



July 26, 2000

**MEMORANDUM OF AGREEMENT**

***BETWEEN***

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

**DIVISION OF AIR QUALITY**

***AND***

**THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

**DIVISION OF EMERGENCY MANAGEMENT**

***ON***

**THE RISK MANAGEMENT AND CHEMICAL ACCIDENT  
PREVENTION PROVISIONS UNDER § 112(r) OF  
THE CLEAN AIR ACT AMMENDMENTS AND CITED IN  
TITLE 40 CODE OF FEDERAL REGULATIONS PART 68**

**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 (NCDENR) Division of Air Quality (DAQ) and the Department of Crime Control and Public Safety (CCPS) Division of Emergency Management (DEM) that will facilitate the administration of the Risk Management and Chemical Accident Prevention Program [112(r)] in North Carolina.

The goal of this program is to prevent accidental chemical releases and to minimize the consequences to the public and the environment of accidental releases that do occur.

This instrument will serve as a guide for cooperation and coordination between the DAQ and DEM. The DAQ is operating as the implementing agency for the 112(r) program in North Carolina. The North Carolina Administrative Code 15A(NCAC) 2D.2100, Risk Management Programs gives North Carolina regulatory authority. The 15A NCAC 2D.2100 adopts the 40 CFR Part 68 (Chemical Accident Prevention Provisions) by reference. This instrument will not serve as a delegation of authority to DEM, but as a guide for cooperative efforts between the two agencies. The DEM has a 112(r)

coordinator whose position is funded by the DAQ. The job tasks of that position shall include, exercises of Risk Management Plans at regulated facilities and involving the local emergency responders, outreach to Local Emergency Planning Committees, interaction with the State Emergency Response Commission, accident investigations in conjunction with the NCDAQ, and outreach to local fire, emergency responders and emergency planners. This individual shall provide an annual summary status report of LEPC activities and outreach performed in the state as related to this program. This report shall be provided to the program coordinator within the NCDAQ.

Additional responsibilities and efforts may be self-assigned and supported by the DEM such as grant programs, training, community support and other needs as they arise for stakeholders. All program efforts that affect the mission and scope shall be coordinated with the DAQ program coordinator.

## **II. Background and General Responsibilities**

### **A. Background**

The 1990 Clean Air Act Amendments established provisions in § 112(r) for the prevention and mitigation of accidental chemical releases. The Risk Management and Chemical Accident Prevention Program requires stationary sources with more than a threshold quantity of regulated substances in a process to develop a Risk Management Program and submit a summary Risk Management Plan (RMP) to EPA.

### **B. NCDENR-DAQ and DEM Responsibilities**

#### **1. General**

The NCDENR-DAQ will be an implementing agency under the oversight of the USEPA Region 4. The State has primary responsibility for the coordination and implementation of all program activities, including penalty assessment with exception to issues that pertain to the provisions of the General Duty Clause of § 112(r). Activities coordinated by the DAQ may include Risk Management Program reviews, stationary source site inspections, audits, outreach, education, compliance assistance, and post accident investigations for root cause determination. The DAQ may complete the tasks below in cooperation with other State agencies within North Carolina.

#### **2. Outreach with DEM**

The DAQ will continue to hold training sessions for industry as needed in cooperation with the DEM. This effort is to familiarize regulated facilities with the regulations and requirements. Staff training sessions shall also be held to familiarize new inspectors with the 112(r) program and inspection techniques as needed or requested by cooperative agencies. The awareness and inspector training sessions will target new program staff attempting to better prepare inspectors for 112(r) regulatory inspections.

### **3. Inspections**

The DEM may participate in facility inspections with DAQ or other cooperative agencies, however are not required by this agreement to perform facility inspections. The following is a guideline that inspecting entities shall follow. Inspections shall be performed on a schedule set by existing programs. Since multiple agencies will be involved, the inspection schedule and frequency will be at the discretion of the inspecting agency. The inspections will be scheduled on a five year cycle, where each facility will be visited a minimum of once every five years. Many North Carolina programs involve visiting each facility once per year. Inspections shall involve the completion of a 112(r) inspection checklist (attachment 1) and comments page (attachment 2). Inspections shall result in a compliance determination performed by the inspector at the conclusion of the inspection or after consultation with the DAQ program coordinator. A copy of the inspection checklist shall be left with the facility for reference. If compliance problems are noted, the follow-up shall include a Notice of Violation (NOV) to the facility indicating a compliance problem and potential penalties associated with non-compliance. The enforcement process will also be used to ensure all necessary corrections are made to maintain compliance with program rules. All involved State agencies will make every effort to assist regulated facilities in complying with the intent of the 112(r) rules by providing guidance documentation, small business assistance, training, and technical support. All enforcement of the Risk Management rules will be performed by the NC-DAQ.

### **III. Inter-Agency Cooperative Efforts**

The 112(r) program in North Carolina will be implemented by several agencies working in cooperation with the DAQ. The agencies will work to integrate this program into existing jurisdictional infrastructure. The DAQ will establish MOA's with the NCDENR Division's of Water Quality (DWQ) and Environmental Health (DEH); the Department of Crime Control and Public Safety-Division of Emergency Management (DEM); and the Department of Agriculture and Consumer Services (NCDA)-Standards Division. The DWQ and DEH will inspect the wastewater treatment and drinking water treatment facilities respectively. They are currently the agencies responsible for inspections under state regulations. The two agencies will inspect regulated facilities using a water treatment checklist designed primarily for chlorine and after inspection will forward the checklist to the DAQ program coordinator. The NCDA will inspect the regulated propane and anhydrous ammonia facilities for Risk Management Program compliance. The NCDA currently inspects the facilities in North Carolina with greater than 2,000 gallons of propane in a single tank and or greater than 4,000 gallons in aggregate quantity on an annual basis. Annual inspections for propane facilities are performed to ensure compliance with the National Fire Protection Association (NFPA) Standard 58, which has been adopted by State regulation. Specific questions relevant to the Risk Management Program have been added to this NFPA 58 checklist to ensure compliance with the 112(r) regulations. The DEM is involved due to the close relationship of the program to the Emergency Planning and Community Right to Know Act (EPCRA)

program. The DAQ will fund a staff position in the DEM to coordinate exercises at regulated facilities to test Risk Management Plans and exercise local emergency plans. This position will also assist the DAQ program coordinator in accident investigations and outreach to Local Emergency Planning Committees (LEPC's) within North Carolina. This outreach will be devoted to assisting LEPC's with integrating Risk Management Program concepts into ongoing activities and attempt to use the 112(r) program to activate inactive LEPC's. Individual LEPC's have the option to participate in inspections if they choose. LEPC's are also given the opportunity to conduct inspections if they establish individual MOA's with the DAQ, participate in all training sessions, and use approved DAQ checklists.

#### **IV. USEPA Region 4 Responsibilities**

##### **1. Oversight and Support**

In support of the NCDENR-DAQ the USEPA Region 4 will provide oversight of the DAQ as a State implementing agency. This support shall involve reviewing of annual reports provided by the North Carolina 112(r) Program coordinator and annual meetings with the DAQ management and/or the program coordinator to discuss program status, goals, priorities. Such meetings shall also provide the State with newly developed EPA resources, documentation and shall also provide an update on USEPA initiatives, projects, and lessons learned from other implementing agencies.

##### **2. General Duty Clause Investigations and Inspections**

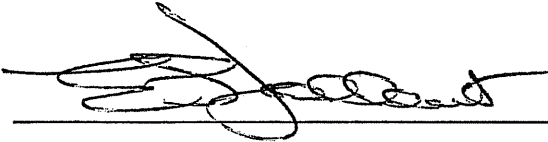
In addition to program oversight and support, the USEPA may conduct General Duty Investigations or Inspections. In the event the USEPA exercises this authority, the EPA will notify NCDENR-DAQ of activities within North Carolina so that appropriate North Carolina staff may accompany USEPA inspectors at the discretion of the North Carolina 112(r) program coordinator or the DAQ regional offices. Communication between the DAQ and USEPA is necessary due to the potential for North Carolina DAQ permitted facilities to be visited by the USEPA. Many non-permitted facilities also have a relationship with the North Carolina Small Business Ombudsman. Notification is also requested when the USEPA visits these facilities.

##### **3. Outreach and Training**

The USEPA shall make training available in the topics of Chlorine Storage, Anhydrous Ammonia Operations and Storage, Propane Storage facilities, and Chemical Safety Audit Training. This training shall be provided at no cost other than travel to all cooperating agencies involved in implementation of the 112(r) program in North Carolina. LEPC's may also attend this training, if interested in participating in audits and or inspections. The USEPA shall also share the latest outreach materials and techniques with the DAQ so the information may be shared with all stakeholders involved with the 112(r) program.

**V. Rights And Duration**

This MOA shall become effective upon the date of last signing by the parties' representatives. This MOA may be terminated by either NCDENR-DAQ or by the NCDCCPS-DEM at any time with 30 days written notice to the other party, or by mutual written agreement.

 \_\_\_\_\_ Date: 9/7/00

Eric Tolbert

Director, North Carolina Division of Emergency Management

 \_\_\_\_\_ Date: 9/15/00

Alan W. Klimek, P.E.

Director, North Carolina Division of Air Quality