

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

JAN 05 1998

Mr. James M. Seif, Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, Pennsylvania 17105

Dear Mr. Seif:

This is in response to your delegation request in the Implementation Agreement for the Title V Operating Permit Program between the Pennsylvania Department of Environmental Protection (PADEP) and EPA Region III which was fully executed on February 13, 1996. Section IX of the Implementation Agreement sets forth PADEP's 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 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.

EPA Region III has reviewed the pertinent laws of the Commonwealth of Pennsylvania (Commonwealth) and the rules and regulations thereof, 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 the 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 HAPs which are located at major sources (as defined in 40 CFR Part 70) to PADEP as follows:

- A. Responsibility for all affected sources located or to be located in Pennsylvania at major sources (as defined in 40 CFR Part 70) subject to emission standards for HAPs promulgated in 40 CFR Part 63 and amendments and revisions thereto as published in the Federal Register.

This partial delegation of authority includes all future 40 CFR Part 63 standards and all amendments and revisions to existing and future standards.

- B. 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.

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

1. Enforcement of emission standards in Pennsylvania will be the primary responsibility of the PADEP. 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 PADEP determines that enforcement is not feasible and so notifies the EPA, or where the PADEP 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 U.S. EPA Administrator shall be met by sending such submissions to the PADEP and U.S. EPA Region III.
4. If at any time there is a conflict between a PADEP regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the PADEP. EPA Region III is responsible for determining stringency between conflicting regulations. If the PADEP 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 the Commonwealth'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 in this delegation letter:

- a. Approval of alternative means of emission limitations and alternative control technologies (e.g., 40 CFR 63.6(g), 63.6(h)(9) and applicable sections of relevant standards);
 - b. Approval of alternative test methods (e.g., 40 CFR 63.7(e)(2)(ii) and 63.7(f) and applicable sections of relevant standards);
 - c. Approval of alternative monitoring methods (e.g., 40 CFR 63.8(b)(ii) and (f) and applicable sections of relevant standards); and,
 - d. The authority to make applicability determinations as sought by an owner/operator of a major source (as defined in 40 CFR Part 70) through a formal, written request.
 - e. In determining applicability of 40 CFR Part 63 NESHAPs for sources during the Title V permitting process, the PADEP may refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance. Any correspondence from the PADEP based on the Compendium must be sent to EPA Region III to maintain national consistency.
7. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, PADEP must notify U.S. EPA, Region III in writing:
- a. Compliance extensions (e.g., 40 CFR 63.6(i) and applicable sections of relevant standards);
 - b. Approval of site-specific test and performance evaluation plans (e.g., 40 CFR 63.7(c), 63.8(e)(3) and applicable sections of relevant standards). PADEP 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 alternative test or monitoring methods shall be referred to EPA for approval (see Section C.6 of this letter);
 - c. 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);
 - d. Approval of shorter sampling times/ volumes (e.g., 40 CFR 63.7(e)(2)(iii) and applicable sections of relevant standards);

- e. Waiver of performance testing (e.g., 40 CFR 63.7(h)(2), (3) and (e)(2)(iv) and applicable sections of relevant standards); and,
 - f. Waiver of record keeping (e.g., 40 CFR 63.10(f) and applicable sections of relevant standards)).
8. As required, the PADEP and U.S. 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 Commonwealth 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 PADEP. 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 Pennsylvania.

An informational notice announcing this delegation will be published in the Federal Register in the near future. Any original reports which have been received will be promptly transferred to the PADEP.

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

If you have any questions regarding this matter, please contact me or have your staff contact Dianne J. Walker at 215-566-3297.

Sincerely,



W. Michael McCabe
Regional Administrator

cc: James Salvaggio, PADEP
John Slade, PADEP
Joyce Epps, PADEP