



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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AUG 26 2009



Ref: 8P-AR

Terry O'Clair, Director
Division of Air Quality
Environmental Health Section
North Dakota Department of Health
918 E. Divide Avenue
Bismarck, ND 58501-1947

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Mr. O'Clair:

With Governor Hoeven's July 9, 2009 letter and your July 14, 2009 letter, the State of North Dakota submitted revisions to its Air Pollution Control Rules and requested, among other things, direct delegation to implement and enforce the Federal New Source Performance Standards (NSPS). Specifically, North Dakota Administrative Code Chapter 33-15-12, Standards of Performance of New Stationary Sources, was revised to update the citation for the incorporated Federal NSPS in 40 CFR part 60 as those in effect on March 1, 2008, with the exception of subparts Eb, L, M, N, Na, P, Q, R, S, BB, EEEE, IIII, and JJJJ which have not been adopted by the State.

Subsequent to states adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the states' regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of North Dakota and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State. Therefore, pursuant to section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR part 60, as in effect on March 1, 2008, with the exception of subparts Eb, L, M, N, Na, P, Q, R, S, BB, EEEE, IIII, and JJJJ which have not been adopted by the State. *Note this delegation does not include the emission guidelines in subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and FFFF. These subparts require state plans, which are approved under a separate process pursuant to section 111(d) of the Act.*

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision-making to ensure national consistency, and (3) EPA rulemaking in order to implement. Enclosed with this letter is a list of examples of sections in 40 CFR part 60 related to the NSPS being delegated in this letter that cannot be delegated to the State of North Dakota. Please note that the enclosed list has been updated since our August 22, 2007, delegation of authority to implement and enforce the NSPS to the State of North Dakota.

(C) The North Dakota Department of Health (NDDH) and EPA will continue a system of communication sufficient to guarantee that each office is always kept informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the NDDH. If the NDDH determines that such enforcement is not feasible and so notifies EPA, or where the NDDH acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of North Dakota subject to NSPS.

(E) The State of North Dakota will at no time grant a variance or waiver from compliance with NSPS regulations. Should NDDH grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to section 113 of the Act. The granting of such relief by the NDDH shall also constitute grounds for revocation of the delegation by EPA.

(F) If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the NDDH.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of North Dakota to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's July 9, 2009 letter.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of NDDH may sub-delegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of North Dakota must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR 60.11(e).

(L) Determinations of applicability, such as those specified in 40 CFR 60.5 and review of plans, as provided for in 40 CFR 60.6, shall be consistent with those determinations already made and reviews conducted by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR 60.13(i), may be approved by the State only if the specific NSPS grants that authority. Otherwise, EPA retains the authority to review and approve such alternatives.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the NDDH.

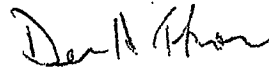
(Q) As 40 CFR part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving North Dakota's request for NSPS delegation for all areas within the State except for the following: Lands within the exterior boundaries of the Fort Berthold, Fort Totten, Standing Rock and Turtle Mountain Indian Reservations; and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to accept all the terms of this delegation. To inform the public of this delegation, EPA will publish an information notice in the **Federal Register** in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me at (303) 312-6241 or Callie Videtich, Director of our Air Program, at (303) 312-6434, or toll-free at 1-800-227-8917.

Sincerely,



for Stephen S. Tuber
Assistant Regional Administrator
Office of Partnerships and
Regulatory Assistance

Enclosure

cc: Tom Bachman, NDDH

Enclosure to Letter Delegating NSPS in 40 CFR Part 60,
Effective Through March 1, 2008, to the State of North Dakota

Examples of Authorities in 40 CFR Part 60 Which Cannot Be Delegated

| 40 CFR Subparts | Section(s) |
|-----------------|--|
| A | 60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e); and 60.13(i). |
| Da | 60.47Da. |
| Db | 60.44b(f), 60.44b(g) and 60.49b(a)(4). |
| Dc | 60.48c(a)(4). |
| Ec | 60.56c(i), 60.8. |
| J | 60.105(a)(13)(iii) and 60.106(i)(12). |
| Ka | 60.114a. |
| Kb | 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii). |
| O | 60.153(e). |
| DD | 60.302(d)(3). |
| GG | 60.332(a)(4) and 60.335(b)(10)(ii). |
| VV | 60.482-1(c)(2) and 60.484. |
| WW | 60.493(b)(2)(i)(A) and 60.496(a)(1). |
| XX | 60.502(e)(6). |
| AAA | 60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539. |
| BBB | 60.543(c)(2)(ii)(B). |
| DDD | 60.562-2(c). |
| GGG | 60.592(c). |
| III | 60.613(e). |
| JJJ | 60.623. |
| KKK | 60.634. |
| NNN | 60.663(f). |
| QQQ | 60.694. |
| RRR | 60.703(e). |
| SSS | 60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716. |
| TTT | 60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b). |
| VVV | 60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746. |
| WWW | 60.754(a)(5). |
| CCCC | 60.2030(c)(1) through (7). |
| EEEE | 60.2889(b)(1) through (6). |

