

R. V. M



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**230 SOUTH DEARBORN ST.**

**CHICAGO, ILLINOIS 60604**

REPLY TO THE ATTENTION OF

(5RA-14)

**08 APR 1988**

CERTIFIED MAIL RETURN  
RECEIPT REQUESTED

Carroll D. Besadny, Secretary  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707

Dear Mr. Besadny:

On August 10, 1983, you requested an expansion of the United States Environmental Protection Agency's (USEPA) delegation of authority to Wisconsin to implement and enforce the Federal New Source Performance Standards (NSPS) and the Federal National Emission Standards for Hazardous Air Pollutants (NESHAPS). The State requested that it be delegated only engineering and administrative responsibilities for NSPS and NESHAPS until the regulations are incorporated in Wisconsin's Administrative rules. The request included all future promulgated NSPS and NESHAPS and all revisions and amendments to existing and future NSPS and NESHAPS. This letter revises the September 27, 1983, delegation letter by including a list of NSPS and NESHAPS sections which cannot be delegated to the State because they involve regulation setting and amending actions that require notification in the Federal Register.

We have reviewed the pertinent procedures and supporting regulations of the State of Wisconsin and have determined that the State has an adequate program for the implementation and enforcement of the NSPS and NESHAPS. Therefore, in accordance with Clean Air Act Sections 111(c) and 112(d) and subject to the specific terms and conditions set forth below, the USEPA hereby delegates authority to the State of Wisconsin to implement and enforce the NSPS and NESHAPS as follows:

- A. Authority for all sources located or to be located in the State of Wisconsin subject to the NSPS promulgated in 40 CFR Part 60. This delegation includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards. The delegation of authority to enforce future standards, revisions, and amendments will be effective as of the date that such standards become applicable pursuant to State law.

- B. Authority for all sources located or to be located in the State of Wisconsin subject to the NESHAPS promulgated in 40 CFR Part 61, except Subparts B, H, I and K related to radionuclides. This delegation includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards. The delegation of authority to enforce future standards, revisions, amendments will be effective as of the date that such standards become applicable, pursuant to State law.
- C. This delegation of authority for NSPS and NESHAPS supersedes the previous statewide delegations of September 28, 1976, and September 27, 1983, and is subject to the following terms and conditions.
1. Upon approval of the Regional Administrator of Region V, the Secretary of the Wisconsin Department of Natural Resources (WDNR) may subdelegate this authority to implement and enforce the NSPS and NESHAPS to other air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.
  2. The State of Wisconsin will at no time grant a waiver of compliance with NSPS or NESHAPS, except as provided for in 40 CFR 61.11. The State of Wisconsin may grant variances from State standards which are more stringent than the NSPS or NESHAPS, so long as the variances do not prevent compliance with the NSPS or NESHAPS.
  3. The Federal regulations in 40 CFR Parts 60 and 61, as amended, do not have provisions for granting waivers by class of testing requirements or variances; hence this delegation does not convey to the State of Wisconsin authority to grant waivers by class of testing requirements or variances from NSPS or NESHAPS regulations. For NSPS and NESHAPS sources, Wisconsin may waive a performance test or specify the use of a reference method with minor changes in methodology under 40 CFR 60.8(b) on a case-by-case basis, and with respect to 40 CFR 61.14 may on a case-by-case basis approve minor modifications to sampling procedures or equipment that affect single sources; however, the State must inform USEPA of such actions within 30 days.
  4. For NSPS and NESHAPS sources, the State of Wisconsin will utilize the methods specified in appendices and Subparts of 40 CFR Parts 60 and 61 in performing source tests pursuant to the regulations.

5. For NSPS and NESHAPS pollutants and source categories and for amendments to existing NSPS and NESHAPS for which the State of Wisconsin has not promulgated regulations or amendments, the State will exercise a partial delegation by performing the administrative and engineering responsibilities with respect to plan review, notifications and recordkeeping, and performance testing. The partial delegation does not include applicability determinations or enforcement actions. The administrative and engineering responsibilities shall continue until such time as the State promulgates appropriate regulations or amendments, at which time the State is given fully delegated responsibility as cited in item 6 of the terms and conditions.
6. Enforcement of NSPS and NESHAPS in the State of Wisconsin will be the primary responsibility of the State of Wisconsin for those standards for which the State has promulgated appropriate regulations and for which the State has notified the Regional Administrator. Enforcement shall be consistent with USEPA's "Timely and Appropriate" guidance. If, after appropriate discussion with the WDNR, the Regional Administrator determines that a State procedure for implementing and enforcing the NSPS or NESHAPS is not in compliance with Federal regulations (40 CFR Parts 60 or 61), or is not being effectively carried out, this delegation will be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Secretary of the WDNR.
7. The WDNR and the USEPA Region V will develop a system of communication for the purpose of insuring that each office is informed on: (a) the current compliance status of subject sources in the State of Wisconsin; (b) the interpretation of application regulations; (c) the description of sources and source inventory data; and (d) the decisions the State makes where the State is delegated certain discretionary authority in the following sections: 40 CFR 60.8(b)(4), 40 CFR 60.8(c), 40 CFR 60.46(b), 40 CFR 60.46(d), and 40 CFR 61.154(b). Except for the provisions of 40 CFR 61.146 concerning asbestos demolition and renovation, the reporting and notification provisions in 40 CFR Parts 60 and 61 requiring industry to make submissions to the USEPA are met by sending such submissions to the WDNR. The WDNR will make available this information to the USEPA on a case-by-case basis. Information required by 40 CFR 61.146 must be submitted to both USEPA and WDNR.

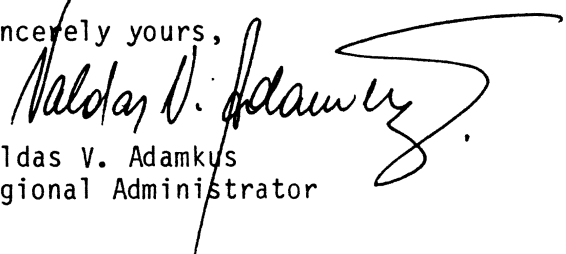
WDNR's annual report, submitted to USEPA pursuant to 40 CFR Part 51, will include information relating to the status of sources subject to 40 CFR Parts 60 and 61. Such information will include the name, address, type and size of each facility, date facility commenced operation, date of most recent stack test, compliance status of facility, enforcement actions initiated, surveillance action undertaken for each facility, and results of reports relating to emissions data.

8. Prior USEPA concurrence is to be obtained on any matter involving the interpretation of Sections 111 or 112 of the Clean Air Act or 40 CFR Parts 60 and 61 to the extent that implementation, administration, or enforcement of these sections have not been covered by determinations or guidance sent to the WDNR. All applicability determinations, including those submitted under 40 CFR 60.5 and 61.06, which have not been specifically treated in the Compendium of Applicability Determinations issued by USEPA are reserved for USEPA.
9. If the State of Wisconsin determines that a violation of a delegated NSPS or NESHAPS exists, the WDNR shall, within 30 days of detection of the violation, notify USEPA, Region V of the nature of the violations, together with a brief description of the State's efforts or strategy to secure compliance. With respect to those NSPS and NESHAPS for which the State has only administrative and engineering responsibilities and during the time which the State has only administrative and engineering responsibility, any violations which are detected will be immediately referred to USEPA Region V. This delegation in no way limits the Administrator's concurrent enforcement authority as provided in Sections 111(c)(2) and 112(d)(2) of the Clean Air Act.
10. In addition to any future provision which may be cited in forthcoming NSPS and NESHAPS which cannot be delegated, the Administrator retains authority for the regulations setting and amending aspects of: (1) those sections of the NSPS and NESHAPS listed in Appendix A and Appendix B, respectively; (2) approval of equivalency for design, equipment, work practice, operational standard or combinations thereof, pursuant to Section 111(h) or Section 112(e) of the Clean Air Act; and (3) the granting of an innovative technology waiver, pursuant to Section 111(j) of the Clean Air Act. The State is delegated the authority for implementing such decisions made by the Administrator.

A notice announcing this delegation will be published in the Federal Register in the near future. This delegation becomes effective as of the date of this letter and, unless the USEPA receives written notice from the WDNR of objections within 10 days of the receipt of this letter, it will be deemed that the State has accepted all the terms and conditions of this delegation.

We trust that this amended delegation will provide for a more efficient NSPS and NESHAPS enforcement program in Wisconsin.

Sincerely yours,

  
Valdas V. Adamkus  
Regional Administrator

Appendix A June 1986

The following sections of the NSPS are not delegated by the USEPA to the State for implementation and enforcement. These sections either require rulemaking in the Federal Register or require Federal overview in order to ensure national consistency.

- |                                                      |                                                      |                             |
|------------------------------------------------------|------------------------------------------------------|-----------------------------|
| 1. Subpart A<br>60.8(b)(2)<br>60.8(b)(3)<br>60.11(e) | 5. Subpart DD<br>60.302(d)(3)                        | 9. Subpart GGG<br>60.592(c) |
| 2. Subpart Da<br>60.45a                              | 6. Subpart GG<br>60.332(a)(3)<br>60.335(a)(1)(ii)    | 10. Subpart JJJ<br>60.623   |
| 3. Subpart Ka<br>60.114a                             | 7. Subpart VV<br>60.482-1(c)(2)<br>60.484            |                             |
| 4. Subpart S<br>60.195(b)                            | 8. Subpart WW<br>60.493(b)(2)(i)(A)*<br>60.496(a)(1) |                             |

\* For last sentence only concerning values of Se and Sh

Appendix B June 1986

The following sections of the NESHAPS are not delegated by the USEPA to the State for implementation and enforcement. These sections either require rulemaking in the Federal Register or require Federal overview in order to ensure national consistency.

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|------------------------------------------------------------|--------------------------------------------------------------------------------------------|------------------------------------------|
| 1. Subpart A<br>61.04(b)<br>61.12(d)(1)<br>61.13(h)(1)(ii) | 3. Subpart N<br>61.164(a)(2)<br>61.164(a)(3)                                               | 5. Subpart V<br>61.242-1(c)(2)<br>61.244 |
| 2. Subpart E<br>61.53(c)(4)*                               | 4. Subpart O<br>61.172(b)(2)(ii)(B)<br>61.172(b)(2)(ii)(C)<br>61.174(a)(2)<br>61.174(a)(3) |                                          |
| 3. Subpart J<br>61.112(c)                                  |                                                                                            |                                          |

\* Restricted delegation applies only to development of list.