

MEMORANDUM OF AGREEMENT

BETWEEN

**THE NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY,**

DIVISION OF AIR QUALITY

AND

THE NORTH CAROLINA DEPARTMENT OF LABOR,

OCCUPATIONAL SAFETY & HEALTH DIVISION

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 Environmental Quality ("DEQ" or "Department"), Division of Air Quality ("DAQ" or "Division") and the North Carolina Department of Labor ("DOL"), Occupational Safety & Health Division ("OSH") 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 major chemical accident investigations, and to eliminate duplication of efforts. This MOA delineates DAQ's authority under the Clean Air Act (CAA)¹ and OSH's authority under the Occupational Safety and Health Act ("OSH Act")² to enter into agreements with other State agencies.

II. BACKGROUND AND GENERAL RESPONSIBILITIES

The 1990 amendments to the CAA³ established chemical accident prevention and mitigation mechanisms. Section 112(r) of the CAA pertains to the prevention of accidental releases. Section 112(l)(1) of the CAA authorizes the Environmental Protection Agency ("EPA") to delegate the authority to implement and enforce the requirements of section 112(r) to approved state and local agencies. Pursuant to this

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.

authority, the EPA has delegated authority to DAQ to implement section 112(r) in North Carolina.

The 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 authorized 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 DEQ "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.*

OSH was established under the authority of the OSH Act (N.C. Gen. Stat. § 95-126 *et seq.*), which authorizes the Commissioner of Labor to ensure safe and healthful working conditions for every employee, by developing occupational safety and health standards, and by providing training programs, an effective enforcement program, and 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, consistent with the standards promulgated under the OSH Act.

Both DAQ and OSH have a responsibility to conduct compliance inspections and to investigate major chemical accidents to determine whether any violations of their respective rules and regulations have occurred and, if so, to require correction of these violations. In addition, DAQ and OSH, under their separate statutory authority, have a responsibility to undertake investigations to determine the root cause(s) of major chemical accidents and to issue public reports containing recommendations about what

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

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 interests 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 OSH'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 OSH can be useful to the other agency. Therefore, DAQ and OSH should conduct joint inspections, provide a list of subject facilities inspected, and provide inspection reports as requested or on a regular schedule established by the agencies.

Since DAQ inspectors and OSH 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, then the DAQ inspector should contact the OSH Complaint Desk by calling 919-779-8560 or 1-800-NCLABOR (1-800-625-2267) to make a referral. Similarly, if an OSH compliance officer notes a potential RMP or other air quality violation during a compliance inspection, then the OSH compliance officer should contact DAQ by calling (919) 707-8400 to make a referral.

B. Notification

Since DAQ and OSH 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, OSH should be notified. Similarly, when OSH 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 major chemical accident.

For the purposes of this MOA, a "major chemical accident" shall mean "Catastrophic release" as defined within the agencies' respective standard or rule:

OSH utilizes the following standard to define "catastrophic release":

1910.119(b): Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more highly hazardous chemicals, that presents serious danger to employees in the workplace.

DAQ utilizes the following rule to define “catastrophic release”:

40 CFR part 68.3: Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Examples of major chemical accidents/catastrophic releases include, but are not limited to, those meeting one or more of the following criteria:

- Results in one (1) or more human fatalities;
- Results in the hospitalization of three (3) 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.

C. Investigation of Major Chemical Accidents

When a major chemical accident occurs, DAQ and OSH 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 the accident, the other agency reserves the right to conduct their own investigation and to issue an independent report. In general, DAQ and OSH 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 OSH investigation efforts will be coordinated with On-Scene Incident Command, the State Emergency Response Commission, the Local Emergency Planning Committee, 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). If the potential for criminal case development exists related to a particular accident or acts of terrorism, DAQ and OSH 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 OSH 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 OSH should make their chemical accident-related training programs available to each other's agency personnel. The agencies should provide training, technical, and professional assistance to each other during compliance inspections or on major 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 constitutes the entire understanding of the parties with respect to the subject matter contained within; and all prior agreements, understandings, and representations are superseded or canceled in their entirety, including the Memorandum of Agreement between the parties dated April 18, 2019. This Agreement shall become effective upon the date of last signing by the parties' representatives and shall continue in effect until and unless it is: 1) modified in writing by mutual consent of both parties; or 2) terminated by either DAQ or OSH. This Agreement may be terminated at any time by either party with thirty (30) days' written notice to the other party, or by mutual written agreement.

IN WITNESS WHEREOF, the North Carolina Department of Environmental Quality, Division of Air Quality and the North Carolina Department of Labor, Occupational Safety & Health Division have executed this Agreement in duplicate originals, one of which is retained by each of the parties. This Agreement shall become effective upon its full execution by both parties.

Jennifer Haigwood

Date: 11/1/2022

Jennifer Haigwood
Director, North Carolina Occupational Safety & Health Division
North Carolina Department of Labor

Michael A. Abraczinskas

Date: 11/7/22

Mike Abraczinskas, EIT, CPM
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North Carolina Department of Environmental Quality