

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 5 2011

Ms. Joyce E. Epps, Esquire
Director of Air Quality
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8468
Harrisburg, PA 17105-8468

Dear Ms. Epps:

The U. S. Environmental Protection Agency (EPA) has previously delegated to the Commonwealth of Pennsylvania (Pennsylvania) the authority to implement and enforce numerous specified federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS), which are found at 40 C.F.R. Parts 60, 61 and 63.¹ In those actions EPA also automatically delegated to Pennsylvania the authority to implement and enforce future NESHAP applicable to major sources, future changes to any of the specific NESHAP applicable to area sources that Pennsylvania had been delegated the authority to implement and enforce, and any future NSPS requirements.

EPA also previously approved processes by which Pennsylvania may easily request and quickly receive delegation of authority to implement and enforce additional NESHAP applicable to area sources. As part of Pennsylvania's Title V Operating Permits Program approval,² EPA promulgated full approval under CAA section 112(l)(5) and 40 C.F.R. § 63.91 of Pennsylvania's program for receiving delegation of the CAA Section 112 standards that are unchanged from Federal standards as promulgated in 40 C.F.R. Part 63. That approval allows Pennsylvania to request and receive delegation of NESHAP for sources covered by the 40 C.F.R. Part 70 program, including area sources which are subject to NESHAP which require area sources to obtain Part 70 program permits. In addition, EPA has separately approved a mechanism by which Pennsylvania may request and receive delegation of any additional NESHAP applicable to area sources which are not covered by the 40 C.F.R. Part 70 operating permits program.³ That mechanism is for Pennsylvania to adopt the additional NESHAP applicable to area sources without changes and to send EPA a letter requesting delegation of those additional NESHAP.

In a letter dated December 10, 2009, Pennsylvania requested delegation of authority, by reference, to implement and enforce NESHAP as codified in 40 C.F.R. Part 63 for the following source categories: (1) Subpart AAAA (relating to municipal solid waste landfills); (2) Subpart BBBBBB (relating to gasoline bulk terminals, bulk plants and pipeline facilities); (3) Subpart EEE (relating hazardous waste combustion); (4) Subpart LLL (relating to Portland cement manufacturing industry); (5) Subpart NNNNNN (relating to chromium compounds), (6) Subpart OOOOOO (relating to flexible polyurethane foam fabrication and production area sources); (7)

¹ EPA has posted copies of these actions at: <http://www.epa.gov/reg3airtd/airregulations/delegate/padelegation.htm>.

² 61 Fed. Reg. 39597 (July 30, 1996).

³ 66 Fed. Reg. 47579 (September 13, 2001).

Subpart P P P P P (relating to lead acid battery manufacturing area sources); (8) Subpart S S S S S (relating to glass manufacturing area sources); (10) Subpart T T T T T (relating to secondary nonferrous metals processing area sources); (11) Subpart Y Y Y Y Y (relating to electric arc furnace steelmaking facilities, and (12) Subpart Z Z Z Z Z (relating to iron and steel foundries area sources). Pennsylvania also requested "automatic delegation" of future amendments to these NESHAP.

In its delegation request letter, Pennsylvania confirmed that the EPA rules in 40 C.F.R. Part 63 "are applicable, without revisions, to affected sources in Pennsylvania on the effective dates published in the *Federal Register*." Pennsylvania also confirmed that it continues to have adequate legal authority to implement and enforce such federal rules.

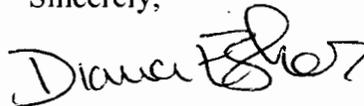
Pennsylvania's December 10, 2009 request for delegation of authority to implement and enforce additional federal NESHAP is approvable under the previously approved delegation processes discussed above. Accordingly, EPA hereby delegates to Pennsylvania the authority to implement and enforce the additional NESHAP for which Pennsylvania requested delegation in its December 10, 2009 submittal.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,⁴ the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 C.F.R. Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued a mandate vacating these SSM exemption provisions which are found at 40 C.F.R. § 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 C.F.R. § 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed these SSM exemption provisions from the General Provisions of 40 C.F.R. Part 63. Because Pennsylvania incorporates 40 C.F.R. Part 63 by reference, Pennsylvania should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 C.F.R. Part 63 due to the Court's ruling in *Sierra Club v. EPA*.

EPA appreciates Pennsylvania's continuing NESHAP and NSPS enforcement efforts, and also Pennsylvania's decision to request delegation of additional NESHAP.

Sincerely,



Diana Esher, Director
Air Protection Division

⁴ *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008)

