

US EPA ARCHIVE DOCUMENT

alcoholic," and "alcohol-free," as used on labels, in accordance with § 7.26 (b), (c), and (d).

Signed: December 16, 1988.
Stephen E. Higgins,
Director.

Approved: January 4, 1989.
Salvatore R. Martoche,
Assistant Secretary (Enforcement).
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3508-3; Docket No. AM704]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Delaware Department of Natural Resources and Environmental Control

AGENCY: Environmental Protection Agency.

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emissions Standards for Hazardous Air Pollutants (NESHAP). On August 20, 1987, the State of Delaware Department of Natural Resources and Environmental Control (DNREC) requested delegation of authority for an additional NESHAP source category to implement and enforce NESHAP regulations for Equipment Leaks of Benzene. The benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Part 61, Subparts A, J, and V (July 1, 1987 revision). EPA granted the request on November 10, 1987, with the understanding that EPA will retain full responsibility for the application of the benzene NESHAP to Texaco Refining and Marketing, Inc. (TEXACO), until the current litigation with EPA is concluded. Certain provisions that address standard setting and waiver of compliance have not been delegated. Those provisions are cited at 40 CFR 61.06, 61.11, 61.12(d), 61.13(h), 61.14(g), 61.16 and 61.244. The State has the authority to implement and enforce the NESHAP regulation for Equipment Leaks of Benzene as of the date of the publication of this notice.

EFFECTIVE DATE: January 25, 1989.

ADDRESSES: Copies of the delegation and accompanying documents are

available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,
Region III, 841 Chestnut Building,
Philadelphia, Pennsylvania 19107,
Attn: Joseph W. Kunz.
State of Delaware, Department of
Natural Resources and Environmental
Control, 89 Kings Highway, P.O. Box
1401, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT:
Kelley Yost of EPA, Region III above,
telephone (215) 597-2746.

SUPPLEMENTARY INFORMATION: The Delaware Department of Natural Resources and Environmental Control (DNREC) was delegated the authority to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. Notice of that delegation was published at 43 FR 6771 (February 15, 1978). They also requested and were delegated authority for several other NESHAP source categories for which EPA published notifications at 44 FR 70465 (December 7, 1979), 47 FR 17989 (April 27, 1982), and 51 FR 12144 (April 9, 1986).

On August 24, 1987, the Secretary of The Delaware Department of Natural Resources and Environmental Control submitted a letter to EPA Region III, requesting delegation of the benzene NESHAP. The following letter was sent to Delaware on November 10, 1987, delegating authority for the benzene NESHAP.

Mr. Robert R. French,
Manager, Air Resources Section, Delaware
Department of Natural Resources &
Environmental Control, P.O. Box 1401,
Dover, Delaware 19901

Dear Mr. French: This letter responds to your August 20, 1987 request to EPA, for delegation of authority to the Delaware Department of Natural Resources & Environmental Control (DNREC) to enforce the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Equipment Leaks of Benzene, 40 CFR Part 61, Subparts A, J, and V (collectively referred to as the benzene NESHAP).

We have reviewed the pertinent laws, rules and regulations of the State of Delaware and have determined that they continue to provide adequate and effective procedures for implementation and enforcing the NESHAP. Therefore, EPA delegates primary authority for implementation and enforcement of the benzene NESHAP, as delegated, will be incorporated by reference to 40 CFR Subparts A, J, and V as of July 1, 1987.

This delegation will become effective upon publication, by EPA, in the Federal Register. At that time, certain conditions and exceptions to this delegation will be set forth. This delegation is granted with the understanding that EPA will retain full responsibility for the application of the

benzene NESHAP to Texaco Refining and Marketing, Inc. (Texaco), in Delaware City, until all current EPA litigation pertaining to Texaco for benzene NESHAP is resolved in federal courts.

This Notice now sets forth the conditions and exceptions to this delegation of responsibility for the benzene NESHAP to Delaware. The following provisions of the NESHAP regulations are excepted from this delegation, and EPA retains exclusive authority for their application:

- Determination of whether actions intended to be taken constitute construction or modification of a source subject to a standard (40 CFR 61.06).
- Waiver of compliance from existing sources. (40 CFR 61.11)
- Allowance of alternative means of compliance. (40 CFR 31.12(d))
- Approved of specified on alternative emission testing. (40 CFR 61.13(h))
- Approval of specified or alternative monitoring requirements. (40 CFR 61.14(g))
- Determination of public availability of information (40 CFR 61.16)
- Allowance of use of alternative means of emission limitation. (40 CFR 61.244)

Enforcement of the NESHAP regulation for Equipment Leaks of Benzene in the State of Delaware will primarily be the responsibility of the DNREC.

Pursuant to section 112(d)(2) of the Clean Air Act, 42 U.S.C. 7412(d)(2), EPA retains authority to enforce any NESHAP standard whenever such enforcement is deemed by the EPA to be necessary to carry out the purposes of the Clean Air Act. Where the Department determines that such enforcement is not feasible and so notifies EPA when the DNREC acts in a manner inconsistent with the term of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Delaware subject to NESHAP regulations.

The reporting provisions of 40 CFR 61.04 requiring sources to make submission to the EPA will be satisfied only by making such submission to both the DNREC and to EPA, Region III.

The DNREC and U.S. EPA Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DNREC interpretation and Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DNREC. This system of communication will insure that both agencies are informed on:

- The current compliance status of subject sources in the State of Delaware;
- The interpretation of applicable regulations;
- The description of sources and source inventory data; and,
- Applications for compliance test waivers and approval of waivers for matters where EPA retains authority for such waivers pursuant to this delegation.

From time to time when appropriate, the DNREC will revise its NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NESHAP pollutant source categories.

If the Director of the Air Management Division, or other appropriate staff at EPA Region III, determines that a DNREC program of enforcing or implementing the NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DNREC.

This delegation is effective upon publication. There is no requirement that the DNREC notify the U.S. EPA of its acceptance.

Unless U.S. EPA receives from the DNREC written notice of objections within ten (10) days of publication of this notice, the DNREC will be deemed to have accepted all of the terms of the delegation.

The Office of Management and Budget has exempted this delegation of authority from the requirements of section 3 of Executive Order 12291.

Authority: Section 112(d), the Clean Air Act 42 U.S.C. 7412(d).

Date: January 12, 1989.

James M. Self,
Regional Administrator.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination on the Basis of Age in Federally-Assisted Programs

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: These final regulations implement the provisions of the Age Discrimination Act of 1975, and the government-wide regulations published in the *Federal Register* on June 12, 1979 (44 FR 33768, June 12, 1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

The Age Discrimination Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Job Partnership Training Act. The Act applies to persons of all ages.

These final regulations are designed to guide the actions of recipients of financial assistance from the Department of the Interior (DOI). They discuss the responsibilities of DOI recipients and the investigation, conciliation and enforcement procedures DOI will use to ensure compliance with the Act.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Charlene D. Hutchinson, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240, or phone (202) 343-3443 (voice) or (202) 343-3434 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94-135). The Age Discrimination Act was amended by the Civil Rights Restoration Act of 1988 (Pub. L. 100-259).

The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act prohibits recipients of Federal financial assistance from taking actions that result in denying or limiting services or otherwise discriminating on the basis of age. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. The Act applies only to programs or activities in which there is an intermediary (recipient) standing between the Federal financial assistance and the ultimate beneficiary of that assistance. The Act does not apply to programs of direct assistance (such as the National Parks System) in which Federal assistance flows directly and unconditionally from the Federal government to the individual beneficiary. In accordance with the Act, the Secretary of the Department of Health, Education and Welfare (now the Department of Health and Human Services (HHS)) issued government-wide regulations to guide the development of agency-specific regulations by each Federal agency that administers programs of Federal financial assistance; (44 FR 33768, June 12, 1979, codified at 45 CFR Part 90). These final regulations are intended to be consistent with HHS' government-wide regulations. These final regulations were approved by HHS on August 10, 1988.

The Civil Rights Restoration Act of 1987, Pub. L. 100-259 (CRRA), was enacted on March 22, 1988, subsequent to the publication of these rules as proposed regulations. The CRRA, among other matters, amends the Age Discrimination Act of 1975, and other civil rights statutes, to define the term "program and activity" to mean all of the operations of specified entities. For State and local governments, only the department or the agency that receives the aid is covered. For private corporations, if the federal aid is extended to the corporation as a whole, or if the corporation is principally engaged in providing education, health care, housing, social services or parks and recreation, the entire corporation is covered. If the federal aid is extended to only one plant or geographically separate facility of other private businesses, only that plant is covered. For other entities, established by two or more of the entities listed in the statute, the entire entity is covered if it receives any federal aid. The CRRA leaves in effect the enforcement structure and adds no new language to the fund termination provision of the Age Discrimination Act. The CRRA contains a provision which leaves intact the current exemption from coverage by the civil rights laws for "ultimate beneficiaries" of federal financial assistance such as farmers who receive assistance under commodity programs or other comparable programs.

DOI published proposed regulations in the *Federal Register* on October 21, 1987 (52 FR 39243, October 21, 1987). Publication of the proposed rule was followed by a 30 day comment period. Comments, suggestions, and recommendations were requested by November 20, 1987. No comments were received.

In order to be consistent with HHS' government-wide rule (45 CFR Part 90), several sections of the proposed rule have been revised. The last sentence of § 17.335(a)(1), "Compliance Procedures" has been deleted to ensure consistency with 45 CFR Part 90. Section 17.335(b) has been revised to more precisely reflect the degree of "pinpointing" required by the Age Discrimination Act and to make this section consistent with the government-wide rule.

Section 17.303(b) "Definition," has been corrected to include "or the use of any policy, rule, standard, or method of administration." This portion of the definition was inadvertently omitted from the proposed rule.

In addition to publishing specific regulations consistent with the government-wide regulations, the