



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 08 1996

REPLY TO THE ATTENTION OF:

(AR-18J)

Dennis Drake, Chief
Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30260
Lansing, Michigan 48909

Dear Mr. Drake: *Dennis*

As you know, the United States Environmental Protection Agency (USEPA) is in the process of approving Michigan's request for delegation of the Federal air toxic program pursuant to Section 112(1) of the Clean Air Act, as amended. We anticipate rulemaking on the request in a Spring 1996 Federal Register notice. To facilitate Federal delegation of authority to implement and enforce standards promulgated by USEPA, our respective staffs have been working together for many months to develop a memorandum of agreement (MOA) between the Michigan Department of Environmental Quality (MDEQ) and USEPA. This MOA outlines MDEQ's and USEPA's responsibilities regarding information exchange and delegation of both existing and future standards.

I believe that this MOA will be a valuable tool for coordinating MDEQ's and USEPA's Section 112 responsibilities. In addition, I believe that it will facilitate communication between our agencies by establishing a new framework for continuing our cooperative working relationship.

Enclosed are two copies of the document that have been signed by me. If you agree with the provisions in the MOA, please sign the documents, and send one back to me for our records. If you have any questions regarding the MOA, please call me at (312)353-2212. I would like to thank the MDEQ staff for all of their hard work and cooperation during the development of this MOA.

Sincerely yours,

David Kee, Director
Air and Radiation Division

Enclosures



cc: Jerry Avery
Michigan Department of Environmental Quality

MEMORANDUM OF AGREEMENT
BETWEEN
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 5
REGARDING
SECTION 112, CLEAN AIR ACT IMPLEMENTATION

INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) is to provide for a procedure to facilitate delegation by the United States Environmental Protection Agency (USEPA) to the Michigan Department of Environmental Quality (MDEQ) of authority to implement and enforce standards promulgated by USEPA under Section 112 of the Clean Air Act. This MOA sets forth specific expectations and responsibilities of MDEQ and USEPA and describes a formal procedure for cooperative information sharing between them. Both MDEQ and USEPA recognize that timely delegation of Section 112 responsibilities is vital to implementation of the Section 112 program, affirm their commitment to an effective State/USEPA partnership, and agree to review this MOA as the need arises.

SCOPE

MDEQ has requested, and USEPA intends to grant, delegation of responsibilities for implementation and enforcement of emission standards and other requirements promulgated under Section 112. MDEQ has not requested and at this time does not intend to request delegation of the accidental release program under Section 112(r) or of responsibilities relating to the radionuclide standard. This MOA addresses only those provisions and responsibilities for which MDEQ has requested delegation.

BACKGROUND

Section 112 requires USEPA to develop National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 112(1) authorizes the USEPA Administrator to delegate the authority for the implementation and enforcement of standards promulgated under Section 112 to any State which applies for such delegation and which can demonstrate that it has in place a program which meets the criteria set forth in Section 112(1) and its implementing regulations at 40 CFR § 63.91 through § 63.96. The Administrator has redelegated the authority to approve State programs to the Regional Administrators.

MDEQ has submitted to USEPA, Region 5, and seeks approval of its program for implementation and enforcement of emission standards and other requirements for air pollutants subject to Section 112 (Section 112 standards). MDEQ has demonstrated that it has in place appropriate mechanisms for implementing and enforcing Section 112 standards with respect to both part 70 and non-part

70 sources in accord with this MOA, and that its program is in compliance with the regulations at 40 CFR § 63.91 through § 63.96.

Region 5 will approve MDEQ's Section 112 program in a 1996 Federal Register rulemaking pursuant to Section 112(1) at which time the authority to implement existing Section 112 standards for both part 70 and non-part 70 sources will be delegated to MDEQ. Authority to enforce Section 112 standards applicable to non-part 70 sources will be delegated to MDEQ upon incorporation of such standards by reference into the State air quality regulations. MDEQ will enforce Section 112 standards applicable to part 70 sources by including such Section 112 standards in State operating permits when they are issued or updated. Authority to implement and enforce future Section 112 standards will be delegated to MDEQ in accordance with this MOA.

POLICY STATEMENT

MDEQ and USEPA hereby agree to establish a process for delegation of responsibilities under Section 112(1). MDEQ and USEPA will presume delegation of all Section 112 standards as promulgated by USEPA unless MDEQ notifies USEPA otherwise as specified in this agreement. Both MDEQ and USEPA recognize that MDEQ's ability to implement and enforce a Section 112 standard in a timely manner will depend largely upon its having access to information regarding such standard prior to the final promulgation of such standard. The delegation process should therefore be an interactive, information-sharing process which should begin prior to promulgation by USEPA of the Section 112 standard to be delegated.

MDEQ shall implement Section 112 standards pursuant to this MOA through the part 70 and the new source review permit programs. Pursuant to Mich. Comp. Laws § 324.5506(6) (1994), MDEQ has the authority to include Section 112 requirements in operating permits. MDEQ shall include applicable Section 112 requirements in part 70 permits for existing sources and in new source review permits for new sources.

MDEQ and USEPA agree to implement the following procedures:

- I. Prior to final promulgation of a Section 112 standard, USEPA shall provide MDEQ with any information it has regarding Michigan sources that may be subject to such standard.
- II. Following final promulgation by USEPA of a Section 112 standard:
 - A. USEPA shall provide MDEQ with blank notification forms and other supporting resources.

- B. USEPA shall provide MDEQ with access to the applicable MACT database.
- C. USEPA shall coordinate the sharing of guidance, outreach and other materials developed by USEPA and by other Region 5 States to implement the standard.
- D. *Implementation Authority.* USEPA shall, by letter, delegate to MDEQ the authority to implement each Section 112 standard as promulgated unless MDEQ notifies USEPA differently, within 45 days of USEPA's final promulgation of the standard.
- E. *Enforcement Authority.* As expeditiously as practicable and, if possible, within 12 months of the promulgation by USEPA of a Section 112 standard which is applicable to non-part 70 sources, MDEQ shall incorporate such standard by reference into the State air quality regulations. Upon completion of such regulatory action, MDEQ shall submit to USEPA proof of incorporation by reference. USEPA shall respond with a letter delegating enforcement authority to the MDEQ with respect to the standard or standards so incorporated.

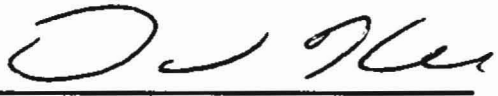
III. MDEQ shall be responsible for implementing and enforcing Section 112 standards in Michigan. Such implementation and enforcement shall include, as appropriate:

- A. Distribution of initial notification forms to potentially affected sources;
- B. Receiving initial notifications and compliance certifications from affected sources;
- C. Issuing or revising part 70 and new source review permits for affected sources as needed to include Section 112 standards;
- D. Assuring compliance through implementation of the part 70 and new source review permit programs for those affected sources required to obtain permits.

IV. Until MDEQ obtains the authority necessary to enforce Section 112 standards, USEPA shall initiate enforcement action when enforcement is in the best interest of the State, the general public, or USEPA, or when delayed enforcement would impose an undue level of risk on the general public and/or the environment. USEPA at all times retains its authority to enforce all provisions of Section 112 standards and requirements.

The above agreement is effective when signed and may be modified upon agreement by MDEQ and USEPA. Nothing in this agreement shall be construed to restrict in any way the authority of either USEPA or MDEQ to fulfill its responsibilities under State or Federal law.

Dennis Drake, Chief
Air Quality Division



David Kee, Director
Air and Radiation Division

Date: _____

Date: 5/8/96