

# OP-MEMO'S

Op memo's: The good, the bad and the ugly!

Op Memo's when done correctly, can work very well. It is my opinion that the system works well when there is open communication between the agency and the regulated community. Op Memo's should also not be used as regulation, but rather as guidance or as a way to clarify regulation. If the goal is regulation, Op Memo's are not the way to achieve this goal.

One example of an acceptable Op Memo is the Spill Op Memo, POG #3. After the Michigan utilities discussed the reporting of spills, it was determined that we all reported spills differently, based on different interpretations of the regulations. We discussed the situation with the agency and decided it would be best if we could all sit down at the table and decide how best to report under the current regulation, making "consistency and accuracy" our goals. This was a perfect example of where an "Op Memo" should be used... to clarify regulation, not create new regulations. The agency and the regulated community worked together and now we have a consistent reporting procedure that implements the regulation more efficiently. It is easy to follow, everyone is on the same page, and everyone is aware of it!

Fellow I&M employees have informed me they have been told to use Operational Memo Gen-8, Revision 6 (August 7, 2002) for reporting the analyses of laboratory samples. There are a number of technical and legal issues this memo raises; two are of immediate concern to this committee. Op Memo Gen-8 is an example of a regulation issued as an Op Memo and the Op Memo was developed without public involvement. This memo sets Reporting Limits for a long list of chemicals. Reporting Limits is a new term with a new definition and the application of the definition has direct regulatory application. That the memo was developed without public involvement is implied from the first page heading that identifies the memo as interoffice communication.

Another comment I've heard from fellow I&M employees who have encountered Op Memo's is the fact they were not aware of the Op Memo until an inspection occurs. This is troublesome. Op Memo's need the involvement of the regulated community and must be communicated to us prior to their implementation.

"Where exactly can you find Op Memo's?" If the regulated community is to comply with the conditions and terms of Op Memos, they need easy access to all Ops Memos. I searched the MDEQ website all morning and through trial and error, I found some of the Op Memo's. Actually, when I searched for Op Memo Gen-8, an old revision (4) appeared on the search list and the current version did not even show up. This really creates confusion. There should be a list of the Op Memo's somewhere on the DEQ webpage. One of the tasks of this committee needs to be determining where they should be placed and what cross

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indexing should be done where the Op Memo affects more than one area of regulation such as air, waste, water, etc.

Op Memo's, if we continue to use them, must be easy to find and use. Old revisions must be archived when no longer in use. This would allow us to see the changes from revision to revision, but it needs to point you to the current revision. With today's technology, this is something that could be accomplished rather easily. The search engine on the MDEQ's website needs to be user friendly as well.

In summary, I do think Op Memo's play a vital role in today's world and should be used when implemented properly. You must have input from the regulated community, they should only be used to clarify regulation, not create regulation, they must be clear and easy to use and finally, they must be made available to the regulated community to use with ease (i.e., easy to find). A Notice of Violation (NOV) should never be based upon an Op Memo. NOV's are taken very seriously by the regulated community and NOV means that a regulation has been violated, not the guidance given in an Op Memo.

Thank you,

Jeni Miller  
Indiana Michigan Power (AEP)