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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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August 2, 1996

IN REPLY REFER TO:

David Kee, Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

SUBJECT: Memorandum of Agreement regarding Section 112(1)

Dear Mr. ~~Kee~~: *Dave*

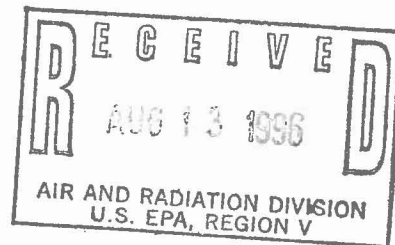
I am enclosing a copy of the signed Memorandum of Agreement regarding Section 112(1) and the respective responsibilities of our two agencies. We look forward to continuing our cooperative working relationship with your staff in implementing Section 112(1) of the Clean Air Act.

Sincerely,

Carlisle Jansen for
Donald Theiler, Director
Bureau of Air Management

Enclosure

cc Pat Kirsop - AM/7
Lloyd Eagan - AM/7



**MEMORANDUM OF AGREEMENT
BETWEEN
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5
REGARDING
SECTION 112, CLEAN AIR ACT IMPLEMENTATION**

INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) is to provide joint procedures to facilitate Federal delegation of authority to implement and enforce standards promulgated by the United States Environmental Protection Agency (USEPA) under Section 112 of the Clean Air Act as amended (Section 112) to the Wisconsin Department of Natural Resources (WDNR). USEPA has already approved Wisconsin's program for receiving delegation of Section 112 standards for sources covered by the Part 70 program in the Part 70 program approval. This MOA sets forth specific expectations and responsibilities of the WDNR and USEPA and describes a formal procedure for delegating standards applicable to non-Part 70 sources. Both WDNR and USEPA recognize that timely delegation of Section 112 responsibilities is vital to implementation of both the Title V and Section 112 programs. The parties to this agreement affirm their commitment to an effective State/USEPA partnership, and agree to review this commitment as the need arises.

SCOPE

WDNR has requested, and USEPA intends to grant, delegation of responsibilities for implementation and enforcement of certain emission standards and other requirements promulgated under Section 112. WDNR has not requested and at this time does not intend to request delegation of the early reductions program under 112(I)(5), the accidental release provisions under 112(r), and the responsibilities relating to the radionuclide standard. This MOA addresses only those provisions and responsibilities for which WDNR has requested delegation.

BACKGROUND

Section 112 requires USEPA to develop National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 112(1) authorizes the 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 Code of Federal Regulations (CFR) 63.91 through 63.96. The Administrator has delegated the authority to approve State programs to the Regional Administrators.

WDNR 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. WDNR 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 plans to approve WDNR'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 non-Part 70 sources will be delegated to WDNR. Authority to enforce Section 112 standards applicable to non-Part 70 sources will be delegated to WDNR upon adoption of such standards into the State's air quality regulations. WDNR 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 revised. For Maximum Achievable Control Technology source categories with more than ten Wisconsin sources, WDNR will set such standards into State air quality regulations. Authority to implement and enforce future standards will be delegated to WDNR in accordance with this MOA.

POLICY STATEMENT

WDNR and USEPA hereby agree to establish a process for delegation of responsibilities under Section 112(1). Both WDNR and USEPA recognize that WDNR'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 its final promulgation. 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.

WDNR shall implement Section 112 standards pursuant to this MOA through the Part 70 and approved State implementation plan permit programs. WDNR shall include applicable Section 112 requirements in Part 70 permits and federally enforceable State operating permits (FESOP) for existing sources, and in construction permits for new sources.

WDNR and USEPA agree to implement the following procedures:

- I. Prior to final promulgation of a Section 112 standard, USEPA shall provide WDNR with any information it has regarding Wisconsin sources that may be subject to such standard.
- II. Following final promulgation by USEPA of a Section 112 standard:
 - A. USEPA shall provide WDNR with blank notification forms, if available, and other supporting resources.
 - B. USEPA shall provide WDNR with access to the applicable Maximum Achievable Control Technology 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. USEPA shall, by letter, notify WDNR of each Section 112 standard as promulgated. Within 45 days of USEPA's final promulgation of the standard, WDNR will respond in one of the following ways:
 - (1) Request delegation of standard:

(a) As promulgated for promulgation of State standard (or rule), or

(b) to incorporate Federal standards into State air pollution control permits, reserving the right to promulgate the standard as a State rule at a later time.

(2) Request deferral of delegation of the standard until further notice in order to prioritize State rulemaking or permitting activities according to the needs of the State of Wisconsin.

(3) Notify USEPA of its intent to promulgate State rules varying from the Section 112 standards as promulgated, for USEPA approval.

E. *State adoption of Federal standards (Straight delegation).*

(1) Upon receipt of a letter from the WDNR requesting delegation of a Section 112 standard as promulgated as described under D(1)(a) of this memorandum, USEPA will delegate to WDNR the authority to implement the Section 112 standard applicable to non-Part 70 sources. As expeditiously as practicable and, if possible, within 18 months of the promulgation by USEPA of a Section 112 standard which is applicable to non-Part 70 sources, WDNR shall adopt such standard into the State air quality regulations. Upon completion of such regulatory action, WDNR will submit to USEPA proof of adoption. USEPA shall respond with a letter delegating enforcement authority to the WDNR with respect to the adopted standard.

F. *State promulgated rules varying from Federal standards.*

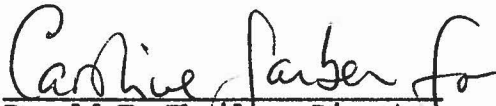
As expeditiously as practicable, and if possible within 18 months of promulgation by USEPA of a Section 112 standard applicable to non-Part 70 sources, WDNR shall submit for approval to USEPA State rules varying from the Federal standard. USEPA will review such rules for approvability pursuant to Section 112(1) and will rulemake on them.

III. WDNR shall be responsible for implementing and enforcing Section 112 standards in Wisconsin. 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 FESOP permits for affected sources as needed to include Section 112 standards;

- D. Assuring compliance through implementation of the Part 70 and FESOP programs for those affected sources required to obtain permits.
- IV. Until WDNR 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 WDNR and USEPA. Nothing in this agreement shall be construed to restrict in any way the authority of either USEPA or WDNR to fulfill its responsibilities under State or Federal law.


Donald F. Theiler, Director
Bureau of Air Management

Date: 7/26/96.


David Kee, Director
Air and Radiation Division

Date: 7/15/96