

Ohio EPA
Division of Air Pollution Control

inter-office communication

to: District Office Air Unit Supervisors/Local Air Agency Directors

from: Jennifer Nichols, CO DAPC

subject: Guidance entitled "Ensuring the Correct Person is Acting as the Responsible Official for a Facility Subject to Air Pollution Regulations"

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ENSURING THE CORRECT PERSON IS ACTING AS THE RESPONSIBLE OFFICIAL FOR A FACILITY SUBJECT TO AIR POLLUTION REGULATIONS

The following guidance is intended to provide clarification for Ohio EPA staff regarding who can act as the responsible official for purposes of submitting applications, certifying required reporting information and attesting to information required under Ohio law for air fee emission reporting. Ohio EPA staff may use this guidance internally or provide it directly to permittees requesting information. The guidance covers the following areas:

- Identification of the responsible official for sources subject to Ohio Administrative Code (OAC) Chapter 3745-77
- Identification of the person responsible for the source or the signatory, herein referred to as the "signatory authority" for sources subject to OAC Chapter 3745-31 and/or OAC Chapter 3745-35
- Notification requirements for situations where a responsible official or signatory authority chooses to delegate responsibility

Title V Purposes

OAC Rule 3745-77-01(GG) provides the definition of responsible official for a corporation; a partnership or sole proprietorship; a municipality or state, federal or other public agency; and for affected sources under the Acid Rain Program. Clarification is provided below for each.

Corporation

Option 1 - Direct Authorized: no notification or approval by the Director required

Only the president, secretary, treasurer, or vice-president in charge of a principal business function can act as the responsible official without notification to the Ohio EPA .

Any other person who may have a title that differs from those above, but performs the same functions for the corporation as those above, would also qualify. For example, a corporation may not have a person formally titled “president”, but it has a person titled “chief executive officer (CEO)” or “executive director” who performs the same functions that a president would. In such situations, these alternatively named individuals would qualify as the responsible official.

Option 2 - Delegated Authorization: notification requested, approval by the Director not required

The responsible official can duly authorize a representative to perform the functions of the responsible official if the representative is responsible for the overall operation of one or more facilities (manufacturing, production, or operating facilities applying for or subject to a permit). ***Persons responsible for only certain aspects of operation, such as environmental managers, do not qualify to be an authorized representative.*** The responsible official can delegate authorization to multiple persons for multiple facilities, but delegation to multiple persons cannot occur for the same facility (i.e 10 facilities could have 10 different authorized representatives, but one facility cannot have 10 different authorized representatives). Authorized representation can only be delegated by the responsible official when the representative person is responsible for the overall operation of the facility(ies) and one of the following conditions is also met :

1. **Option 2a:** The facility(ies) for which the responsible official is delegating authorization to a representative must employ 250 or more persons, or;
2. **Option 2b:** The facility(ies) for which the responsible official is delegating authorization to a representative must have gross annual sales or expenditures in excess of \$25 million (in second quarter 1980 dollars). Twenty five million dollars in 1980 would be equivalent to \$54.6 million dollars in 2002 (using the consumer price index(CPI)).

For example, President Smith of ABC Company has four facilities, in Ohio. Mr. Smith wishes to authorize three separate representatives for the four facilities as follows:

- Mr. Johnson, the Regional Manager of Operations, will represent Facility 1 and Facility 2. Combined, there are 320 employees at the facilities and annual sales exceed \$60 million.
- Mr. Jones, the Plant Manager, will represent Facility 3. Facility 3 employees 256 employees and has annual sales or expenses of approximately \$21 million.
- Ms. Doe, the Plant Manager, will represent Facility 4. Facility 4 employees 190 employees and has annual sales or expenses of approximately \$18 million.

Mr. Johnson and Mr. Jones qualify to act as the responsible official on behalf of President Smith, but Ms. Doe does not meet either of the two criteria although she is responsible for the overall operation of the facility. There is another option for Ms. Doe (see **Option 3** below).

Option 3 - Delegated Authorization: notification and authorization by the Director required

The authorized representative can request approval of the delegation from the director of the Ohio EPA for a chosen representative if the chosen representative who will be duly authorized to represent the responsible official is responsible for the overall operation of the facility(ies) but does not meet either of the two criteria above. This must be approved in advance of the representation.

Partnership or Sole Proprietorship

Only a general partner or the proprietor can act as the responsible official.

Municipality or State, Federal, or Other Public Agency

Only the ranking elected official or a principal executive officer responsible for the overall operations of the agency, principal geographic unit, or installation can act as the responsible official. The ranking elected official for a city, county, state or federal agency would be the mayor, county commissioner, governor or president, respectively. The principal executive officer will vary from agency to agency but must oversee, control and manage all aspects of the agency, geographic unit, or installation and have the authority to allocate funds to address environmental issues. The example provided in 40 CFR Part 70 lists the regional administrator of the U.S. EPA as the principal executive officer. In this example, the principal executive officer presides over a large geographic unit because the U.S. EPA is divided into regions with administrators responsible for the overall operation assigned to each region. Not all government

agencies will be organized into large geographic units and the principal geographic unit may be as small as the installation itself. For example, the responsible official for a government operated correctional institution is the warden because the warden presides over a given installation. Likewise, for a government operated educational institution such as a college or university, the responsible official would be the dean or the president, respectively.

Affected Sources (Title IV Acid Rain Program Sources)

The designated representative may act as the responsible official for Title V purposes. Under Title IV of the Act, Section 402 of the Clean Air Act, a designated representative is defined as “a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.”

This is an option for an affected source. In the event the designated representative chooses to act as the responsible official for Title V purposes, OAC 3745-103-06 discusses how the designated representative performs when submitting documents to the Ohio EPA. In the event the designated representative chooses not to act as the responsible official for Title V purposes, the responsible official rules described in this document and contained in OAC Chapter 77 are followed.

State Permit to Install (PTI) and Permit to Operate (PTO) Purposes

OAC Rules 3745-31-04(B) and 3745-35-02(B) provide the definition of whom may act as the “signatory” for PTI and PTO application purposes, respectively. Both rules provide definitions equivalent to the Title V rules responsible official definition for a corporation; a partnership or sole proprietorship; and a municipal, state, federal or other governmental agency. In addition, Ohio Revised Code (ORC) 3745.11.1 requires the “person responsible for the source” submit information to be used for emission fee purposes. In cases where a signature is not required by a permit or rule, the following sections are not applicable.

Corporation

Option 1 - Direct Authorized: no notification or approval by the Director required

For PTI and PTO purposes, only the principal executive officer of at least the level of vice president can act as the signatory authority .

As described under the Title V section, any other person who may have a title that differs from

those above, but performs the same functions for the corporation as those above, would also qualify. For example, a corporation may not have a person formally titled president, but it has a person titled chief executive officer (CEO) or executive director who performs the same functions that a president would.

Option 2 - Delegated Authorization: notification requested, approval by the Director not required

Similar to that described under the Title V section, the signatory authority can duly authorize a single representative to perform the functions of the signatory authority if the representative is responsible for the overall operation of the facility. *Persons responsible for only certain aspects of operation, such as environmental managers, do not qualify to be an authorized representative.* Under the State PTI and PTO programs there are no criteria where delegation by the Director would be required.

Partnership or Sole Proprietorship

Only a general partner or the proprietor can act as the signatory authority .

Municipality or State, Federal, or Other Public Agency

Option 1 - Direct Authorized: no notification or approval by the Director required

The principal executive officer or ranking elected official can act as the signatory authority . The Title V section of this document provides additional clarification regarding these positions.

Option 2 - Delegated Authorization: notification requested, approval by the Director not required

Unlike the Title V program, the State PTO and PTI programs provide a second option where a single duly authorized employee may be delegated the authorization to act as the signatory authority. Consistent with corporations, the employee should be responsible for the overall operation of the facility. *Persons responsible for only certain aspects of operation, such as environmental managers, do not qualify to be an authorized representative.*

Notification Requirements

It should be requested that facilities who exercise **Option 2** under the Title V or State programs

notify both the district or local Division of Air Pollution Control (DAPC) office(s) responsible for the facility(ies) affected by the authorization and Jennifer Nichols at central office DAPC. This notification should be signed by the current responsible official or signatory authority and include the following information: facility(ies) name and identification number(s), person(s) who will be duly authorized for each facility(ies) with title, a statement affirming the person(s) named are responsible for the overall operation of the facility(ies) and for Title V facilities, which of the two criteria apply.

If **Option 3** will be applicable to the facility(ies), the current responsible official is required to make this request in writing, and receive approval, prior to permitting the representative to sign-off on required documents or certify compliance. A letter, addressed to the director of the Ohio EPA, should be signed by the current responsible official and include the following information: facility(ies) name and identification number(s), person(s) who will be duly authorized for each facility(ies) with title, a statement affirming the person(s) named is responsible for the overall operation of the facility(ies), a statement that the facility(ies) does not meet either the 250 persons employed or \$25 million in sales/expenses criteria and that it is requested the director approve the delegation of authority.