

US EPA ARCHIVE DOCUMENT

2. Section 52.2120 is amended by adding paragraph (c)(32) to read as follows:

§ 52.2120 Identification of plan.

- (c) * * *
- (32) Provisions for PM₁₀ submitted on April 29, 1988 and April 4, 1989, by the South Carolina Department of Health and Environmental Control. The April 29, 1988, submittal contained revisions that were effective on April 22, 1988. The April 4, 1989, submittal contained revisions that were effective on March 24, 1989.
- (i) Incorporation by reference.
- (A) Regulation 62.1, Definitions, Permit Requirements, and Emissions Inventory as revised by the addition on April 22, 1988, of Section I, Nos. 22, 23, 25, and 42.
- (B) The following portions of Regulation 62.3, Air Pollution Episodes were revised April 22, 1988.
- (1) Section I.
- (2) Section II, Introductory paragraph.
- (C) The following portions of Regulation 62.5, Standard No. 1—Emissions from Fuel Burning Operations were revised April 22, 1988:
- (1) Section II, Title.
- (2) Section VI, Introductory paragraph
- (D) Regulation 62.5, Standard No. 2—Ambient Air Quality Standards revised April 22, 1988.
- (E) The following portions of Regulation 62.5, Standard No. 4—Emissions from Process Industries were revised April 22, 1988.
- (1) Section III
- (2) Section VIII (A)
- (3) Section XI, Introductory paragraph
- (F) The following portions of Regulation 62.5, Standard No. 7—Prevention of Significant Deterioration were revised April 22, 1988.
- (1) Section I, Part V(1)
- (2) Section II, Part A
- (3) Section III Part H(1)
- (4) Section IV Part E(4)
- (G) The following portions of Regulation 62.5, Standard No. 7—Prevention of Significant Deterioration were revised March 24, 1989.
- (1) Section III, Part D, (6) and (7)
- (2) Section III Part (J)(3), (4), and (5)
- (3) Section IV Part (H)(4)
- (ii) Other materials.
- (A) Letters of April 29, 1988, and April 4, 1989, from the South Carolina Department of Health and Environmental Control which address PM₁₀ revisions.
- (B) Revised narrative on particulate matter.

[FR Doc. 89-23329 Filed 10-2-89; 8:45 am]

BILLING CODE 6560-60-M

40 CFR Parts 60 and 61

[FRL-3651-1; Docket No. AMO705]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Delaware

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act (CAA) permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR parts 60 and 61, Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). On December 21, 1988, the State of Delaware requested EPA to delegate to it the authority for additional NSPS and NESHAP source categories.

EFFECTIVE DATE: April 26, 1989.

ADDRESSES: Applications and reports required under NSPS and NESHAP source categories which EPA has delegated Delaware authority to implement and enforce should be addressed to: Mr. Robert French, Delaware Department of Natural Resource and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901, rather than to EPA Region III.

FOR FURTHER INFORMATION CONTACT: Terry Yost at (215) 597-2746.

SUPPLEMENTARY INFORMATION: On December 21, 1988, the State of Delaware requested additional NSPS and NESHAP source categories. Delaware requested these delegations to supplement the delegations for other source categories which the State had already received and which EPA had published notifications at 43 FR 66771 (1978), 44 FR 70465 (1979), 46 FR 28402 (1981), 48 FR 41764 (1983), 47 FR 17989 (1982), 51 FR 12144 (1986).

The following letter was sent to Delaware on delegating authority for additional source categories:

Dear Secretary Clark:

On December 21, 1988, Mr. Wilson, former Secretary, requested that EPA delegate to the State of Delaware the authority to implement and enforce additional New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for various NSPS and NESHAP source categories. These additional source categories are as follows:

1. Standards of Performance for Petroleum Liquids for which Construction, Reconstruction, or Modification commenced after June 11, 1973, and prior to May 19, 1978. This action would replace the previous

delegation with EPA revised version of 6/16/87.

2. Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification commenced after May 18, 1978, and prior to July 23, 1984. This amends the previous delegation, EPA's revised version, to incorporate the 40 CFR part 60, Subpart Ka (4/8/87).

3. Standards of Performance for Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry. This action will replace the previous delegation to incorporate EPA revised version of 1/21/86.

4. Standards of Performance for Industrial-Commercial-Industrial Steam Generating Units. This is an additional adoption by reference of the Federal NSPS, subpart D which was promulgated on 11/25/88.

5. Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels), for which Construction, Reconstruction, or Modification commenced after July 23, 1984. This is an additional adoption by reference of the Federal NSPS subpart Kb, which was promulgated on 6/16/87.

6. National Emission Standards for Mercury. This action will replace the 2/15/78 delegation with EPA revised version of 3/19/87.

7. National Emission Standards for Vinyl Chloride. This action will replace the 4/27/82 delegation with EPA revised version of 9/30/86.

8. National Emission Standards for Equipment Leaks (Fugitive Emission Sources). This action will replace the delegation with EPA revised version of 7/1/86.

Also requested was EPA's approval of Delaware's adoption by reference of the following Test Methods for the determination of compliance with applicable New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants:

1. 40 CFR, part 60, Standards of Performance for New Stationary Sources: Appendix A, Reference Methods, Miscellaneous Clarifications and Additions of Concentration Calculation Equations to Method 19, 1987, pp. 5106-5112, and the corrections as they appear in 40 CFR, part 60, Vol. 52, No. 64, Friday, April 3, 1987, p. 10852.

2. 40 CFR, part 60, Standards of Performance for New Stationary Sources: Addition of Alternative Procedures (Critical Orifice as Calibration Standards) to Method 5, Appendix A, published in the Federal Register Vol. 52, No. 58, Thursday, March 26, 1987, pp. 9658-9662, and the corrections as they appear in 40 CFR, Part 60, Vol. 52, No. 115, Thursday, June 16, 1987, p. 22888.

3. 40 CFR, part 60, Standards of Performance for New Stationary Sources: Reference Methods; Method 15A for the Determination of Total Reduced Sulfur Emissions from Sulfur Recovery Plants in Petroleum Refineries, published in the Federal Register, Vol. 51, No. 107, Wednesday, June 4, 1986, p. 20288.

4. 40 CFR, part 60, Standards of Performance for New Stationary Sources;

Addition of Alternative Procedure to Method 1 of Appendix A; Measurement Location, published in the Federal Register, Vol. 51, No. 107, Wednesday, June 4, 1986, p. 20288.

5. 40 CFR, part 60, Standards of Performance for New Stationary Sources, subparts D and Da, Appendix A, published in the Federal Register, Vol. 51, No. 112, Wednesday, June 11, 1986, pp. 21164-21172, and the corrections as they appear in 40 CFR, part 60, Vol. 52, No. 101, Wednesday, May 27, 1987 p. 198797.

6. 40 CFR, part 60, Appendix B, Alternative Procedure to Performance Specification 2, for SO₂ and NO_x Continuous Emission Monitoring Systems, published in the Federal Register, Vol. 51, No. 115, Monday, June 16, 1986.

7. 40 CFR, part 60, Appendix F, Procedure 1, Quality Assurance Requirements for Gaseous Continuous Emission Monitoring Systems Used for Compliance Determination, Published in the Federal Register, Vol. 52, No. 107, Thursday, June 4, 1987, pp. 21007-21010.

8. 40 CFR, part 61, Test Method 107 for National Emission Standards for Hazardous Air Pollutants, published in the Federal Register, Vol. 52, No. 104, dated Monday, June 1, 1987.

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 implementing and enforcing the NSPS and NESHAP regulations. Therefore, we hereby delegate our authority for the implementation and enforcement of the NSPS and NESHAP regulations listed above to the State of Delaware for all sources located or to be located in Delaware that fall under the requirements of these regulations. We also approve Delaware's adoption by reference of the above test methods and test method revisions.

This NSPS and NESHAP delegation is based upon the following conditions:

1. Quarterly reports which may be combined with other reporting information are to be submitted to EPA Region III, Air Enforcement Section (3AM20) by the Delaware Department of Natural Resources and Environmental Control (DNREC) and should include the following:

- (i) Source determined to be applicable during that quarter.
- (ii) Applicable sources which started operating during that quarter or which have not been previously reported;
- (iii) The compliance status of the above, including the summary sheet from the compliance test(s); and
- (iv) Any legal actions which pertain to these sources.

2. Enforcement of the NSPS and NESHAP regulations in the State of Delaware will be the primary responsibility of the DNREC. Where DNREC determines that such enforcement is not feasible and so notifies EPA, or where DNREC acts in a manner inconsistent with the terms of this delegation, 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 NSPS regulations.

3. Acceptance of this delegation of regulations for the source categories listed

above does not commit the State of Delaware to request or accept delegation of other present or future standards and requirements. A new request for delegation will be required for any additional standards or amendments to previously delegated standards.

4. DNREC will not grant a variance from compliance with the applicable NSPS and NESHAP regulations if such variances delays compliance with the Federal Standards. Should DNREC grant such a variance EPA will consider the source receiving the variance to be in violation of the applicable Federal regulation and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The grant of such variance by the Agency shall also constitute grounds for revocation of delegation by EPA.

5. DNREC and EPA 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 DNREC's interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of DNREC.

6. If at any time there is a conflict between DNREC and the Federal regulation found at 40 CFR part 60, the federal regulation must be applied if it is more stringent than that of DNREC. If DNREC does not have to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

7. DNREC will utilize the methods specified in 40 CFR part 60 in performing source tests pursuant to these regulations. However, alternatives to continuous monitoring procedures and requirements may be acceptable upon concurrence by EPA as stipulated in 40 CFR 60.13.

8. If the Director of the Air Management Division determines that DNREC's program for enforcing or implementing the NSPS and 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 or Revocation to DNREC.

EPA procedures permit delegation of all the Administrator's authorities under 40 CFR parts 60 and 61 except for any which require rulemaking in the Federal Register to implement or where Federal overview is the only way to ensure national consistency in the application of standards. Accordingly, the following authorities are not delegable under section 111 of the Clean Air Act, as amended.

1. Performance Tests, §§ 60.8(b)(2) and 60.8(b)(3). In order to ensure uniformity and technical quality in the test methods used for enforcement of national standards, EPA will retain the authority to approve alternative and equivalent methods which effectively replace a reference method. This restriction on delegation does not apply to 60.8(b)(1), which allows for approval of minor modifications to reference methods on a case-by-case basis.

Some subparts include general references to the authority in § 60.8(b) to approve alternative or equivalent standards. Examples include, but are not necessarily

limited to §§ 60.11(b), 60.274(d), 60.396(a)(1), 60.396(a)(2), and 60.393(c)(1)(i). These references are reminders of the provisions of paragraphs 60.8 and are not separate authorities which can be delegated.

2. Compliance with Standards and Maintenance Requirements § 60.195(e). The granting of an alternative opacity standard requires a site-specific capacity limit to be adopted under 40 CFR part 60.

3. Subpart S, § 60.195(b). Development of alternative compliance testing schedules for primary aluminum plants is done by adopting site-specific amendments to Subpart S.

4. Subpart Da § 60.45a. Commercial demonstration permits allow an alternative emission standard for a limited number of utility steam generators.

5. Subpart GC, §§ 60.332(a)(3) and 60.335(a)(ii). These sections pertain to approval of customized factors (fuel nitrogen content and ambient air conditions, respectively), for use by gas turbine manufacturers in assembly-line compliance testing. Since each approval potentially could affect emissions from equipment installed in a number of States, the decisionmaking must be maintained at the Federal level to ensure national consistency. Notice of approval must be published in the Federal Register.

6. Equivalency Determinations, section 111(h)(3) of the Clean Air Act. Approval of alternative to any design, equipment, work practice, or operational standard, e.g., §§ 60.114(a) and 60.302(d)(3) is accomplished through the rulemaking process and is adopted as a change to the individual subpart.

7. Innovative Technology Waiver, section 111(i) of the Clean Air Act. Innovative Technology waivers must be adopted as site-specific amendments to the individual subpart. Any questions pertaining to such waivers should be sent to the Director of the Air Management Division, Region III. (States may be delegated the authority to enforce waivers provisions if the State has been delegated the authority to enforce NSPS.)

8. Determination of Construction or Modification (Applicability), § 60.5. In order to ensure uniformity in making applicability determinations pertaining to sources, EPA will retain this authority. The delegated agency may exercise judgment based upon the Compendium of Applicability Determinations issued by EPA annually, and updated quarterly. Any applicability determinations made by the State agency based on the Compendium must be sent to EPA for informational purposes in order for EPA to maintain national consistency.

9. Determination of whether actions intended to be taken constitute construction or modification of source subject to a standard (40 CFR 61.06).

10. Allowance of alternative means of compliance (40 CFR 61.12(d)).

11. Approval of specified or alternative emission testing (40 CFR 61.13(h)).

12. Approval of specified or alternative monitoring requirements (40 CFR 61.14(g)).

13. Determination of public availability of information (40 CFR 61.16).

14. Allowance of use of alternative means of emission limitation (40 CFR 61.244).

A Notice announcing this delegation will be published in the Federal Register in the near future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the above-enumerated Federal NSPS and NESHAP regulations by sources located in the State of Delaware should be submitted to the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware 19901. In addition to EPA Region III, any original reports which are received by EPA region III will be promptly transmitted to DNREC.

Since this delegation is effective immediately, there is no requirement that DNREC notify EPA of its acceptance. Unless EPA receives from DNREC written notice of objections within ten (10) days of receipt of this letter, DNREC will be deemed to have accepted all of the terms of the delegation.

Sincerely,
Edwin B. Erickson,
Regional Administrator.

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

Authority: Secs. 11(c) and 112(d), the Clean Air Act, 42 U.S.C. 7412(d).

Edwin B. Erickson,
Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 52 U.S.C. 7401, 7411, 7414, 7416, and 7601.

§ 60.4 [Amended]

2. Section 60.4(b)(1) is amended by removing the parenthetical statement.

PART 61—[AMENDED]

3. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

§ 61.04 [Amended]

4. Section 61.04(b)(1) is amended by removing the parenthetical statement.

[FR Doc. 89-22694 Filed 10-2-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 123 and 403

[FRL 3652-2]

Approval of California's Revisions to the State National Pollution Discharge Elimination System Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of approval of the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program, approval to issue NPDES general permits and approval of revisions to the existing NPDES permit regulations of the State of California.

SUMMARY: On September 22, 1989, the Environmental Protection Agency, Region IX approved the State of California NPDES Pretreatment Program which authorizes the State of California to administer the National Pretreatment Program as it applies to municipalities and industries within the State. EPA, Region IX also approved authority of the State of California to issue NPDES general permits and approved revisions to the State's existing NPDES permit regulations.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: William H. Pierce, Chief, Permits Branch, Water Management Division, 215 Fremont Street, San Francisco, CA 94105 (415-974-8110).

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) requires EPA to administer the NPDES permit program under which the Agency may issue permits for the discharge of pollutants into waters of the United States in accordance with conditions required by the Act. Section 402(b) of the CWA provides for States to assume NPDES permitting responsibilities upon approval by EPA. States also may request authority to issue general permits for similar dischargers with the same effluent limitations. (See 40 CFR 122.28.) In addition, under section 54 of the 1977 amendments to the CWA, States requesting NPDES permitting authority, as well as States already approved to administer the NPDES permit program, must also request permitting authority over dischargers from federal facilities located within the State and authority to administer the federal pretreatment program governing the introduction of non-domestic pollutants into publicly owned treatment works (POTWs). (Cf. CWA section 402(n) 33 U.S.C. 1342(n).) After EPA approves a State's request for NPDES permit and/or pretreatment authority, the State must thereafter submit any proposed program revisions to EPA for reapproval pursuant to 40 CFR 123.62(b).

On May 14, 1973, California became the first State to be approved by EPA to administer the NPDES permit program. On May 5, 1978, it also became the first

State to receive EPA approval to regulate discharges from federal facilities.

On June 8, 1989, California submitted an application to EPA for approval of revisions to its approved NPDES program in accordance with 40 CFR 123.62 and 403.10. This application included a request to add pretreatment and general permit authority to its approved program. It also included a request for EPA approval of revisions to the State's existing NPDES permit regulations. (California does not have, and has not requested, EPA approval to administer the NPDES and pretreatment programs on Indian lands.) Pursuant to 40 CFR 123.62(b) and 403.10(g), California submitted in support of its application an Attorney General's Statement (including copies of all applicable State statutes and regulations) certifying that the State has adequate authority to administer the NPDES program being sought, a program description describing how the State intends to carry out its responsibilities, and a proposed EPA/California Memorandum of Agreement. These documents were revisions of the original copies submitted to EPA when California sought approval of its existing NPDES permit program.

With respect to California's request for approval of revisions to the State's existing NPDES permit regulations, EPA has approved the State's request to implement the State permit program under State law, which, according to the California Attorney General, incorporates by reference all existing and future federal NPDES law and regulations. Specifically, the Attorney General has certified that the Porter-Cologne Water Quality Control Act (Porter-Cologne Act), which implements the California NPDES program, incorporates federal NPDES and pretreatment law and regulations prospectively, meaning that future amendments to federal law and regulations are automatically incorporated into State law without the need for amendment of State statutes and regulations. (In support of this authority for prospective incorporation by reference, the California Attorney General has cited the Porter-Cologne Act, Water Code sections 13169, 13170, 13177, 13385, 13386, and 13387.) The California Attorney General also has certified that regulations adopted by the California State Water Resources Control Board, the Statewide NPDES permitting agency, prospectively