COMMENTS ON ESTABLISHMENT OF ELECTRONIC REPORTING; ELECTRONIC RECORDS

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1200 Pennsylvania Avenue NW
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Submitted By: Mark Bohrer
UIC Manager
North Dakota Industrial Commission
Oil and Gas Division
600 East Boulevard
Bismarck, ND 58505
Telephone: (701) 328-8020
Email: mfb@saturn.ndic.state.nd.us

The North Dakota Industrial Commission, Oil and Gas Division manages the Class II UIC program through a primacy agreement with the EPA.

Thank you for the opportunity to provide comments concerning EPA's proposed rule: Establishment Of Electronic Reporting; Electronic Records. This proposed rule is commonly referred to as Cross-Media Electronic Reporting and Recordkeeping Rule (CROMERRR). I will refer to this proposed rule throughout my comments by its acronym, CROMERRR.

The apparent purpose of CROMERRR is to allow voluntary electronic recordkeeping and submission of electronic documents to EPA. The EPA believes that in order to maintain trustworthy and reliable electronic records, the electronic record-retention system must:

1. Generate and maintain accurate and complete electronic records in a form that may not be altered without detection;

2. Ensure that electronic records are not altered throughout the retention period;

3. Produce readily available copies of the electronic records throughout the retention period;

4. Ensure that any record bearing an electronic signature contains the name, the date and time, and any information that explains the meaning affixed to the signature;

5. Ensure that electronic signatures affixed to a record cannot be compromised;

6. Use secure, computer-generated, time-stamped audit trails that automatically record the date and time of operator entries and actions that create, modify, or delete electronic records;

7. Ensure that electronic records are searchable and retrievable for reference and secondary uses throughout the retention period;

8. Archive electronic records in an electronic format which preserves the context, metadata, and audit trail. If necessary, ensure that complete records can be migrated to a new system including related metadata throughout the retention period;

9. Make computer systems, controls, and attendant documentation readily available for inspection.

In addition, a system used to receive electronic documents must have robust safeguards to prevent unauthorized access to the system or any electronic signature, provide for the detection of unauthorized access or attempted access to the system or electronic signatures, provide safeguards to prevent modification of electronic records or signatures, prevent tampering of the system clock, and provide safeguards to prevent any other compromise of the system.

The provision to make CROMERRR a voluntary rule appears to evolve into a mandatory requirement when electronic recordkeeping requirements of an EPA administered environmental program are required to be maintained by an acceptable electronic record retention system as specified in this proposed rule.

The definition of an electronic record as any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved, or distributed by a computer system seems onerous in that a record generated by computer but archived in a paper format would not meet the apparent electronic record retention requirement. If a paper archive is preferred by an entity, it apparently would be required to retain the electronic record that was used to generate the paper copy. In today's business environment, computers are used extensively if not exclusively to maintain and/or generate all documents. The retention of all electronic records used to generate reports to the EPA for the required retention period would be burdensome, expensive, and inefficient. This does not appear to be "voluntary". In addition, the possibility also exists that the electronic format utilized to retain electronic records may not be supported for the entire retention period and

transfer of these records to another format in such a manner that maintains the complete record and always in a readily readable format, may be very expensive, and in some instances, impossible.

CROMERRR also indicates that EPA will inform any regulated company or other entity that maintains records addressed by this proposed rule under EPA regulations, when they can store records electronically. Does this mean that current electronic records and record retention systems utilized by state agencies or regulated companies that are used to report to the EPA are impermissible or unacceptable?

Not all current legacy systems can meet retention requirements such as the auditing requirement, and if they can, do not retain these audit records for an extended period of time such as five years. Requiring retention of all electronic records and the audit trail for five years would be expensive, time-consuming, and inefficient.

The development of a record retention plan, the training of appropriate personnel, the purchase of any necessary hardware/software, the cost of storing these electronic records for the specified timeframe, and managing of these electronic records would be expensive, time-consuming, and inefficient. In North Dakota, these costs may exceed or significantly impact the grant monies allocated to our agency by the EPA for management of the UIC Class II program. The costs associated with the retention and management of electronic records pursuant to this proposed rule would be in the tens of thousands of dollars. Would an agency such as ours be better off relinquishing primacy of the program back to the EPA and not deal with burdensome requirements?

Our agency has spent considerable time, money, and effort to develop Microsoft Excel® electronic forms for data submission. Would this effort be wasted since Excel does not contain an audit trail capability and these forms would not meet record retention requirements under CROMERRR?

It would appear that fraud in reporting to the EPA must be rampant based upon the fraud-prevention emphasis in this proposed rule. Historically, states and regulated companies have reported data to the EPA, previously exclusively with pen and paper documents, and more recently with electronic documents, even if it is used only to generate the paper copy. These documents could easily be altered. Is the incidence of fraud associated with these documents such that the migration to a truly electronic reporting and retention system necessitates this quantum leap in security and its associated costs? Is the incidence of fraud so prevalent that every entity that reports to the EPA should be subject to these burdensome requirements and penalized for others "sins"? It is already a crime to fraudulently report to an enforcement authority. Is the incidence of fraud so great that the extra costs associated with this proposed rule are worth the benefit?

Our agency maintains a strong field presence and strives for good working relationships with our regulated community. Because of this relationship, we feel that fraud in reporting by our regulated community is extremely low or non-existent. Our

agency also has always maintained a good working relationship with the EPA, and in the fourteen years I have been associated with the North Dakota Industrial Commission, Oil and Gas Division, there has never been any mention of fraud under any circumstances by the EPA. It would appear that the EPA trusts our agency and our record management. Is it necessary and worth the cost to migrate to a total lockdown of records? If record management is adequate now, why not allow for a means to "grandfather" in systems and management of those systems?

If the incidence of fraud is not prevalent or excessive, less stringent electronic reporting and retention requirements would be adequate.

The goal of electronic reporting and record retention should be to encourage, not discourage, its use. The costs and time constraints associated with this proposed rule are too burdensome; it will discourage implementation of electronic reporting and record retention systems.

Respectfully submitted,

Mark Bohrer