



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

AIR & RADIATION
DIVISION

May 10, 2023

Mr. Mark Buford
Control Officer
Northwest Clean Air Agency
1600 South Second Street
Mount Vernon, Washington 98273

Re: Approval of the Northwest Clean Air Agency's Request for Updated Delegation of Authority for New Source Performance Standards

Dear Mr. Buford:

This letter is in response to your May 18, 2022, request to update and continue the delegation of authority to implement and enforce certain New Source Performance Standards, 40 CFR part 60. After review of your request, the U.S. Environmental Protection Agency hereby grants this updated delegation request, as described below, to the Northwest Clean Air Agency for those sources under your jurisdiction for the identified NSPS in effect on December 8, 2021.

Delegation Request

You have requested to update delegation of the 40 CFR part 60 NSPS that were previously delegated to NWCAA and to obtain delegation of new standards that the EPA has promulgated since your last delegation.

Your request for delegation excluded the following subparts of 40 CFR part 60: S, BB, BBa, AAA, QQQQ, and TTTT.¹

NWCAA demonstrated that on February 10, 2022, NWCAA adopted the identified provisions of 40 CFR part 60 unchanged and as in effect on December 8, 2021, into section 104.2 of its regulations.

Delegation of Authority

The EPA has determined that NWCAA's regulations continue to provide adequate and effective procedures for implementing and enforcing the NSPS. Accordingly, the EPA hereby approves your request for an updated delegation of authority to implement and enforce the NSPS identified in Enclosure A, subject to the following terms and conditions:

1. As requested by NWCAA, the delegation of all requested NSPS is limited to implementation and enforcement of the NSPS as of December 8, 2021.

¹ Subparts S, BB, and BBa apply to primary aluminum reduction plants and Kraft pulp mills which, in the state of Washington, are regulated by the Washington Department of Ecology. See Washington Administrative Code 173-405-012 and 173-415-010.

2. The EPA is not delegating the following provisions under 40 CFR part 60 to NWCAA:
 - a. Subparts B and Ba, which apply to the adoption and submittal of state plans and actions taken to approve or disapprove such plans by the Administrator of the EPA. These subparts are not delegable.
 - b. Subpart C, which states that several other subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B of 40 CFR part 60. This subpart establishes no authority that is necessary to implement or enforce the program and is not delegable.
 - c. Subparts Cb, Cc, Cd, Ce, Cf, BBBB, DDDD, FFFF, MMMM, and UUUUa. These subparts specify the requirements for approval of state plans for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B or Ba of 40 CFR part 60.
3. The EPA is not delegating the provisions of the Consolidated Air Rule under 40 CFR part 65. As proposed on October 28, 1998, (63 FR 57748, 57784-57786) and promulgated on December 14, 2000, (65 FR 78268, 78272), the CAR comprises alternative compliance approaches to referencing subparts in 40 CFR parts 60 and 63. Therefore, formal delegation of the CAR is not required provided the state has received formal delegation of the referencing subpart.
4. The EPA is delegating the identified federal standards as in effect on December 8, 2021. New NSPS or NSPS that are revised substantively after that date are not delegated to your agency; these remain the responsibility of the EPA.
 - a. Acceptance of this delegation does not commit your agency to request or accept delegation of future NSPS standards and requirements.
 - b. The EPA encourages your agency to update your NSPS delegation on an annual basis. This could coincide with the updating of the adoption by reference of the federal NSPS standards, which is important for maintaining the EPA's approval of your part 70 permitting program.
5. The EPA is not delegating authorities under 40 CFR part 60 that specifically indicate they cannot be delegated, that require rulemaking to implement, that affect the stringency of the standard, equivalency determinations, or where national oversight is the only way to ensure national consistency.
6. The EPA is not delegating standards that have been vacated as a matter of federal law.
7. Implementation and enforcement of the delegated NSPS are subject to the *Environmental Performance Partnership Agreement* between the State of Washington and the EPA and its successor documents. The agreement defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Integrated Compliance Information System for Air via the Exchange Network. Your agency will ensure that all relevant source notification and report information is entered as provided in the agreement into the specified EPA database system to meet your recordkeeping/reporting requirements.

8. Enforcement of these delegated NSPS in your jurisdiction will be the primary responsibility of your agency. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 111(d)(2) and 113 of the Clean Air Act with respect to sources that are subject to the NSPS.
9. Your agency and the EPA should communicate sufficiently to ensure that each is fully informed and current regarding interpretation of regulations (including any unique questions about applicability) and the compliance status of subject sources in your jurisdiction.
 - a. Any records or reports provided to or otherwise obtained by your agency should be made available to the EPA upon request.
 - b. In accordance with 40 CFR 60.9, the availability to the public of information provided to or otherwise obtained by the EPA in connection with this delegation shall be governed by 40 CFR part 2.
10. Your agency will be the recipient of all notifications and reports and be the point of contact for questions and compliance issues for these delegated NSPS. The EPA may request notifications and reports from owners/operators and/or your agency, if needed.
11. Your agency will work with owners and operators of affected facilities subject to an NSPS subpart to ensure all required information is submitted to your agency. Your assistance is requested to ensure that this information, including excess emission reports and summaries, is submitted to the EPA upon request, if needed.
12. Your agency will require affected facilities to use the methods specified in 40 CFR part 60, as applicable, in performing source tests pursuant to the regulations. *See* 40 CFR 60.8.
13. Changes and alternatives:
 - a. Your agency is not delegated the authorities under 40 CFR 60.4(b), 60.8(b) (terms 2 and 3, to the extent that the change represents an alternative or equivalent method or a *major change to testing* as defined in 40 CFR 63.90), 60.9, 60.11(b) (with respect to alternative methods), 60.11(e)(7)&(8), 60.13(a), 60.13(d)(2), and 60.13(g). Such authorities and approvals remain the responsibility of the EPA.
 - b. Your agency is not delegated the authority to approve a major change to monitoring under 40 CFR 60.13(i). A *major change to monitoring* is defined in 40 CFR 63.90.
 - c. Your agency must maintain a record of all approved alternatives to monitoring, testing, and recordkeeping/reporting requirements and provide this list of alternatives to the EPA semi-annually or more frequently if requested by the EPA. The EPA may audit any approved alternatives and disapprove any that it determines are inappropriate, after discussion with your agency. If changes are disapproved, your agency must notify the owner/operator that it must revert to the original applicable monitoring, testing, recordkeeping, and/or reporting requirements. Also, in cases where the owner/operator does not maintain the conditions which prompted the approval of the alternatives to the monitoring, testing, recordkeeping, and/or reporting requirements, your agency must require the owner/operator to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.

14. Your agency's authority to implement and enforce NSPS under this delegation does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151.² Consistent with previous federal program approvals or delegations, the EPA will continue to implement the NSPS in Indian Country because your agency has not demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.

15. The EPA Administrator delegated to the EPA, Region 10 the authority to delegate the NSPS to any state or local agency. A state or local agency that receives delegation from the EPA, Region 10 does not have the federally recognized authority to further delegate the NSPS.

16. If the EPA determines that your agency's procedures for implementing or enforcing the NSPS are inadequate or are not being effectively carried out, this delegation may be revoked in whole or in part by written notice of the revocation. Any such revocation will be effective as of the date specified in the notice.

Unless we receive negative comments from you within ten days, this delegation is final and will be effective ten days from the date of this letter. Otherwise, no further correspondence to the EPA is needed from NWCAA to make this delegation effective. We will periodically publish a notice in the Federal Register informing the public of NWCAA's updated delegations.

If you have any questions, please contact Geoffrey Glass of my staff at (206) 553-1847 or glass.geoffrey@epa.gov.

Sincerely,

Krishna Viswanathan
Director

Enclosure

cc: Ms. Kathy Taylor
Washington Department of Ecology

Mr. Ned Ende
Washington Department of Ecology

Ms. Crystal Rau
NWCAA

² Under this definition, the EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.