

PART 70 OPERATING PERMIT PROGRAM

IMPLEMENTATION AGREEMENT

BETWEEN

THE OHIO ENVIRONMENTAL PROTECTION AGENCY

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

I. GENERAL

- A. This implementation agreement (agreement) establishes policies, responsibilities, and procedures by which the Part 70 operating permit program will be administered by both the Ohio Environmental Protection Agency (OEPA) and the United States Environmental Protection Agency (USEPA). Such agreement shall be maintained consistent with the Clean Air Act (Act), Part 70, applicable requirements of the Act, and State statutes and regulations formally approved by USEPA.
- B. Nothing in this agreement shall be construed to restrict in any way USEPA's authority to fulfill its oversight and enforcement responsibilities under the Act. Nothing in this agreement shall be construed to contravene any provision of Part 70. This agreement is in addition to, and does not contravene, any other agreements between USEPA and OEPA, such as the delegation of authority for the Prevention of Significant Deterioration; the delegation of authority for the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants; and any agreement to be developed pursuant to Section 112 of the Act.
- C. This agreement is entered into by the Chief of the Division of Air Pollution Control, OEPA, and the Chief of the Air Programs Branch, Air and Radiation Division, USEPA Region 5.
- D. This agreement shall become effective upon signature by both parties. Any revisions to this agreement must be in writing and must be signed by representatives of OEPA and USEPA.
- E. If USEPA withdraws approval of the operating permit program pursuant to Part 70, this agreement shall no longer remain in effect. If USEPA withdraws approval of a portion of the operating permit program, this agreement shall remain in effect only for that portion of the program that remains approved.

II. DELEGATION OF SECTION 112 STANDARDS

In accordance with section 112(1) of the Act and the notice of proposed approval of the Ohio operating permit program, this agreement effects the full and automatic delegation of all section 112 standards as promulgated by USEPA, as they apply to Part 70 sources that are required to obtain an Ohio Title V permit. This delegation does not encompass section 112 programs, including but not limited to 112(r) (however, OEPA will verify compliance with the requirement to register a risk management plan for sources applying for an Ohio Title V permit). Upon promulgation of a Section 112 standard or program, the authority and responsibility for implementation of that section 112 standard is automatically delegated to the State of Ohio. These responsibilities include, but are not limited to, applicability determinations consistent with USEPA guidance, notification, recordkeeping, reporting, permitting, general program implementation, and enforcement of all section 112 standards for sources required to obtain an Ohio Title V permit (including sources opting into the program).

III. PROGRAM DEVELOPMENT, MAINTENANCE, AND ASSESSMENT

- A. OEPA and USEPA agree to work together to develop and maintain a high quality operating permit program in Ohio that meets all Federal and State requirements.
- B. USEPA agrees to inform OEPA as soon as practicable about new Federal regulations, standards, policies, guidance, and any resulting action expected to be taken by OEPA. OEPA agrees to distribute any such policies and guidance to OEPA permit program staff and district/local offices.
- C. OEPA and USEPA agree to work together during the development and implementation of any significant changes to the State program to ensure that such changes meet the requirements of the Act.
- D. OEPA and USEPA agree that, in accordance with section 70.4(i), operating permit program revisions become effective, for purposes of federal law, only upon approval by USEPA. Approval of nonsubstantial program changes may be made by a letter from USEPA to OEPA, but substantial program changes must go through the public notice provisions specified in section 70.4(i). Changes in operating permit program implementation which do not alter the requirements of the State's approved program do not have to undergo USEPA approval.
- E. OEPA and USEPA agree to develop an enforcement agreement that will address each party's responsibilities regarding Title V compliance and enforcement activities. This agreement will provide for the performance of those types of compliance/enforcement activities as previously outlined in the Projected Program Accomplishments (PPAs) in the Fiscal

Year 1995 Cooperative Agreement.

- F. USEPA will assess OEPA's administration of the operating permit program for consistency with Title V, Part 70, and all other requirements of the Act. This assessment will be accomplished by USEPA review of information submitted by OEPA or any interested person, program audits, permit overview, and compliance and enforcement overview. USEPA will timely notify OEPA of any concerns regarding OEPA's administration of the program and will work cooperatively with OEPA to reach resolution.
- G. OEPA has primary responsibility for:
1. Notifying USEPA in advance of any proposed changes that alter the requirements of the approved State program, including but not limited to permit program-related statutes and regulations, and submitting program changes for approval;
 2. Notifying USEPA of any significant changes or clarifications in program implementation that do not alter the requirements of the approved State program, including but not limited to implementation policies;
 3. Seeking legislative approval to modify the permit fee system to ensure that it continues to cover the costs of administering the program, if USEPA determines that the presumptive minimum fee of \$25 per ton plus the Consumer Price Index (CPI) is no longer adequate for states to cover the implementation of the program, and increases the presumptive minimum fee; and
 4. Fulfilling the commitment dated December 30, 1994, for developing a State Acid Rain program that meets the requirements of the Federal Acid Rain Program.
- H. USEPA has primary responsibility for:
1. Developing an oversight system for assessing the State program;
 2. Cooperating with OEPA by allowing appropriate flexibility when determining the most effective and expeditious means of implementing USEPA policies and guidance;
 3. Providing ongoing technical and other assistance on permit program matters as requested;
 4. Reviewing, upon OEPA request, any draft documents which may change or otherwise affect the State's operating permit program; and

5. Providing for expeditious review and final action on any program revision.

IV. PROGRAM IMPLEMENTATION

- A. Each party is responsible for ensuring that its obligations under Part 70 and Title V of the Act are met. Both parties agree to maintain regular communication, cooperation, and coordination between their respective staffs to enable successful and effective implementation of the operating permit program.
- B. OEPA and USEPA agree that a working document that addresses specific program implementation procedures requiring coordination between USEPA and OEPA may be developed and maintained.
- C. OEPA and USEPA agree to participate in conference calls as needed to discuss program implementation, including program requirements, operating procedures, and source specific permit issues. USEPA and OEPA agree that staff and lower level management will work together to resolve any issues, and will only elevate issues to higher level management if a timely resolution cannot be reached.
- D. OEPA and USEPA each agree to notify the other as early as possible of any problems either party anticipates with any permit or permit application, such as anticipated public controversy, complex equivalency or trading provisions, etc.
- E. OEPA and USEPA agree to work together to determine which permit applications and draft permits may have particular national or regional interest. For applications and draft permits requested by USEPA, OEPA agrees to make the non-confidential applications and draft permits available to USEPA prior to the beginning of the public comment period. USEPA agrees to comment on such permits or request additional time for review within 5 business days.
- F. USEPA will have the lead in processing permit revisions to Phase I acid rain permits. OEPA will not revise or take action on any revision to a Phase I acid rain provision contained in any Part 70 permit prior to USEPA taking action on such revision in a Part 72 Phase I permit.
- F. OEPA agrees to do the following:
 1. Maintain an adequate file (accessible for USEPA audit) for each permittee in accordance with Section V of this agreement;
 2. Notify USEPA of any permit actions that do not take place within the time frames provided by the State program and/or Part 70;

3. Include a statement on the OEPA Division of Air Pollution Control Bulletin Board System outlining citizen's appeal rights to the Administrator, specified in §70.8(d);
4. If any permit is changed as a result of any administrative or court action, make the permit available to USEPA with the changes identified; and
5. Notify USEPA as early as possible of any problems anticipated with any permit or permit application that results in the scheduling of a public hearing.

G. USEPA agrees to do the following:

1. Provide technical support, assistance, and training opportunities as available for Title V related activities;
2. When requested by OEPA, assist in determining general or source-specific Title V permit requirements;
3. Provide OEPA the opportunity for involvement and input into new program activities and initiatives;
4. Consistent with the oversight system referenced under III.H.1., review selected permits and provide effective oversight of the operating permit program to ensure consistency with Part 70;
5. Provide comments on draft permits and objections to proposed permits in an expeditious manner and consistent with Part 70; and
6. Provide timely notification to OEPA when the Administrator receives public petitions which object to the issuance of a permit, and keep OEPA informed concerning USEPA's response.

V. DATA MANAGEMENT AND INFORMATION TRANSFER

- A. OEPA and USEPA agree to work together to develop an efficient data management and information transfer system. OEPA and USEPA agree to expeditiously transfer to one another any requested documents as outlined in this agreement or any working document developed pursuant to IV.B.
- B. OEPA and USEPA agree that any information obtained or used in the administration of the program shall be available to

USEPA upon request without restriction and in a form specified by USEPA. To the extent practicable, such files shall be in the form of computer readable files compatible with AIRS. Any information obtained by USEPA from OEPA or from a permit applicant or permittee which is subject to a claim of confidentiality will be treated by USEPA in accordance with the regulations at 40 CFR Part 2.

C. OEPA agrees to make available to USEPA the following permitting information.

1. At a minimum, the following permit documents shall be available to USEPA:

- a. Non-confidential operating permit applications;
- b. Proposed permits;
- c. Any written refusal to accept an affected State's recommendations on a draft permit;
- d. Final permits; and
- e. Any documentation equivalent to items a. through

d. permit
above submitted or generated pursuant to any
revision process.

OEPA agrees to provide these documents either through direct electronic access, or when requested, by hardcopy submission to USEPA. USEPA will accept the electronic portions of an application as an application summary if the electronic data constitutes a significant portion of the source's application. If requested, however, OEPA will provide USEPA with any hard copy portions of an application that are not available electronically.

2. In addition to the above permit documents, OEPA agrees to make the following information available upon request.

- a. Permit tracking information;
- b. Copies of preliminary staff determinations and draft permits;
- c. Copies of all settlements and decisions in permit appeals;
- d. Records of sources covered by general permits;
- e. Records of denied and revoked permits;

State

f. Records of public notice procedures permits have undergone, and copies of public and affected comments and responses to comments;

g. Information regarding monitoring, compliance, and enforcement activities as determined under a separate enforcement agreement to be developed pursuant to section III.E.; and

h. Other specific information agreed to by USEPA and OEPA and referenced in the working document that may be developed pursuant to section IV.B. of this agreement.

D. OEPA agrees that any changes to the Ohio data management system will be compatible with AIRS/AFS to the extent practicable. OEPA will ensure that AIRS/AFS data includes compliance monitoring and enforcement data, as well as the permit related data elements outlined in the March 17, 1994 memorandum entitled, "Policy on Title V Permit Program Data Elements", signed by John Seitz, Director, Office of Air Quality Planning and Standards.

VI. SIGNATURES

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency

Date: _____

Stephen Rothblatt, Chief
Air Programs Branch
Air and Radiation Division
United States Environmental Protection Agency

Date: _____