

MEMORANDUM OF UNDERSTANDING

between the

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 3**

and the

**UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
Region 3, Philadelphia**

I. PURPOSE

The purpose of this interagency Memorandum of Understanding (MOU) is to establish and improve the working relationship between the United States Environmental Protection Agency, Region 3 (EPA) and Region 3, Philadelphia of the Occupational Safety and Health Administration (OSHA) of the Department of Labor (collectively, the Parties or Agencies). The goal of the Agencies in entering into this MOU is to improve and optimize the combined efforts of the Parties to achieve protection of workers, the public, and/or the environment at facilities subject to EPA and/or OSHA jurisdiction.

This MOU will establish a process and framework for notification, consultation, and coordination between EPA and OSHA to more effectively support the Agencies' enforcement programs. In particular, improved coordination should help: (1) OSHA enforce the Occupational Safety and Health Act (OSH Act) and undertake special enforcement initiatives, such as OSHA's pilot National Emphasis Program for Process Safety Management (PSM) of Highly Hazardous Chemicals; and (2) EPA enforce Section 112(r) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r), Sections 302-312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11002-11022, and Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a).

II. Background and Responsibilities

EPA and OSHA have the statutory responsibility to ensure the safety and health of the public and America's workforce through the timely and effective implementation of a number of federal laws and implementing regulations. In some areas, the responsibilities of the Agencies are separate and distinct. In others, they are complementary. EPA and OSHA wish to work together to maximize the efforts of both Agencies to ensure the efficient and effective protection of workers, the public, and/or the environment.

A. EPA Responsibilities

EPA responsibilities include the protection of public health and the environment by promoting compliance with federal environmental statutes and regulations, including, among others, the CAA, EPCRA, and CERCLA.

CAA Section 112(r)(1) requires owners and operators of stationary sources to identify hazards, design and maintain safe facilities and minimize the effects of accidental releases of extremely hazardous substances present at their facilities. CAA Section 112(r)(7) and EPA's regulations at 40 C.F.R. Part 68 require owners and operators of covered stationary sources to develop and implement a risk management program that includes analyses of offsite consequences of accidental chemical releases to the air, a five-year accident history, a prevention program, an emergency response program, and the submission of a risk management plan that describes its hazards, prevention activities, and its compliance with the regulations.

EPCRA and EPA's regulations at 40 CFR Parts 350-372 establish requirements for federal, state and local governments, Indian tribes, and industry regarding emergency planning, community right-to-know reporting and emergency release notification on hazardous and toxic chemicals. Facilities must submit information pertaining to emergency response planning to state and county officials, pursuant to EPCRA Sections 302 and 303. Facilities must notify federal, state and local entities if there a release of a hazardous substance exceeding the reportable quantity, pursuant to CERCLA Section 103 and EPCRA Section 304. Facilities must maintain Material Safety Data Sheets for chemicals held above certain threshold quantities and must submit reports to state, county and local entities regarding hazardous chemicals stored above certain thresholds, pursuant to EPCRA Sections 311 and 312.

EPA ensures facilities comply with these CAA, EPCRA and CERCLA requirements through information gathering, inspections and enforcement actions.

B. OSHA Responsibilities

OSHA is responsible for enforcing the OSH Act, 29 U.S.C. 651 *et seq.* The goal of the OSH Act is to assure so far as possible that every working man and woman in the nation has safe and healthy working conditions. To achieve that purpose, the OSH Act provides broad authority for a variety of activities and programs designed to reduce the number of occupational safety and health hazards at places of employment. Among these is the authority to promulgate mandatory safety and health standards for private sector workplaces and to conduct inspections of such workplaces to determine compliance with the Act and with OSHA standards.

III. General Operating Procedures Covered Under this Interagency MOU

In recognition of the Parties' statutory authorities and responsibilities described above, the Parties intend to follow the procedures described below. As more fully described below, the Parties would like to promote the fullest possible cooperation and coordination in developing and carrying out training, data and information exchange, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the Nation's workforce, the general public, and/or the environment.

A. General Efforts to Promote Coordination and Cooperation

It is the Parties' expectation that the following cooperative efforts may be undertaken in fulfillment of this MOU:

1. The Parties expect to discuss areas of cooperation in relation to their annual plans and commitments and, if possible, identify specific types of facilities to be jointly addressed during the year.
2. EPA and OSHA will designate points of contact for the purpose of this MOU.
3. EPA and OSHA will exchange names and telephone numbers of appropriate regional enforcement field personnel, including personnel in OSHA regional and area offices. The list will also mention the employees' areas of substantive expertise. All information will be kept up to date by both Parties. Each Party should prepare and distribute these contact numbers to appropriate field personnel.
4. EPA and OSHA will discuss what specific categories of information can be shared between the Agencies without raising confidentiality or privilege concerns; what barriers there are to free information exchange; and whether there are procedures or mechanisms that the Parties could establish to remove some of those barriers.
5. Resolution of policy and implementation issues concerning this MOU should first be discussed between the staff of the two Agencies. Issues that cannot be resolved at the staff level should then be discussed by the upper levels of each Agency's regional management.
6. EPA and OSHA expect to meet jointly, as necessary, to discuss the progress of actions made under this MOU, evaluate the effectiveness of enforcement referrals, and make changes to the MOU process to improve effectiveness and efficiencies.

B. Inspections

1. EPA and OSHA may conduct joint inspections as appropriate to carry out the purposes of their respective statutory authorities. Such inspections may be coordinated in advance, but may also be scheduled on an ad-hoc basis such as in the case of investigations following accidents or fatalities or injuries to workers resulting from reported activities or situations subject to either EPA or OSHA jurisdiction.
2. EPA and OSHA inspectors, in the course of conducting separate inspections, may discover situations involving potential violations of the other Agency's laws or regulations. In those instances, referrals to the appropriate program contacts, as described below, may be appropriate.

3. Where EPA and OSHA have conducted joint or coordinated inspections, they may share inspection reports, as appropriate, including copies of any photographs and documents.

C. Referrals of Violations and Inspections

1. Although EPA does not conduct inspections for occupational safety, in the course of an EPA inspection, EPA personnel may identify safety concerns within the area of OSHA responsibility or may receive complaints about the safety or health of employees related to their working conditions. In such instances, EPA may bring the matter to the attention of OSHA designated contacts. EPA inspectors are not to perform the role of OSHA inspectors; however, they may refer worker health and safety issues to OSHA pursuant to the procedures set forth in this MOU and implementing Agency directives. Likewise, OSHA inspectors are not to perform the role of EPA inspectors; however, OSHA may inform EPA of matters which appear to be subject to EPA jurisdiction when these come to their attention during Federal or State safety and health inspections or through worker complaints.
2. Each Party may evaluate referrals from the other Party concerning potential violations of the Agency's requirements and, when appropriate and when resources allow, conduct investigations and inspections. The Parties intend to report back to each other in a timely manner regarding the results of these referrals.

D. Data Exchange

Subject to any constraints regarding confidentiality or privileges, the Parties expect to exchange information relating to potential inspection targets, complaints, inspections, investigations, violations discovered, imposition of monetary penalties or other legal actions taken to enforce pertinent laws and regulations, and other information necessary to ensure effective and coordinated law enforcement. If requested, EPA may provide to OSHA non-confidential data collected under EPCRA, CERCLA, and CAA Section 112(r) and other federal statutes. EPA intends to provide OSHA personnel with training so that OSHA can directly access publicly available data. The Agencies will discuss the possible exchange of confidential or privileged information on a case-by-case basis, in accordance with all applicable laws and regulations concerning the handling of confidential or privileged information.

E. Training

1. EPA and OSHA expect to cooperate in developing and conducting periodic training programs for each other's personnel in the respective laws, regulations, and compliance requirements of each Agency, as appropriate, to ensure that valid referrals are made when potential violations are found and to support joint enforcement and inspection initiatives. This MOU contemplates exchanges of

appropriate training materials and information and development of specialized training activities. Likewise, OSHA and EPA intend to make each other aware of local training opportunities that could be useful for enhancing each other's effectiveness. For example, if EPA offers training in National Fire Protection Association standards to its employees, EPA may inform OSHA about such training.

F. **Litigation Support**

1. As resources allow, OSHA and EPA intend to provide support for each other's litigation efforts as appropriate and in accordance with their respective statutory authorities. Such support could include, among other things, providing suggestions for expert witnesses and being available for consultations about the applicability of regulatory requirements and involvement of the Department of Labor Office of the Solicitor.
2. OSHA and EPA agree that the Agencies are not in privity for purposes of *res judicata* or claim preclusion because, among other reasons, the Agencies have different statutory goals.

IV. **Period of this Interagency MOU**

This MOU is to take effect upon the signature of both Parties and remain in effect unless modified in writing by mutual consent of both Parties or terminated by either Party upon 30 days advance written notice to the other. Every two years the Parties expect to review this MOU for modifications.

This MOU does not preclude either Agency from entering into separate agreements or understandings setting forth procedures for other special programs that can be addressed more efficiently and expeditiously by special agreement.

V. **Nature of this Interagency MOU**

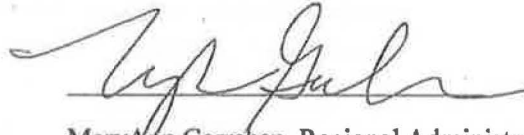
Nothing in this Agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory and/or regulatory functions. Each Agency retains its authority and ability to enforce violations of its regulations and statutes and to keep confidential certain information as required by law or regulation or if needed to ensure the proper administration and enforcement of each Agency's respective statutes. This MOU is a nonbinding statement of intent and is not a rule, regulation, contract, or interagency agreement. Any commitments made by the signatories to this Agreement are subject to availability of appropriated funds. This Agreement does not exempt either Agency from the application of all pertinent statutory and regulatory law, executive orders and relevant policy, including those provisions governing the award and administration of any contract, assistance agreement or interagency agreement; nor do the terms herein alter the application of or supersede the terms of any such authority. The MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity by persons who are not party to this MOU, against OSHA or EPA, their officers or employees, or any other person. This MOU neither directs or applies to any person outside OSHA or EPA, nor provides or creates defenses for any third party to use in any litigation.



Shawn M. Garvin, Regional Administrator

**U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION 3**

Date: 9/29/14



MaryAnn Garrahan, Regional Administrator

**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH
ADMINISTRATION, REGION 3**

Date: 9/30/14

Appendix A

Designated Points of Contact:

OSHA Region 3:

MOU Contacts

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