

IMPLEMENTATION AGREEMENT  
BETWEEN  
THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

PART 70 RENEWABLE OPERATING PERMITS PROGRAM

**I. GENERAL**

A. This implementation agreement (IA) defines policies, responsibilities, and procedures, pursuant to 40 Code of Federal Regulations part 70, by which the renewable operating permits (ROP) program will be administered by both the Michigan Department of Environmental Quality (MDEQ) and the United States Environmental Protection Agency (USEPA). Such agreement shall be maintained consistent with the Clean Air Act (Act) and other existing regulations, notably the Michigan State Implementation Plan (SIP).

B. Nothing in this IA shall be construed to restrict in any way USEPA's authority to fulfill its oversight and enforcement responsibilities under the Act. Nothing in this IA shall be construed to contravene any provision of part 70. This IA is in addition to, and does not contravene any other agreements between USEPA and MDEQ, such as the Delegation of Authority for the Prevention of Significant Deterioration, 40 CFR 52.21; the Delegation of Authority for New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants; the Cooperative Enforcement Agreement for Air Enforcement Activities in Michigan; and the Memorandum of Agreement for the section 112 toxics program, including section 112(l) delegations.

C. In any instance where Michigan's administrative rules for implementation of Part 70 requirements through the ROP program make reference to state submittals to the "Administrator of the EPA", such submittals shall be made to Region 5 of the USEPA.

D. This agreement is entered into by the Chief of the Air Quality Division of MDEQ and the Chief of the Air Programs Branch of USEPA Region 5.

E. This IA shall become effective upon signature by both parties. Any revisions to this IA must be in writing and must be signed by MDEQ and USEPA.

**II. PROGRAM DEVELOPMENT**

A. Each party is responsible for ensuring that its obligations under part 70 and title V of the Act are met. Both parties agree to maintain a high level of communication, cooperation, and coordination between their respective staffs to assure successful and effective administration of the ROP program.

B. USEPA will assess MDEQ's administration of the ROP program for consistency with title V, part 70, and all other requirements of the Act. This assessment will be accomplished by USEPA review of information submitted by MDEQ or any interested person, program audits, permit overview, and compliance and enforcement overview. USEPA will timely notify MDEQ of any

concerns regarding MDEQ's administration of the program, and will work cooperatively with MDEQ to reach resolution.

C. MDEQ and USEPA agree that, in accordance with 40 CFR 70.4(i), ROP program changes become effective, for purposes of federal law, only upon approval by USEPA. However, USEPA is developing a program revision process that will meet the requirements of 40 CFR 70.4(i) while also providing continuity as the State program is modified and updated. Although the details of this process have yet to be established, this process will focus on ongoing cooperation between MDEQ and USEPA, with real time evaluation of program revision efforts.

D. MDEQ and USEPA agree to work together during the development and implementation of any significant changes to the State program to ensure that such changes will meet the requirements of the Act.

E. USEPA and MDEQ agree that any delegation of the State ROP program to a local agency, such as Wayne County, must be approved by USEPA as a part 70 program revision before any local agency would have the authority to issue federally enforceable title V permits. USEPA agrees to work with MDEQ as necessary to address any specific programmatic or implementation issues arising from the State's delegation to a local agency.

F. MDEQ agrees that it will implement R 336.1212(4) consistently with the insignificant activities gatekeeper provision in 40 CFR 70.5(c) and USEPA's July 10, 1995 guidance memorandum entitled "White Paper for Streamlined Development of Part 70 Permit Applications". Specifically, the reference in R336.1212(4) to "all applicable requirements that include a process specific emission limitation or standard" only excludes generic applicable requirements (such as source wide opacity limits and general housekeeping requirements) that can be identified without requiring the source to describe specific insignificant units or processes in its application.

G. MDEQ agrees that the State administrative amendment provisions for incorporating permit to install conditions into ROP's (R 336.1216(1)(a)(v)) require public and affected State review in accordance with R 336.1214(3) and (4). The phrase "substantially equivalent" in R 336.1216(1)(a)(v) does not alter the requirements for public and affected State notice, a 30 day public comment period, an opportunity for a public hearing, a 30 day notice of any public hearing, and a notice to USEPA and any affected State of any refusal to accept an affected State's timely recommendations on a draft permit.

H. In accordance with USEPA's March 5, 1996 memorandum entitled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program", MDEQ has broad discretion to tailor the permits for insignificant emission units as long as compliance with Federal requirements is assured. Additionally, as USEPA has not at this time issued any national guidance related to the content or sufficiency of title V periodic monitoring scenarios, MDEQ has broad discretion in determining the nature of specific periodic monitoring scenarios in ways that are effective and reasonable.

I. MDEQ has primary responsibility for:

1. Administering the program in accordance with part 70, the Act, USEPA policies and guidance, and the applicable State law.

2. Making all statutory, regulatory, or other changes to the approved program necessitated by the interim program approval conditions specified in Appendix A of this IA. Making any other program changes needed to maintain the approval status of the permitting program.
3. Notifying USEPA in advance of any proposed changes that alter the requirements of the approved State program, including changes to permit program-related statutes and regulations, and submitting program changes for approval. Notifying USEPA of any significant changes in program implementation that do not alter the requirements of the approved State program, including but not limited to implementation policies.
4. If requested by USEPA, providing an accounting which demonstrates how revenue from required permit fees was collected and spent by MDEQ and demonstrating that the fee structure is adequate. This accounting may be fulfilled by providing USEPA copies of the documents required pursuant to Michigan's NREPA Section 5522 (3) and (9). If necessary, seeking legislative approval to modify the permit fee system to ensure that it continues to cover the costs of administering the program.

J. USEPA has primary responsibility for:

1. Developing a differential oversight system for assessing the State program. Consistent with this system, reviewing selected permits and providing effective oversight of the ROP program to ensure consistency with part 70.
2. Informing MDEQ as soon as possible about new Federal regulations and any related litigation results or settlements, new Federal standards, the effect of these new requirements, any action needed to be taken by MDEQ, and communication of USEPA policy determinations.
3. Cooperating with MDEQ by allowing appropriate flexibility when determining the most effective and expeditious means of implementing USEPA policies and guidance.
4. Providing ongoing technical and other assistance on permit program matters as requested. Reviewing, upon MDEQ request, any draft documents which may change or otherwise affect the State's ROP program, including: legislation and regulations, permit application and monitoring forms, and policy guidance.
5. Providing for final action in the Federal Register within 12 months of any substantial program change submitted by MDEQ.

### **III. PROGRAM IMPLEMENTATION**

- A. USEPA agrees to inform MDEQ as soon as possible about new Federal standards, implementation information and related Federal policies and guidance. MDEQ agrees to distribute any such guidance to MDEQ permit program staff.
- B. USEPA and MDEQ agree to maintain a working document that addresses specific ROP program implementation procedures requiring coordination between USEPA and MDEQ.
- C. USEPA and MDEQ agree to participate in conference calls as needed to discuss program

implementation, including program requirements, operating procedures, and source specific draft and proposed permit issues. USEPA and MDEQ agree that staff and lower level management will work together to resolve any issues, and will only elevate issues to higher level management if resolution cannot be timely reached.

D. MDEQ and USEPA each agree to notify the other of any problems or controversy either party anticipates with any permit or permit application, including any particularly complex permitting scenarios. Whenever MDEQ anticipates such permits or permit applications, MDEQ intends to schedule a public hearing for any such permit.

E. USEPA and MDEQ agree to work together to determine which permit applications and draft permits may have particular national or regional interest. Permits of interest shall include the development of any general permits. MDEQ agrees to make such applications and draft permits available to USEPA to the extent practicable prior to the beginning of the public comment period. USEPA agrees to expeditiously comment on such permits.

F. USEPA and MDEQ agree to work cooperatively to identify Indian country and resolve jurisdictional issues involving air pollution sources located or wishing to locate in Indian country.

G. USEPA and MDEQ agree to develop an enforcement agreement or modify the existing Memorandum of Understanding (MOU) entitled "Cooperative Enforcement Agreement for Air Enforcement Activities in Michigan" that will address each party's responsibilities regarding title V compliance and enforcement activities. This agreement will provide for the performance of those types of compliance/enforcement activities as previously outlined in the Projected Program Accomplishments (PPAs) in the Fiscal Year 1995 Cooperative Agreement.

H. USEPA is responsible for issuing Phase I Acid Rain permits, and MDEQ is responsible for issuing Phase II Acid Rain permits. USEPA and MDEQ agree to work together to address Acid Rain Program implementation matters.

I. USEPA and MDEQ agree to work together to resolve any material mistakes, the omission of any information required by an applicable requirement, or any inaccurate statements made in establishing the emission limitations or standards or the terms and conditions of an ROP. For issues raised by a citizen petition to USEPA or those discovered directly by USEPA, the USEPA agrees to provide MDEQ with an informal notice and opportunity to resolve such issues prior to commencing a formal action for reopening pursuant to the procedures in 40 CFR 70.7(g) whenever possible. The MDEQ recognizes USEPA's authority, pursuant to 40 CFR 70.7(f), 70.7(g), and 40 CFR part 71 to reopen for cause, terminate, modify, or revoke and reissue an ROP issued by the MDEQ, if MDEQ cannot resolve such issues that are raised by USEPA.

J. MDEQ agrees to do the following:

1. Maintain an adequate file (accessible for USEPA audit) for each permittee in accordance with section IV of this IA.
2. Keep USEPA apprised of ROP program implementation, including information on fulfilling the permit issuance timeframes required for initial permits, modifications, and renewals.

3. If any permit is changed as a result of an appeal in any administrative or judicial forum, make the permit available to USEPA.

4. Act on any section 112(i) early reduction permits to be issued by MDEQ within the time period required by 70.4(b)(11). Although the time period in the current regulation is 9 months, USEPA has proposed to change the time period to 12 months.

K. USEPA agrees to do the following:

1. Provide technical support and assistance and training opportunities as available for title V related activities.

2. When requested by MDEQ, assist in determining general or individual title V permit requirements.

3. Provide MDEQ the opportunity for involvement and input into new program activities or initiatives.

4. Provide comments or objections to proposed permits in an expeditious manner, but no later than 45 days from receipt/availability of the following permit documentation: the permit application or application summary form, the proposed permit, and any written refusal to accept an affected State's recommendations. USEPA shall:

a. Include with any objection a statement of the reasons for the objection and the actions that USEPA believes should be taken by MDEQ to resolve the basis for the objection.

b. Send a copy of its written comments to the permit applicant.

c. Issue or deny the final permit if MDEQ fails to submit a revised permit for review within 90 days after receipt of an objection.

d. Withdraw its objection in writing when satisfied that MDEQ has resolved the basis for the objection and provide a copy of the withdrawal to the applicant.

5. Timely notify MDEQ when the Administrator receives public petitions which object to the issuance of a permit, and keep MDEQ informed concerning USEPA's response. Notify the permit applicant if the Administrator objects to a permit as a result of a public petition to the Administrator.

#### **IV. DATA MANAGEMENT AND INFORMATION TRANSFER**

A. USEPA and MDEQ will work together to develop an efficient data management and information transfer system. USEPA and MDEQ agree to expeditiously transfer to one another any requested documents.

B. MDEQ and USEPA agree to the following procedures with respect to confidentiality of information:

1. Any information obtained or used in the administration of the program shall be available to USEPA upon request without restriction, except for information that has been submitted to MDEQ with an application for confidentiality in accordance with **Act 442 of Public Acts of 1976, as amended, of Michigan Compiled Laws (Freedom of Information Act)**. For information deemed confidential in accordance with state law, USEPA will request such information directly from the permit applicant or permittee, consistent with Michigan's R 336.1213(e). If USEPA makes such a request, USEPA's review period for the proposed ROP will not begin until the permit applicant has submitted all such information required by USEPA.

2. Any information obtained by USEPA from a permit applicant or permittee which is subject to a claim of confidentiality will be treated by USEPA in accordance with the regulations in 40 CFR part 2.

C. MDEQ agrees to make available to USEPA and the public the following permitting information, except that MDEQ may not make available to the public information for which confidential treatment has been granted, or information for which confidential treatment has been requested and the MDEQ has not yet acted on the request. If information requested by the public has been determined to be confidential, MDEQ will send a letter of denial to the requester detailing the exact reason why the information is being withheld. USEPA will request confidential information directly from the permit applicant or permittee.

1. At a minimum, the following permit documents shall be available to USEPA either through direct electronic access, or by hardcopy submission to USEPA. To the maximum extent possible, MDEQ agrees to share the following documents through electronic access. USEPA will accept the electronic portions of an application as an application summary if the electronic data constitutes a significant portion of the source's application. If requested, however, MDEQ will provide USEPA with any hard copy portions of an application that are not available electronically.

- a. ROP applications or application summaries
- b. Proposed permits
- c. Any written refusal to accept an affected State's recommendations on a draft permit
- d. Final permits
- e. Any comparable documentation generated by permit revision procedures

2. In addition to the above permit documents that must be made directly available to USEPA, MDEQ also agrees to make the following information available to USEPA.

- a. Copies of staff activity reports and draft permits
- b. Records of public notice procedures permits have undergone, and copies of staff report addenda which describe public and affected State comments and provide responses to the comments. Complete copies of all public and affected State comments will be provided upon request.

c. Other specific information agreed to by USEPA and MDEQ and referenced in the working document identified in section III.B. of this IA

D. MDEQ agrees that any changes to the Michigan data management system will be compatible with AIRS/AFS to the fullest extent practicable. MDEQ will make a good faith effort to include in AIRS/AFS compliance monitoring and enforcement data, as well as the permit related data elements outlined in the March 17, 1994 memorandum entitled, "Policy on Title V Permit Program Data Elements", signed by John Seitz, Director, Office of Air Quality Planning and Standards. For the permit related data elements, Region 5 is currently working to develop a connection between the regional data system and AIRS. If this project is successful, MDEQ may satisfy the requirements for submitting permit data elements through a database file rather than direct uploading to AIRS.

## V. SIGNATURES

\_\_\_\_\_/s/\_\_\_\_\_  
Dennis Drake, Chief  
Air Quality Division  
Michigan Department of Environmental Quality

\_\_\_\_\_  
Date

10/9/97

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen Rothblatt, Chief  
Air Programs Branch  
Air and Radiation Division  
United States Environmental Protection Agency

9/23/97

Date

---

## APPENDIX A

### PROGRAM REVISIONS

#### I. INTERIM APPROVAL REVISIONS

A. USEPA and MDEQ agree to work together to help ensure that Michigan's ROP program will receive full approval prior to the expiration of interim program approval. For further information on Michigan's interim approval issues, refer to the final interim approval of Michigan's program (62 FR 1387, January 10, 1997).

B. MDEQ agrees to develop a schedule to correct all interim program approval deficiencies and to submit the revised program to USEPA by August 10, 1998. USEPA agrees to take action on the corrective program submittal by February 10, 1999.

C. USEPA acknowledges that MDEQ has made changes to its regulations to address the following interim approval issues. However, USEPA notes that it cannot approve these changes until the

Agency has fully reviewed MDEQ's part 70 corrective program submittal and has acted on the submittal through notice and comment rulemaking, in accordance with 40 CFR 70.4(i).

1. Revise the definition of "schedule of compliance" in R 336.1119(a) to provide that the schedule of compliance for sources that are not in compliance shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.
2. Revise the definition of "stationary source" in R 336.1119(q) to provide that the definition includes all of the process and process equipment which are located at one or more contiguous or adjacent properties. The emphasized phrase is not currently included in the State regulation.
3. Revise R 336.1211(1) to provide that nonmajor solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are subject to the title V permits program.

D. USEPA and MDEQ agree that the interim approval issues pertaining to the State's audit privilege and immunity law, part 148 of NREPA, will be addressed in accordance with the agreement documented in the July 1, 1997 letter from Steven A. Herman, Assistant Administrator, Office of Enforcement and Compliance Assurance, USEPA, to Russell J. Harding, Director, MDEQ.

E. MDEQ agrees to revise Michigan's ROP program to address the remaining interim approval issues, as outlined below.

1. Revise R 336.1212(1) to delete the exemption of certain activities from determining major source status. Part 70 and other relevant Act programs do not provide for such exemptions from major source determinations.
2. Revise the State program, including statutes or regulations, if appropriate, to require that permit applications include a certification of compliance with all applicable requirements and a statement of the methods used for determining compliance.
3. Remove the provisions of section 324.5534 of NREPA, which provide for exemptions from penalties or fines for violations caused by an act of God, war, strike, riot, catastrophe, or other condition as to which negligence or willful misconduct was not the proximate cause.
4. Revise R 336.1913 and R 336.1914 to be consistent with the affirmative defense provisions in 40 CFR 70.6(g). Alternatively, adopt an enforcement discretion approach consistent with the Act.