

April 20, 1999

MEMORANDUM

SUBJECT: Title V Program Responsibilities Concerning the
Accidental Release Prevention Program

FROM: Steven J. Hitte, Chief /s/
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TO: Air Program Manager
Regions I-X

This memorandum identifies the title V program responsibilities for air permitting authorities with sources subject to the accidental release prevention program established in 40 CFR part 68 and an operating permits program established under 40 CFR parts 70 or 71. This memorandum also describes how permitting authorities can use a computerized program, developed by the Chemical Emergency Preparedness and Prevention Office (CEPPO), and the title V permit application to help fulfill these responsibilities. Finally, an attachment to this memorandum contains a set of frequently asked questions and responses concerning sources subject to parts 68 and 70 or 71.

Title V program responsibilities

Section 68.215(e) of the accidental release prevention program specifies the particular responsibilities of title V air permitting agencies with respect to the part 68 program. Those responsibilities include:

- (1) Verify[ing] that the source owner or operator has registered and submitted an RMP [risk management plan] or a revised plan when required by this part [part 68];

- (2) Verify[ing] that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;
- (3) For some or all of the sources subject to this section, us[ing] one or more mechanisms such as, but not limited to, a completeness check [i.e., the mechanism associated with the RMP*Info database described below], source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and
- (4) Initiat[ing] enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate.

State, local, and Tribal air permitting authorities with approved title V operating permits programs must ensure these duties are performed for the 22,000 sources estimated to be covered by parts 68 and 70 or 71.¹ Since authority to implement these responsibilities was granted upon title V program approval, and all State and local permitting authorities have approved programs, State and local permitting authorities should begin performing these activities. The cost associated with performing these activities is recoverable through title V fees. Section 68.215 allows a State the ability to delegate these responsibilities to a State or local agency or agencies other than the air permitting authority. A State or local permitting authority can also negotiate a written agreement with EPA under which EPA would perform these required activities.

Note: The responsibilities described above should not be confused with the responsibilities of the implementing agency for part 68. The implementing agency is the State or local agency that obtains delegation from EPA for an accidental release prevention program following procedures described in subpart E, 40 CFR part 63. The implementing agency may be, but is not required to be, the State or local air permitting agency. If neither the State nor the local agency is granted delegation, EPA will be the implementing agency for that State.

¹See *Risk Management Planning: Accidental Release Prevention Factsheet*, document number 550-F-96-002, published May 1996 by the Chemical Emergency Preparedness and Prevention Office.

One Way to Fulfill the Section 68.215(e) Responsibilities

To help permitting agencies carry out the aforementioned responsibilities, CEPPPO has developed RMP*Info, a computerized database that will be available on the Internet beginning January 1999. CEPPPO will populate the database as RMPs are submitted, marking RMPs as "complete" or "incomplete" as they are entered into the system based on a program that will be run on each received RMP. If an RMP is marked "incomplete," an error report which details certain deficiencies in the RMP will be generated. RMP*Submit, the submission software EPA is developing for industry to use to submit their RMPs, will contain the same error-reporting program. Because the bulk of RMPs are expected in the few weeks before the June 21, 1999 deadline for submission, the database may not be fully populated until sometime in August 1999. A prototype of RMP*Info can be viewed at the following Internet address:
<http://www.epa.gov/ceppo/pubs/srmp/start.htm>.

More specifically, a permitting authority can fulfill its first section 68.215(e) responsibility, to verify that sources subject to parts 68 and 70 or 71 have submitted an RMP by checking the RMP*Info database, which will be monitored by CEPPPO. If the source appears in the database, it has registered and submitted an RMP. A permitting authority can also use RMP*Info to help meet its third responsibility by observing whether a "complete" or "incomplete" flag appears in the RMP*Info database. An "incomplete" flag means that the source has failed to provide the minimum amount of data every RMP is required to provide. A "complete" flag means the source has provided the minimum amount of information required, although it does not indicate whether the source has complied with all of the requirements applicable to RMPs or to risk management programs under Part 68. The EPA understands that most States will be relying upon completeness checks.

A permitting authority can meet its fourth section 68.215(e) responsibility, to take enforcement action, based on the information provided in the database, such as the appearance of an "incomplete" flag. However, an air permitting authority should not assume that absence of a source in the RMP*Info database warrants automatic enforcement action, since CEPPPO may be delayed in adding information to the database. When the database lacks information concerning the source, the air permitting authority must determine through other means whether an RMP has been submitted.

A permitting authority's second responsibility, verifying whether a source subject to parts 68 and 70 or 71 has submitted a certification or a compliance schedule, can be fulfilled by checking the source's title V air permit application. That application will indicate whether a certification statement or a compliance schedule was submitted.

Given the RMP*Info database and title V permit applications, it should not be resource intensive for a permitting authority to determine whether all, not just a few, sources subject to parts 68 and 70 or 71 have submitted complete RMPs and certification statements or compliance schedules. Of course, should an air permitting authority not choose to use the database, the permitting authority must use other means to ensure that its title V program responsibilities are met. Failure of a permitting authority to perform these responsibilities could result in part 70 program withdrawal, sanctions, or imposition of a Federal air operating permit program.

Please share this memorandum with the State, local, and Tribal title V programs in your jurisdiction. Should you have questions concerning title V program responsibilities, please contact Barrett Parker at (919) 541-5635. For other questions concerning the accidental release prevention program, please contact Thomas Driscoll in OAQPS at (919) 541-5135 or William Finan in OSWER at (202) 260-0030.

cc: Title V Contacts
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Frequently Asked Questions and Responses Regarding
Title V Program Responsibilities of the
Accidental Release Prevention Program

Question 1: What are the title V program responsibilities for air permitting authorities with sources subject to the accidental release prevention program established in 40 CFR part 68 and the operating permits programs established in 40 CFR parts 70 and 71?

Response 1: Section 68.215(e) of the accidental release prevention program specifies particular title V program responsibilities with respect to the Part 68 program. These responsibilities include verifying submission and registration of a risk management plan (RMP), verifying submission of a compliance certification or compliance schedule, performing a spot check on a sample population, and initiating enforcement action when appropriate.

Question 2: Are permitting authorities required to perform the activities associated with these responsibilities?

Response 2: No. Even though permitting authorities received authority to implement these responsibilities upon approval of their title V programs, they are able to designate another State or local agency to perform the activities. Moreover, a permitting authority can negotiate a written agreement with the EPA in which the EPA would perform the activities. However, in no circumstance can a permitting authority absolve itself of the responsibility for ensuring that the activities are performed. Failure to perform the activities, or to ensure the activities are performed, could result in title V program withdrawal, sanctions, or imposition of a Federal air operating permit program. Failure could also result in withholding of Section 105 grant monies.

Question 3: Are the responsibilities of an implementing agency the same as those of a designated agency?

Response 3: No. The implementing agency is the State or local agency that obtains delegation from EPA for an accidental release prevention program following procedures described in subpart E, 40 CFR part 63. The implementing agency may be, but is not required to be, the State or local air permitting agency. If neither the State nor the local agency is granted delegation, EPA will be the implementing agency for that State. Question 4: Can title V fees be used to cover the cost of performing these activities?

Response 4: Yes, title V fees can be used for section 215(e) activities.

Question 5: Does EPA plan to provide an easy means of verifying that RMPs and compliance certifications or schedules have been submitted?

Response 5: Yes. EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) is preparing and will maintain RMP*Info, a computerized database that can be used to verify submission of RMPs. Verification of compliance certifications or schedules of compliance can be fulfilled by reviewing individual title V air permit applications. Note that while RMP*Info will be available on the Internet beginning April 1999, the database most likely will not be complete until sometime in August 1999 because the Agency will need some time to populate the database, as the bulk of RMPs are expected in the few weeks before the June 20, 1999 deadline. A prototype version of RMP*Info can be viewed at the following address: www.epa.gov/ceppo/pubs/srmp/start.htm.

Question 6: What does a permitting authority do if a source does not appear in the database?

Response 6: After August 1999, if the permitting authority is unable to verify registration and submission of an RMP through other means, then the permitting authority should initiate enforcement action against the source for violating the requirements of the accidental release prevention program and the title V permit terms and conditions.

Question 7: Are all sources subject to both parts 68 and 70 or 71 required to be reviewed by the permitting authority for compliance with the requirements of the accidental release prevention program?

Response 7: No, but given the database and the title V permit applications, ease of accessibility, and minimal burden, permitting authorities should be able to determine whether all, not just a few, sources subject to parts 68 and 70 or 71 have submitted RMPs. Note that this audit function differs from the audit function that is to be performed by implementing agencies.