures in their 40 CFR Part 68 evaluation programs once EPA guidance is issued.

If you have any questions, please contact us or have your staff contact Jim Belke in the Office of Emergency Management at (202) 564-8023, or Rob Lischinsky in the Office of Compliance at (202) 564-2628.

cc: Removal Managers, Regions I-X
Regional Counsel, Region I-X
CAA section 112(r) implementation officials, Region I-X
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