APR 15 2002

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

REPLY TO THE ATTENTION OF:

APR 10 2002

(AR-18J)

Mike Hopkins
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
122 S. Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

Dear Mr. Hopkins:

Attached is the Memorandum Of Agreement (MOA) between the United States Environmental Protection Agency and the Ohio Environmental Protection Agency regarding the implementation of the delegation of the Section 112(d) standards in conjunction with the July 10, 2001, Federal Register notice.

Sincerely yours,

Pamela Blakley

Pamela Blakley, Section Chief
Permits and Grants Division

Enclosure

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Memorandum Of Agreement Between the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency, Region 5 Regarding Section 112, Clean Air Act Implementation

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

Scope

Ohio EPA is requesting delegation of responsibilities for implementation and enforcement of all emission standards and other requirements promulgated under Section 112 to implement the Maximum Achievable Control Technology (MACT) Standards with the exception of the Coke Oven standard (40 CFR part 63 subpart L). Ohio EPA is not, at this time, requesting delegation of standards that may be promulgated under sections 112(f), 112(m), and 112(p). Ohio EPA may request delegation of these sections at a later date, when the requirements of these programs are more clearly defined. This MOA addresses only those provisions and responsibilities for which Ohio has requested delegation.

Background

Section 112 requires U.S. EPA to develop National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 112(l) authorizes the U.S. EPA Administrator to delegate the authority for the implementation and enforcement of standards promulgated under Section 112 to any State that applies for such delegation and that can demonstrate that it has in place a program that meets the criteria set forth in Section 112(l) and its implementing regulations at 40 CFR §63.91.

U.S. EPA gave approval to Ohio EPA for the Title V program in 1994. Ohio EPA received delegation from U.S. EPA of the accidental release program under Section 112(r) on January 3, 1998.

Ohio EPA will enforce Section 112 standards applicable only to the part 70 sources by including such Section 112 standards in Title V permits, federally enforceable state operating permits and federally enforceable new source review permits when they are issued or updated. Authority to implement and enforce future Section 112 standards will be delegated to Ohio EPA in accordance with this MOA.

Opt-Out: **********

Policy Statement

Ohio EPA and U.S. EPA hereby establish a process for delegation of responsibilities to implement this memorandum. Ohio EPA and U.S. EPA will presume delegation of all Section 112 standards as promulgated by U.S. EPA unless Ohio EPA notifies U.S. EPA otherwise within 45 days of promulgation of such standard as specified in this agreement. Both Ohio EPA and U.S. EPA recognize that Ohio EPA's ability to implement and enforce a Section 112 standard in a timely manner will depend upon its having access to information regarding such standard prior to the final promulgation of such standard. The delegation process must therefore be an interactive, information-sharing process that will begin prior to promulgation by U.S. EPA of the Section 112 standard to be delegated.

Ohio EPA shall implement Section 112 standards pursuant to this MOA through the Title V permit, federally enforceable state operating permit and the new source review permit programs. Pursuant to Ohio Revised Code §3704.036(A), Ohio EPA has the authority to include Section 112 requirements in Title V permits. Ohio EPA shall include applicable Section 112 requirements in Title V permits for existing sources and in new source review permits for new sources. In accordance with 40 CFR 63.93, Ohio EPA plans to apply for an amendment to this MOA in order to be able to use rule substitution by creating general permits for area sources. At that time, Ohio EPA will request delegation for the area sources subject to the Section 112 standards.

Ohio EPA and U.S. EPA agree to implement the following procedures:

I. Prior to final promulgation of a Section 112 standard, U.S. EPA shall provide Ohio EPA with any information it has regarding Ohio sources that may be subject to such standard.

II. Following final promulgation by U.S. EPA of a Section 112 standard:

A. U.S. EPA shall provide Ohio EPA with all applicable forms and other supporting resources, if available.

B. U.S. EPA shall provide Ohio EPA with access to the applicable MACT database, if available.

C. Implementation Authority: Ohio EPA shall have the authority to implement each Section 112 standard as promulgated unless Ohio EPA notifies U.S. EPA differently, within 45 days of U.S. EPA's final promulgation of the standard.

D. When a new Section 112 standard is promulgated, Ohio EPA will incorporate the requirements of such standard into a Title V permit consistent with the time frame specified in the OAC rule 3745-77-08 for reopening and revising permits. In the case of an area source for which U.S. EPA has approved a deferral in the requirement to obtain a Title V permit, the new Section 112 standard will be incorporated into the federally enforceable state operating permit by revising the permit pursuant to OAC rule 3745-35-07. Revisions to the Title V permits and federally enforceable state

operating permits shall be made no later than the first compliance deadline of that standard.

E. For the construction of a new source that will be subject to an existing Section 112 standard, Ohio EPA will incorporate the applicable Section 112 requirements into the permit-to-install.

F. For all existing sources subject to Section 112 standards that have already been promulgated, Ohio EPA shall incorporate the requirements of such standard into either a Title V permit or a federally enforceable state operating permit. Ohio EPA agrees to use its best efforts to
a.) Issue all Title V permits for sources subject to 2, 4, 7, and existing 10-year MACT standards by the end of SFY 2002 (July 1, 2002).
b.) Issue all federally enforceable state operating permits for sources subject to 2, 4, 7, and existing 10-year MACT standards by the end of SFY 2002 (July 1, 2002).

G. Timing and Scope of Delegation. Delegation shall be implemented on a source by source basis. Ohio EPA shall receive delegation authority upon the first issuance of the Title V permit, the state operating permit or the permit-to-install containing the applicable MACT standard for that source. All Title V permits and all federally enforceable state operating permits under this provision must include a comment period. All permits-to-install under this provision must include a comment period. Delegation shall include those provisions under Subpart A of Part 63 which are identified as category I authorities at 40 CFR §63.91(g), as amended by 65 Federal Register 55810 (September 14, 2000), and by any subsequent amendments thereto.

H. Enforcement Authority. Ohio shall enforce the delegated Section 112 standards through the use of the Title V permit, federally enforceable state operating permit and new source review permit programs and the enforcement authority that has been given to Ohio EPA in the State statutes.

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

A. Distribution of initial notification forms provided by U.S. EPA to potentially affected sources;

B. Receiving initial notifications and compliance certifications from affected sources;

C. Issuing or revising Title V permits, federally enforceable state operating permits and new source review permits for affected sources as needed to include Section 112 standards;

D. Specifying Section 112 standards as the underlying authority for permit terms and

conditions and assuring compliance with them through implementation of the Title V permit, federally enforceable state operating and new source review permit programs for affected sources;

E. Taking timely and appropriate enforcement actions, including the assessment of civil penalties, for violation of the Section 112 standards and the permits issued by Ohio EPA; and

F. Ohio EPA will renew the Title V permits and federally enforceable state operating permits in a timely manner so as not to allow any time period during which a source subject to a Section 112 standard will be without a permit containing the requirements of the Section 112 standard. Ohio EPA shall immediately notify U.S. EPA in the event that Ohio EPA is not able to timely reissue a Title V or federally enforceable state operating permit.

IV. U.S. EPA at all times retains its authority to enforce all provisions of Section 112 standards and requirements.

V. U.S. EPA Region 5 shall submit to Ohio EPA within 90 days of the effective date of this agreement a copy of each report, notification, or written request that has been submitted to Region 5 by a facility in Ohio in accordance with a Section 112 requirement. U.S. EPA shall also submit to Ohio EPA within 90 days of the effective date of this agreement a copy of any written response U.S. EPA has provided to any of these reports, notifications, or written requests.

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

Elissa Speigman

for Thomas V. Skinner, Regional Administrator
U.S. EPA Region 5

Date: March 21, 2002

Christopher Jones

Christopher Jones, Director
Ohio EPA

Date: 2-21-02