

MEMORANDUM OF AGREEMENT

BETWEEN

**THE NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

DIVISION OF AIR QUALITY

AND

THE NORTH CAROLINA DEPARTMENT OF LABOR

DIVISION OF OCCUPATIONAL SAFETY & HEALTH

ON

Coordinating Chemical Accident Prevention Programs

I. PURPOSE AND SCOPE

The purpose of this Memorandum of Agreement (“MOA”) is to set forth the principles of the working relationship between the North Carolina Department of Environment and Natural Resources (“DENR” or “Department”), Division of Air Quality (“Division” or “DAQ”) and the North Carolina Department of Labor (“DOL”), Division of Occupational Safety & Health (“OSHNC”) in the area of coordinating chemical accident prevention programs. This MOA establishes general procedures for cooperation between the two agencies in order to ensure effective compliance inspections and chemical accident investigations, and to eliminate duplication. This MOA delineates DAQ’s authority under the Clean Air Act (CAA)¹ and OSHNC’s authority under the Occupational Safety and Health Act (OSH Act)² to enter into agreement with other State agencies.

II. BACKGROUND AND GENERAL RESPONSIBILITIES

The 1990 amendments to the Clean Air Act³ established chemical accident prevention and mitigation mechanisms. Section 112(r) of the Act pertains to the prevention of accidental releases. Section 112(l)(1) of the Act authorizes the Environmental Protection Agency (“EPA”) to delegate the authority to implement and enforce the requirements of

¹ 42 U.S.C § 7401 *et seq.*

² 29 U.S.C. § 655 *et seq.*

³ Section 112 is a reference to the CAA. The corresponding reference in the U.S. Code is 42 U.S.C. § 7412.

section 112(r) to approved states and local agencies. Pursuant to this authority, EPA has delegated authority to DAQ to implement section 112(r) in North Carolina.

EPA's regulations for implementing section 112(r) are promulgated at 40 CFR part 68 ("Chemical Accident Prevention Provisions"). 40 CFR part 68 was adopted by reference in the North Carolina Administrative Code at 15A NCAC 2D .2100 *et seq.* ("Risk Management Program" or "RMP").

N.C. Gen Stat. § 143-215.106 authorizes the Department⁴ to "[a]dminister the air quality program of the State."

N.C. Gen Stat. § 143-215.3(a)(2) gives the Environmental Management Commission (EMC) or the Department the power and authority to investigate "...the condition of the air, air pollution, air contaminant sources, emissions, or the installation and operation of any air-cleaning devices...."

N.C. Gen Stat. § 143-211(c) authorizes the "Department of Environment and Natural Resources ... to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions...." This statute also states that "the powers and duties of the EMC and the Department are to be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs." *Id.*

The Occupational Safety and Health Division (OSHNC) was established under the authority of the Occupational Safety and Health Act of North Carolina ("OSH Act", N.C. Stat. § 95-126 *et seq.*) which authorizes the Commissioner of Labor to ensure safe and healthful working conditions for every working man and woman by developing occupational safety and health standards, providing training programs, providing an effective enforcement program, and providing for appropriate reporting procedures.

N.C. Gen. Stat. § 95-149 authorizes the Commissioner "to enter into contracts with ... any ... State agency ... for the enforcement, administration, and any other application of the provisions of this Article."

N.C. Gen. Stat. § 95-148 requires the head of each State agency to establish and maintain an effective and comprehensive occupational safety and health program and to provide safe and healthful places and conditions of employment for State employees, consistent with the standards promulgated under the OSH Act.

Both DAQ and OSHNC have a responsibility to conduct compliance inspections and to investigate major chemical accidents to determine whether any violations of their respective rules and regulations occurred and, if so, to require correction of these violations. In addition DAQ and OSHNC, under their separate statutory authority, have a

⁴ DAQ is the section of the Department responsible for the air quality program.

responsibility to undertake investigations to determine the root cause(s) of chemical accidents and to issue public reports containing recommendations about what government, industry, and other stakeholders could do to prevent similar accidents from occurring in the future.

Much of the information required to meet the objectives of the two agencies is similar. Therefore, it is in the best interest of the agencies and the public that investigations and information-gathering be conducted in the most efficient and effective manner possible, with minimum duplication of activities.

III. COORDINATED ACTIVITIES

A. Inspections

Since DAQ's Risk Management Program standard largely includes the same requirements as the OSHNC's Process Safety Management (PSM) standard, joint compliance inspections should be encouraged whenever possible. Also, information gathered during applicable compliance inspections conducted by DAQ or by OSHNC can be useful to the other agency. Therefore, DAQ and OSHNC should conduct joint inspections, should provide a list of subject facilities inspected, and should provide inspection reports as requested or on a regular schedule established by the agencies.

Since DAQ inspectors and OSHNC compliance officers may discover compliance issues within the purview of the other agency's authority, referrals to the other agency should also be encouraged. If a DAQ inspector notes a potential PSM or other health and safety violation during a compliance inspection the inspector should contact the OSHNC's Centralized Complaint Desk by calling 1-800-NCLABOR (1-800-625-2267) to make a referral. Similarly, if an OSHNC compliance officer notes a potential RMP or other air quality violation during a compliance inspection the compliance officer should contact DAQ by calling 919-733-3340 to make a referral.

B. Notification

Since DAQ and OSHNC both have the responsibility to investigate major chemical accidents in North Carolina, the agencies should coordinate accident investigation efforts. When DAQ intends to investigate a major chemical accident, OSHNC should be notified. Similarly, when OSHNC intends to investigate a major chemical accident, DAQ should be notified. Such notification should be made through the contacts listed above and should be made immediately after either agency receives a report of a chemical accident.

For the purposes of this MOA, a major chemical accident or release shall meet one or more of the following criteria:

- Results in one or more human fatalities;
- Results in the hospitalization of three or more workers or members of the public;
- Causes property damage (on- and/or off-site) initially estimated at \$500,000 or more in total;

- Presents a serious threat to worker health or safety, public health, property, or the environment;
- Has significant off-site consequences, such as large-scale evacuations or protection-in-place actions, closing of major transportation routes, substantial environmental contamination or substantial effects (e.g., injury, death) on wildlife or domesticated animals;
- Is an event of significant public concern.

C. Investigation of Chemical Accidents

When a major chemical accident occurs, DAQ and OSHNC should first determine whether either agency intends to go on-site. If both agencies decide to go on-site, they should jointly determine whether the event merits a root-cause investigation and the issuance of a public report. Until that decision is made, the agencies should act under the presumption that a joint investigation is being conducted. If one agency elects not to investigate a chemical accident, the other agency reserves the right to conduct its own investigation and to issue an independent report. In general, DAQ and OSHNC will select for joint investigation those events at which both agencies are present under their separate statutory authority and which present the opportunity to gain and disseminate important information about chemical accident prevention.

DAQ and OSHNC investigation efforts will be coordinated with On-Scene Incident Command, the State Emergency Response Commission, the Local Emergency Planning Committee, the responding Regional Response Teams and other responding entities as necessary. This coordination effort includes promptly establishing procedures for gaining access to evidence in cases where other entities have priority in retaining evidence (e.g., state and local criminal investigation agencies). In the event that the potential for criminal case development exists related to a particular accident or acts of terrorism, DAQ and OSHNC will coordinate with each other on a case-by-case basis to ensure the maximum cooperation with criminal investigators.

In the interest of consistency and to ensure the maximum utility of information obtained by a single agency, DAQ and OSHNC should discuss any findings regarding causation prior to the issuance of an official inspection report by either agency.

D. Information and Data Sharing

Both agencies should share records, reports, data, or information obtained by their investigators. The agencies may also make joint requests for information. Neither agency will enter into any settlement agreement with any employer or potentially responsible party that would compromise the sharing of information between the agencies. Both agencies should have access to all factual data gathered by either agency, and should collaborate on determining causation and on developing recommendations to enhance chemical safety.

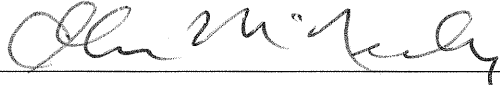
All requests for information shall be done in writing. The originating agency will be responsible for expunging confidential information from reports it generates prior to forwarding the reports to the requesting agency. Each agency will be responsible for maintaining the information it has collected or received pursuant to this MOA. Each agency will be responsible for the release of said information pursuant to public records requests or other legal requests for the information.

E. Training, Technical, and Professional Assistance

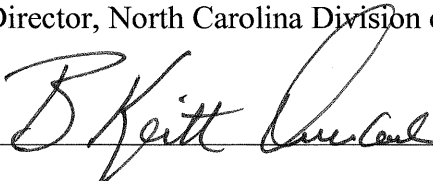
DAQ and OSHNC should make their chemical accident related training programs available to each other's agency personnel. The agencies should provide technical and professional assistance to each other during compliance inspections or on chemical accident investigations upon request and as resources permit.

IV. CONDITIONS OF THE AGREEMENT

Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions. This agreement shall be periodically reviewed for effectiveness. This agreement shall become effective upon the date of last signing by the parties' representatives and shall continue in effect unless: 1) the agreement is modified in writing by mutual consent of both parties; or 2) the agreement is terminated by either DAQ or by OSHNC. The agreement may be terminated at any time with 30 days written notice to the other party, or by mutual written agreement.

 _____ Date: 4/17/07

Allen McNeely
Director, North Carolina Division of Occupational Safety & Health

 _____ Date: 4/18/07

B. Keith Overcash, P.E.
Director, North Carolina Division of Air Quality