

US EPA ARCHIVE DOCUMENT



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

NOV 03 1999

Ms. Ann Marie DeBiase
Acting Director
Air and Radiation Management Administration
Maryland Department of the Environment
2500 Broening Highway
Baltimore, Maryland 21224

Dear Ms. DeBiase:

Ms. Zaw-Mon's letters of October 22, 1998, February 26, 1999, and August 27, 1999 set forth Maryland Department of the Environment's (MDE) request for partial delegation of authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories, and associated infrastructure programs, pursuant to Section 112 of the Clean Air Act (CAA), as set forth in 40 Code of Federal Regulations (CFR) Part 63. This request for partial delegation of authority only pertains to affected sources of Hazardous Air Pollutants (HAPs), as defined in 40 CFR Part 63, for all source categories which are located at major sources, as defined in 40 CFR Part 70.

Additionally, MDE is requesting that NESHAPs for Source Categories promulgated by the Environmental Protection Agency (EPA) in the future be delegated automatically to the MDE.

EPA Region III has reviewed the pertinent state laws and regulations, and has determined that they provide an adequate and effective procedure for implementation and enforcement of the NESHAPs and associated infrastructure programs, as set forth in 40 CFR Part 63. Therefore, pursuant to Section 112 of the CAA, as amended, and 40 CFR Section 63.91, we delegate our primary authority for implementation and enforcement of 40 CFR Part 63 for affected sources of hazardous air pollutants which are located at major sources (as defined in 40 CFR Part 70) to MDE as follows:

- A. Responsibility for all affected sources located or to be located in Maryland at major sources (as defined in 40 CFR Part 70) subject to the following emission standards for HAPs as promulgated by MDE into COMAR 26.11.01.01:

Subpart A - General Provisions (40 CFR 63.1 through 40 CFR 63.11, 63.14 through 63.15, dated July 1, 1998)

Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants (40 CFR 63.70 through 40 CFR 63.81 dated July 1, 1998)

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Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (40 CFR 63.100 through 40 CFR 63.106, dated July 1, 1998)

Subpart G - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 CFR 63.110 through 40 CFR 63.152, dated July 1, 1998)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR 60.160 through 40 CFR 60.182, dated July 1, 1998)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR 63.190 through 40 CFR 63.193, dated July 1, 1998)

Subpart L - Coke Oven Batteries (40 CFR 63.300 through 40 CFR 63.313, dated July 1, 1998)

Subpart M - Perchloroethylene Dry Cleaning Facilities (40 CFR 63.320 through 40 CFR 63.325, dated July 1, 1998)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63.340 through 40 CFR 63.347, dated July 1, 1998)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations (40 CFR 63.360 through 40 CFR 63.367, dated July 1, 1998)

Subpart Q - Industrial Process Cooling Towers (40 CFR 63.400 through 40 CFR 63.406, dated July 1, 1998)

Subpart R - Gasoline Distribution Facilities (40 CFR 63.420 through 40 CFR 63.429, dated July 1, 1998)

Subpart S - Hazardous Air Emissions from the Pulp and Paper Industry (40 CFR 63.440 through 40 CFR 63.458, dated July 1, 1998)

Subpart T - Halogenated Solvent Cleaning (40 CFR 63.460 through 40 CFR 63.469, dated July 1, 1998)

Subpart U - Group I Polymers and Resins (40 CFR 63.480 through 40 CFR 63.506 dated July 1, 1998)

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production (40 CFR 63.520 through 40 CFR 63.528, dated July 1, 1998)

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Subpart X - Secondary Lead Smelting (40 CFR 63.541 through 40 CFR 63.550, dated July 1, 1998)

Subpart Y - Marine Tank Vessel Loading Operations (40 CFR 63.560 through 40 CFR 63.567, dated July 1, 1998)

Subpart CC - Petroleum Refineries (40 CFR 63.640 through 40 CFR 63.654, dated July 1, 1998)

Subpart DD - Off-Site Waste and Recovery Operations (40 CFR 63.680 through 40 CFR 63.697, dated July 1, 1998)

Subpart EE - Magnetic Tape Manufacturing Operations (40 CFR 63.701 through 40 CFR 63.708, dated July 1, 1998)

Subpart GG - Aerospace Manufacturing and Rework Facilities (40 CFR 63.741 through 40 CFR 63.753, dated July 1, 1998)

Subpart II - Shipbuilding and Ship Repair (Surface Coating) (40 CFR 63.780 through 40 CFR 63.788, dated July 1, 1998)

Subpart JJ - Wood Furniture Manufacturing Operations (40 CFR 63.800 through 40 CFR 63.808, dated July 1, 1998)

Subpart KK - Printing and Publishing Industry (40 CFR 63.820 through 40 CFR 63.831, dated July 1, 1998)

Subpart LL - Hazardous Air Pollutants for Primary Aluminum Reduction Plants (40 CFR 840 through 40 CFR 853, dated July 1, 1998)

Subpart GGG - Pharmaceutical Production - (63 Fed. Reg. 27707, September 21, 1998)

Subpart III - Flexible Polyurethane Foam Production (63 Fed. Reg. 53996, October 7, 1998)

Subpart JJJ - Group IV Polymers and Resins (40 CFR 1310 through 40 CFR 1335, dated July 1, 1998)

B. All future 40 CFR Part 63 standards are automatically delegated, subject to the following conditions:

1. Each standard must be legally adopted by the state of Maryland.
2. Each standard must be adopted by reference to the Federal regulations with only those wording changes provided by the present state regulations.

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3. The MDE must notify the Director, Air Protection Division, EPA Region III, that it has adopted additional standards and that it intends to enforce the standards in conformance with the terms of this delegation.

C. This partial delegation does not include the following:

1. Implementation and enforcement of standards that control radionuclides (40 CFR Part 63.12(b)(1)).
2. Implementation and enforcement of standards that apply to any area source, as defined in 40 CFR Section 63.2, which is not located at a major source, as defined in 40 CFR Part 70.
3. Implementation and enforcement of an accidental release prevention program as described in Section 112(r) of the CAA and 40 CFR Part 68.

EPA will continue to be the implementing Agency for these requirements.

D. This partial delegation is based upon the following conditions:

1. Enforcement of emission standards in Maryland will be the primary responsibility of the MDE. Pursuant to Section 112(l)(7) of the CAA, EPA retains the authority to enforce any NESHAP standard whenever such enforcement is deemed by EPA to be necessary to carry out the purposes of the CAA.
2. If the MDE determines that enforcement is not feasible and so notifies the EPA, or where the MDE acts in a manner inconsistent with the terms of this granted authority, the EPA will exercise its concurrent enforcement authority pursuant to Section 113 of the CAA, as amended.
3. The reporting provisions in 40 CFR Part 63 requiring the owners or operators of affected sources to make submissions to the Administrator shall be met by sending such submissions to the MDE and EPA Region III.
4. If at any time there is a conflict between a MDE regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the MDE. EPA Region III is responsible for determining stringency between conflicting regulations. If the MDE does not have the authority to enforce the more stringent Federal regulation, it shall notify EPA Region III in writing as soon as possible, so that this portion of the delegation may be revoked.
5. If the Administrator determines that Maryland's procedure for enforcing or implementing the 40 CFR Part 63 requirements is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set out in 40 CFR Part 63.96(b).

6. Certain provisions of 40 CFR Part 63 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in 40 CFR 63.90(c) and the "Delegation of Authorities" section for specific standards, EPA Region III is retaining the following authorities:
 - a. Approval of alternative non-opacity emission standards (40 CFR 63.6(g) and applicable sections of relevant standards)
 - b. Approval of alternative opacity standard (40 CFR 63.6(h)(9) and applicable sections of relevant standards)
 - c. Approval of major alternatives to test methods (40 CFR 63.7(e)(2)(ii) and 63.7(f) and applicable sections of relevant standards)
 - d. Approval of major alternatives to monitoring methods (e.g., 40 CFR 63.8(f) and applicable sections of relevant standards)
 - e. Waiver of record keeping (e.g., 40 CFR 63.10(f) and applicable sections of relevant standards)

7. The following authorities are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, MDE must notify EPA Region III in writing. Additionally, prior to finalizing an applicability determination of national significance (as defined below), MDE shall notify EPA in writing.
 - a. Applicability determinations for sources during the Title V permitting process and, as sought by an owner/operator of a major source (as defined in 40 CFR Part 70) through a formal, written request.

Applicability determinations are considered to be nationally significant when they: i) are unusually complex or controversial, ii) have bearing on more than one state or are multi-Regional, iii) appear to create a conflict with previous policy or determinations, iv) are a legal issue which has not previously been considered, or v) raise new policy questions, and shall be forwarded to EPA Region III prior to finalization. Detailed information on the applicability determination process is detailed in EPA document 305-B-99-004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring* dated February 1999. The MDE may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.
 - b. Compliance extensions (40 CFR 63.6(i) and applicable sections of relevant standards).

- c. Approval of site-specific test and performance evaluation plans (40 CFR 63.7(c), 63.8(e)(3) and applicable sections of relevant standards). MDE will notify EPA of these approvals on a quarterly basis by submitting a copy of the test or performance evaluation plan approval letter. Any plans which propose major alternative test methods or major alternative monitoring methods shall be referred to EPA for approval (see Section D.6 of this letter).
- d. Approval of minor alternatives to test methods and monitoring (e.g., 40 CFR 63.7(e)(2)(i), 63.8(b)(i) and applicable sections of relevant standards).

A minor change to a test method or monitoring is a modification to federally enforceable test methods or monitoring that (a) does not decrease the stringency of the standard, (b) has no national significance (e.g. does not affect implementation of the applicable regulation for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method or monitoring requirement), and (c) is site-specific, made to reflect the operational characteristics, physical constraints, or safety concerns of an affected source.

- e. Approval of intermediate alternatives to test methods and monitoring (e.g., 40 CFR 63.7(e)(2)(ii), 63.8(b)(ii)).

An intermediate change is a modification to a federally required test method or monitoring involving proven technology which is applied on a site-specific basis and may have the potential to decrease the stringency of the standard, set a national standard for a source category, and may result in a revision to the federally enforceable test method or monitoring. Intermediate changes are not approvable if they decrease the stringency of the national standard.

MDE should refer to Attachment 1 of the July 10, 1998 John Seitz memo, regarding delegation of General Provisions authorities to states and local agencies for definitions of minor, intermediate, and major changes to test methods and monitoring (which is contained in Attachment 1 of EPA document 305-B-99-004 referenced in Section D.7a of this letter).

- f. Approval of shorter sampling times/volumes (e.g., 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards).
- g. Waiver of performance testing (e.g., 40 CFR 63.7(h)(2), (3) and (e)(2)(iv) and applicable sections of relevant standards).

8. As required, the MDE and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR Part 63. In instances where there is a conflict between a Maryland interpretation and a Federal interpretation of applicable regulations in 40 CFR Part 63, the Federal interpretation must be applied if it is more stringent than that of the MDE. Written, verbal and/or electronic notification will also be used to ensure that each agency is informed of the compliance status of affected sources in Maryland.
9. Quarterly reports will be submitted to EPA by the MDE to identify sources determined to be applicable during that quarter.

MDE additionally requested delegation of authority to implement the requirements and provisions of 40 CFR Part 63 Subpart B, which requires states to have a program to make case-by-case Maximum Achievable Control Technology determinations and to certify that the program is in place. The mechanism for incorporating provisions of Subpart B which apply to states is through that state's Title V program, thus there is no need for delegation of this subpart.

This action is effective immediately and there is no requirement that the MDE notify the EPA of its acceptance. Unless the EPA receives from MDE written notice of objections within ten (10) days of the date of receipt of this letter, the MDE will be deemed to have accepted all of the terms as stated herein.

This delegation to MDE will be published in the Federal Register in the near future. Any original reports received by EPA will be transferred promptly to the MDE.

If you have any questions regarding this partial delegation of authority, please have your staff contact Marilyn Powers at (215) 814-2308.

Sincerely,



W. Michael McCabe
Regional Administrator

cc: Karen Irons, MDE