

US EPA ARCHIVE DOCUMENT



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

Mr. Michael O. Callaghan, Secretary
West Virginia Department of Environmental Protection
1356 Hansford Street
Charleston, WV 25301

JAN 8 2002

Dear Mr. Callaghan:

The West Virginia Division of Environmental Protection (WVDEP) letter of November 18, 1999 set forth WVDEP's request for 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 61 and the New Source Performance Standards (NSPS), and associated infrastructure programs, pursuant to section 111 of the CAA, as set forth in 40 CFR part 60. Specifically, WVDEP has requested an update to the delegation of these programs which was granted by the Environmental Protection Agency (EPA) on December 14, 1984 (Federal Register, Vol. 49, No. 242) and subsequently clarified by letter on July 2, 1985.

Additionally, WVDEP is requesting that 40 CFR part 61 NESHAPs and 40 CFR part 60 NSPSs promulgated by EPA in the future be automatically delegated to the WVDEP.

On October 10, 2001, WVDEP provided information to supplement their November 18, 1999 request. This information included updates to their regulations 45CSR15 and 45CSR16, incorporating by reference the Federal regulations under 40 CFR parts 60 and 61 as of July 10, 2000.

EPA Region III has reviewed the pertinent laws, rules and regulations of the State of West Virginia and has determined that they continue to provide adequate and effective procedures for implementation and enforcement of the NESHAPs and associated infrastructure programs, as set forth in 40 CFR Part 61 (i.e., part 61 NESHAPs), and the NSPSs and associated infrastructure programs, as set forth in 40 CFR Part 60 (i.e., part 60 NSPSs). Therefore, pursuant to sections 111 and 112 of the CAA, as amended, and subject to the specific conditions and exceptions set forth below, EPA delegates its primary authority for implementation and enforcement of 40 CFR part 60 and part 61 for affected sources to WVDEP as follows:

1. This delegation replaces the previous part 60 NSPS and part 61 NESHAP delegations.
2. Responsibility for all affected sources located or to be located in West Virginia subject to the emission standards set forth in 40 CFR part 60, effective July 1, 1999, as amended by the Federal Register through July 10, 2000 and set forth in 40 CFR part 61, effective July

1, 1999, as amended by the Federal Register through June 1, 2000), as promulgated by WVDEP into its regulations, 45CSR16 and 45CSR15.

3. All future 40 CFR part 60 and part 61 standards are automatically delegated, subject to the following conditions:
 - a. Each standard must be legally adopted by the WVDEP.
 - b. Each standard must be adopted by reference to the Federal regulations with only the following wording change. WVDEP's clarification defining "Administrator" as "Director" in limited circumstances, as described in §45-15-5 and §45-16-5, is permitted under this delegation, in accordance with Sections 13. and 14. of this letter.
 - c. The WVDEP 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.
 - d. The delegation of future standards will be finalized on the effective date of the legal adoption.
4. Enforcement of the part 60 NSPS and part 61 NESHAP regulations in the State of West Virginia will be the primary responsibility of WVDEP. Pursuant to sections 111(c)(2) and 112(l)(7) of the CAA, as amended, EPA retains authority to enforce any part 60 NSPS or part 61 NESHAP standard whenever such enforcement is deemed by the EPA to be necessary to carry out the purposes of the CAA. Where WVDEP determines that such enforcement is not feasible and so notifies EPA, or where WVDEP acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority, pursuant to Section 113 of the CAA, as amended, with respect to sources within the State of West Virginia subject to the part 60 NSPS and part 61 NESHAP regulations.
5. If, at any time, there is a conflict between a WVDEP regulation and a Federal regulation, the Federal regulation must be applied if it is more stringent than that of the WVDEP. EPA Region III is responsible for determining stringency between conflicting regulations. If the WVDEP 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.
6. If the Administrator determines that West Virginia's procedures for enforcing or implementing the part 60 NSPS or the part 61 NESHAP requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part. Any revocation shall be effective as of the date specified in the Notice of Revocation to the WVDEP.

7. The WVDEP will at no time grant a waiver of compliance under the part 61 NESHAP regulations.
8. The WVDEP will not grant a variance for compliance with the applicable part 60 NSPS regulations if such variance delays compliance with the Federal part 60 NSPS. Should the WVDEP grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal requirements and may initiate enforcement action against the source pursuant to Section 111 of the CAA. The granting of such variance by the WVDEP shall also constitute grounds for revocation of delegation by EPA.
9. As required by 40 CFR 60.4 and 40 CFR 61.04, all requests, reports, applications, submittals and other communications to the Administrator shall be submitted to both WVDEP and the Air Protection Division (3AP12), EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029.
10. The Consolidated Federal Air Rule (40 CFR part 65), issued on December 14, 2000, can be used by WVDEP as an alternative compliance approach for 40 CFR part 60 subparts A, Ka, Kb, VV, DDD,III, NNN and RRR; 40 CFR part 61 subparts A, V, Y, and BB; and part 63 subparts A, F, G, and H.
11. Quarterly reports will be submitted to EPA by WVDEP and should include the following:
 - a. For NSPS:
 - i. Sources determined to be applicable during that quarter;
 - ii. Applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported;
 - iii. The compliance status of the above sources; and,
 - iv. Any legal actions which pertain to these sources.
 - b. For NESHAP:
 - i. NESHAP sources granted a permit to construct;
 - ii. NESHAP sources inspected during that quarter and their compliance status;
 - iii. Sources determined to be applicable during that quarter;
 - iv. Applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported; and,
 - v. Any legal actions which pertain to these sources.

Alternatively, WVDEP will update the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS) accordingly.

12. WVDEP will utilize the methods in 40 CFR part 60 and 61 in performing source tests pursuant to these regulations.

13. Certain provisions of 40 CFR part 60 and 40 CFR part 61 allow only the Administrator of EPA to take further standard setting actions. In addition to the specific authorities retained by the Administrator in the "Delegation of Authority" section of each standard, EPA Region III is retaining the following authorities.¹ As further clarification, EPA is providing a reference document, in Enclosure 1 of this letter, which outlines authorities are not being delegated to WVDEP.

a. For NSPS:

- i. Any authority requiring publication or notification in the FEDERAL REGISTER (e.g., 40 CFR sections 60.11(e)(8), 60.22 and applicable sections of relevant standards).
- ii. Alternative means of emission limitations in the CAA section 111(h)(3) (e.g., 40 CFR sections 60.114a, 60.302(d)(3), 60.473(g), 60.482(c)(2), 60.484, 60.592(c), 60.623, 60.634 and applicable sections of relevant standards).
- iii. Innovative technology waivers in the CAA section 111(j).
- iv. Approval of alternative testing times for Primary Aluminum Reduction Plants in 40 CFR section 60.194(d).
- v. Approval of a "major change to a test method"² (e.g., 40 CFR 60.8(b)(2) and (3) and applicable sections of relevant standards).
- vi. Approval of a "major change to monitoring"³ (e.g., 40 CFR 60.13(g), (h), (i) and (j) and applicable sections of relevant standards).
- vii. Establishment of alternate opacity standards (e.g., 40 CFR 60.11(e) and applicable sections of relevant standards).

¹This paragraph conforms with the guidance issued by EPA in EPA's document 305-B-99-004 How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring dated February 1999 (copy enclosed). See page 20 of this guidance document. In addition, attachment 2 of this document provides copies of previous policy memos issued by EPA which identify 40 CFR part 60 and part 61 authorities which can not be delegated to the state and local agencies.

²As defined in Attachment 1 of EPA's document 305-B-99-004 How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring dated February 1999.

³As defined in Attachment 1 of EPA's document 305-B-99-004 How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring dated February 1999.

viii. Issuance of commercial demonstration permits (e.g., 40 CFR sections 60.45a, 60.49b(a)(4), 60.48c(a)(4), etc.).

ix. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR section 60.332(a)(3) and the ambient condition correction factors in 40 CFR section 60.335(a)(ii).

b. For NESHAPs:

i. Any authority requiring publication or notification in the FEDERAL REGISTER (e.g., applicable sections of relevant standards)

ii. Alternative means of emission limitations (e.g., applicable sections of relevant standards such as 61.112(c) and 61.136(d)).

iii. Determination of public availability of information provided to or otherwise obtained by EPA under 40 CFR 61.16 unless you have legal authority similar to section 114 of the CAA.

iv. Approval of a “major change to a test method” (e.g., 40 CFR 61.13 and applicable sections of relevant standards).

v. Approval of a “major change to monitoring” (e.g., 40 CFR 61.14 and applicable sections of relevant standards).

vi. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c)(4) is only available from the Administrator of EPA.

vii. Approval of alternative means of emission limitation to any design, equipment, work practice or operational standard under section 112(e)(3) of the CAA.

14. The following provisions are included in this delegation and can only be exercised on a case-by-case basis.⁴ When any of these authorities are exercised, WVDEP must notify EPA Region III in writing. As further clarification, EPA is providing a reference

⁴ This paragraph conforms with the guidance issued by EPA in EPA’s document 305-B-99-004 *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring* dated February 1999. This document clarifies that Part 60 NSPS and Part 61 NESHAP applicability determinations and alternative monitoring authorities may be delegated to WVDEP using procedures consistent with EPA’s July 10, 1998 Part 63 delegable authorities guidance located in Attachment 1 of the referenced document.

document, in Enclosure 1 of this letter, which outlines authorities are being delegated to WVDEP on a case-by-case basis but require notification to EPA Region III.

- 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 (see 60.5, 61.06 and applicable sections of relevant subparts).

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 been previously considered, or v) raise new policy questions and shall be forwarded to EPA Region III prior to finalization.⁵ The WVDEP may also refer to the Compendium of Applicability Determinations issued by the EPA and may contact EPA Region III for guidance.

- b. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).
- c. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).
- d. Approval of a "minor or intermediate changes to a test method"⁶ (e.g., 40 CFR 61.13 and applicable sections of relevant standards).
- e. Approval of a "minor or intermediate changes to monitoring"⁷ (e.g., 40 CFR 61.14 and applicable sections of relevant standards).
- f. Authorization of both the use of wet collectors in accordance with 40 CFR 61.152(b)(1) and also the use of filtering equipment explained in 40 CFR 61.152(b)(3).
- g. Approval of sampling techniques as specified in 40 CFR 61.43(a).

⁵ 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.

⁶ As defined in Attachment 1 of EPA's document 305-B-99-004 How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring dated February 1999.

⁷ As defined in Attachment 1 of EPA's document 305-B-99-004 How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring dated February 1999.

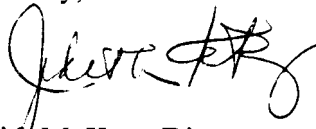
15. As required, the WVDEP and EPA Region III will provide the necessary written, verbal and/or electronic notification to ensure that each agency is fully informed regarding the interpretation of applicable regulations in 40 CFR part 60 and part 61. In instances where there is a conflict between a West Virginia interpretation and a Federal interpretation of applicable regulations in 40 CFR Part 60 and Part 61, the Federal interpretation must be applied if it is more stringent than that of the WVDEP. 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 West Virginia. In implementing the Part 61 NESHAPs, WVDEP will comply with all of the requirements of 40 CFR Section 63.90(g)(1)(ii).

Since this action is effective immediately, there is no requirement that the WVDEP notify the EPA of its acceptance. Unless the EPA receives from the WVDEP written notice of objections within ten (10) days of the date of receipt of this letter, the WVDEP will be deemed to have accepted all of the terms as stated herein. This delegation supercedes the delegation granted by EPA on December 14, 1984 (Federal Register, Vol. 49, No. 242).

Notification of this delegation to WVDEP will be published in the Federal Register in the near future. Any original reports received by EPA will be promptly transferred to the WVDEP.

If you have any questions regarding this delegation of authority, please contact me or have your staff contact Dianne McNally, of my staff, at 215-814-3297.

Sincerely,



Judith M. Katz, Director
Air Protection Division

Enclosures

cc: Stephanie Timmermeyer, WVOAQ
John A. Benedict, WVOAQ
G. Dale Farley, WVOAQ
Karen Watson, WVOAQ