

Docket T027A
Ex. 2-1-6-17

S-10

U.S. Environmental Protective Agency-Region X, et. al.
Clean Air Act

Memorandum of Agreement

Between

Oregon Department of Environmental Quality

And

Oregon OSHA

And

Oregon Office of the State Fire Marshal

And

Environmental Protection Agency, Region 10

**IMPLEMENTATION OF THE U. S. ENVIRONMENTAL PROTECTION AGENCY'S
CLEAN AIR ACT AMENDMENTS, SECTION 112(r)**

This memorandum of agreement (MOA) is made and entered into by the Oregon Department of Environmental Quality (DEQ), the Oregon Occupational Safety and Health Division (Oregon OSHA), the Oregon Office of the State Fire Marshal (OSFM), and the Environmental Protection Agency (EPA) Region 10, for the purposes of identifying and coordinating Section 112(r) of the Clean Air Act (CAA), Risk Management Program (RMP) implementation activities in Oregon. The agreement will also assist in describing the parties' understanding of implementation responsibilities. The object of this MOA is to leverage the expertise of all parties, achieve maximum benefit and efficiency, and avoid replication and duplication of efforts while discharging the parties' respective duties.

This MOA is made under the authority of the ORS 190.110 and ORS 468.035(c) and is intended to implement the parties' roles under the Risk Management Program Rule for Prevention of Accidental Releases (40 CFR Part 68).

Whereas, 40 CFR Part 68 provides for certain reporting by facility owners/operators to EPA;

Whereas, the need exists for sharing of information between the parties to this MOA; and

Whereas, the need exists to coordinate compliance, enforcement, and outreach activities;

Therefore, it is hereby agreed between DEQ, Oregon OSHA, OSFM, and EPA Region 10 that the discharge of the duties/roles pursuant to the federal and state acts and in support of implementation of Section 112(r) of the CAA in Oregon, is designated to the respective agencies as indicated below:

1. EPA, Region 10

- A. 112(r) Lead Agency:** EPA Region 10 (EPA) retains primary authority for implementing Section 112(r) (40 CFR Part 68) in Oregon.
- B. Public Information:** EPA will be the primary contact for public information requests in Oregon.
- C. Compliance Assistance:** EPA will continue to implement the 112(r) program, and to provide technical assistance through telephone, website and newsletter support to the regulated community.
- D. Compliance Assurance:** EPA retains enforcement authority for the Section 112(r) program in Oregon, including the authority to conduct inspections and collect penalties from sources in violation of Section 112(r). EPA is responsible to ensure that for Title V facilities in Oregon subject to Section 112(r), permitted sources are in compliance with the requirements of 40 CFR Part 68, by using one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections. Oregon DEQ, however, has the responsibilities for Title V facilities listed in Section A of the DEQ duties section of this MOA.
- E. Compliance Coordination:** To the extent practicable, and resources permitting, EPA will prioritize requests for compliance inspections from the other parties to this agreement. EPA will, as legally practicable, notify the other parties to this agreement of any enforcement actions taken regarding Section 112(r) violations in Oregon. In particular, EPA will make an effort to notify Oregon OSHA when enforcement action is taken with respect to Program 3/Process Safety Management (PSM) sources in Oregon, and DEQ if the facility is also a Title V affected facility.
- F. Inspection and Information Coordination:** EPA and Oregon OSHA will share information regarding inspections to allow for best use of both agencies' resources for conducting enforcement-related activities among Oregon employers covered by PSM and Section 112(r). Provision of inspection information by any of the parties to this agreement does not constitute approval for release or execution of advance notice. Authorization for advanced notice of inspection activity requires distinct communication and coordination among the parties to this

agreement. The information sharing will be scheduled on an as-needed basis, where the parties can meet to review and discuss such informational needs.

- G. Training Coordination:** EPA and Oregon OSHA agree to share RMP and PSM training opportunities, resources permitting.
- H. Distribution of Consequences Analysis (OCA) Data:** In accordance with the Chemical Safety Site Security and Fuels Regulatory Relief Act, (42 USC 7412)) EPA will make OCA data available to state employees, local government employees, members of Local Emergency Planning Committees (LEPC) and their respective contractors for use in preventing, planning for, or responding to accidental releases. Signatories of this agreement will provide EPA with a list of their employees or members who they are requesting access to the RMP data base.

2. Oregon OSHA

- A. Facility 112(r) Notification:** Oregon OSHA agrees to inform owners/operators of facilities subject to its Process Safety Management (PSM) rules (29 CFR 1910.119) of the requirements of the Section 112(r) program, when inspections and/or consultations of such owners/operators are conducted by Oregon OSHA.
- B. Notification of Compliance Assurance Activities:** To the extent necessary and permitted by law, Oregon OSHA will provide EPA Region 10 identification of Oregon employers with alleged violations of its PSM rules uncovered during Oregon OSHA compliance inspections. Where Oregon OSHA becomes aware of owners/operators who are subject to Section 112(r) but have not developed a Risk Management Plan (RMP), Oregon OSHA will advise EPA of that owners/operators' noncompliance.

When enforcement action is anticipated against owners/operators based on referral information, Oregon OSHA and EPA will consult regarding the impact of additional enforcement of rules and regulations as it serves the public interest.

- C. Inspection and Information Coordination:** Oregon OSHA and EPA will share information regarding inspections to allow for best use of both agencies' resources for conducting enforcement-related activities among Oregon employers covered by PSM and Section 112(r).

For any information related to inspection scheduling provided by the parties to this agreement, the receiver(s) of such information must understand that any divulgence constituting advance notice of inspection activity is subject to civil penalty and/or imprisonment under statutes such as State of Oregon statutes {ORS 654.067(2) and 654.991(2)} and administrative

rule {OAR 437-001-0060}. Provision of inspection priority information by any of the parties to this agreement does not constitute approval for release or execution of advance notice.

Authorization for advanced notice of inspection activity requires distinct communication and coordination among the parties to this agreement. The information sharing will be scheduled on an as-needed basis, where the parties can meet to review and discuss such informational needs.

- D. Miscellaneous:** Oregon OSHA agrees to cooperate, to the extent necessary and permitted by law, in any EPA Region 10 initiatives (resources permitting) related to implementation of this MOA.

3. DEQ

- A. Compliance Assurance:** DEQ is responsible for initiation of enforcement action for Title V [Title V is a subset of Section 112(r)] facilities in violation of conditions in, paragraphs (e)(1) and (e)(2) of 40 CFR 68.215, as appropriate.
- B. Compliance Information Coordination:** DEQ will notify EPA Region 10 of any Section 112(r) violations uncovered during other DEQ enforcement, compliance, or outreach activities. In addition, DEQ will identify facilities that are candidates for EPA Section 112(r) inspections on the basis of current and past compliance history.
- C. Miscellaneous:** DEQ agrees to cooperate, to the extent necessary and permitted by law, in any EPA Region 10 initiatives (resources permitting) related to implementation of this MOA.

4.1 Oregon Office of the State Fire Marshal (OSFM) and State Emergency Response Commission (SERC)

- A. Facility Fire Prevention Assistance:** OSFM agrees to continue to provide fire and explosion prevention assistance to Section 112(r) facilities (as they become subject to the process of existing fire code inspection activity and construction plan comment responsibilities) by applying the Oregon Fire Code.
- B. Public Information:** OSFM agrees, to the extent necessary and permitted by law, to provide public access to community right to know (EPCRA) information and to the RMP information. Additionally, the OSFM will expand and develop existing capabilities (resources permitting) to allow customized retrieval options for the data and will provide RMP data to the LEPC. The OSFM will also provide RMP data to DEQ for analysis.

- C. **Compliance Assurance Activities Notification:** OSFM will provide to EPA Region 10 any evidence of Section 112(r) violations uncovered during other OSFM compliance, enforcement, or outreach activities.
- D. **Training Assistance:** OSFM will continue to coordinate the training of emergency planners and incident response entities.
- E. **Miscellaneous:** OSFM agrees to participate, to the extent necessary and permitted by law, in any EPA Region 10 initiatives (resources permitting) related to implementation of this MOA.

4.2 State Emergency Response Commission (SERC)

- A. The Oregon Office of the State Fire Marshal has the primary responsibility for the business needs of the State Emergency Response Commission (SERC).
- B. **Compliance Assurance Activities Notification:** If SERC has concerns about a facility that may be regulated under Section 112(r) they may contact EPA Region 10 for compliance or assistance.
- C. **Facility and Community Training:** SERC may coordinate and support the training of owners/operators subject to the provisions of Section 112(r) and provide an interface between communities and subject facilities.
- D. **Training Coordination:** SERC may coordinate outreach/training activities with all affected parties.
- E. **Miscellaneous:** SERC agrees to participate, to the extent necessary and permitted by law, in any EPA Region 10 initiatives (resources permitting), in relation to Emergency Planning and Community Right-to-Know Act (EPCRA) requirements only.

5. Joint Agreements

- A. The parties agree that the costs of all services described in this MOA will be borne by the party providing such services. EPA makes no commitment to provide resources or financing pursuant to this MOA except in accordance with applicable laws and subject to the availability of appropriated funds.
- B. Nothing in this agreement should be construed so as to override, supersede, or change the responsibilities of the parties.
- C. EPA Region 10, Oregon OSHA, DEQ and OSFM agree to share facility and chemical data base information, progress reports, and results of inspections to the extent that the information is not

confidential. Any confidential data shared between the parties shall be safeguarded and maintained as confidential according to law.

- D. Nothing in this MOA precludes any party from exercising its own authority under its own laws. This MOA is not a delegation of authority under Section 112(r) of the CAA.
- E. Participation by any party in the arrangement described in this MOA may be terminated for that party by providing written notice at least thirty days prior to the termination date, or by written agreement between the parties. This MOA is automatically terminated upon the enactment of a law which is in conflict with the MOA.
- F. This MOA shall become effective upon the date of last signing by the parties' representatives and shall continue in effect until and unless the signatories agree that it is no longer necessary or useful.
- G. Any party may take a lead role in coordinating implementation of this MOA. This will include arranging any necessary meetings between the parties to this agreement. Any modifications to this MOA shall be in writing, signed by all parties, and attached to this MOA.
- H. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against any signatory, their officers or employees, or any other person.
- I. For purposes of this MOA, each party agrees to establish a point of contact (POC). The contacts agree to communicate as needed. A "Contacts List" as established by all parties accompanies this MOA.

WITNESS THEREOF:


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AGENCY CONTACTS:

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