



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 National Emissions Standards for Hazardous Air Pollutants

Dear Mr. Buford:

This letter is in response to your May 18, 2022, request to update and continue the delegation of certain National Emission Standards for Hazardous Air Pollutants. Consistent with the approved mechanism for streamlined delegation as described in 63 FR 66054 (December 1, 1998), 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 NESHAP in effect on December 8, 2021.

Delegation Request

You have requested to update delegation of the 40 CFR parts 61 and 63 NESHAP standards that were previously delegated to NWCAA and to obtain delegation of new standards that the EPA has promulgated since your last delegation.

1. Your request for delegation excluded subparts under 40 CFR part 61 regulating radon or radionuclides, specifically: subparts B, H, I, K, Q, R, T, and W.
2. Your request for delegation excluded the following subparts of 40 CFR part 63: J, S, LL, MM, NN, RRR, JJJJ, KKKKK, YYYYY, DDDDD, EEEEE, FFFFF, GGGGG, LLLLL, MMMMM, NNNNN, OOOOO, PPPPP, RRRRR, SSSSS, VVVVV, YYYYYY, BBBBBB, CCCCCC, and EEEEEEE.¹

NWCAA demonstrated that on February 10, 2022, NWCAA adopted the identified provisions of 40 CFR parts 61 and 63 unchanged and as in effect on December 8, 2021, into section 104.2 of its regulations.

¹ Subpart LL applies to primary aluminum reduction plants. Subparts S and MM apply to pulp mills, including Kraft and sulfite mills. In the state of Washington, the Department of Ecology regulates primary aluminum reduction plants and Kraft and sulfite pulp mills. See Washington Administrative Code 173-405-012, 173-410-012, and 173-415-010.

Delegation of Authority

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

1. As requested by NWCAA the delegation of all requested NESHAP is limited to implementation and enforcement of the NESHAP as of December 8, 2021.
2. The EPA is not delegating the following provisions under 40 CFR part 63 to NWCAA:
 - a. Subpart B, which implements sections 112(g) and 112(j) of the Clean Air Act. The EPA has previously stated that a part 70 permitting authority does not need to apply for approval in order to use its own program to implement section 112(g). Furthermore, section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements. Therefore, delegation is not required to implement sections 112(g) and 112(j) and 40 CFR subpart B. *See* 59 FR 26429, 26447 (May 20, 1994) and 61 FR 68384, 68397 (December 27, 1996).
 - b. Subpart C, which lists hazardous air pollutants that have been deleted or refined. This subpart grants no authority that is necessary to implement or enforce the program and is therefore not delegable.
 - c. Subpart D, which implements section 112(d) of the Clean Air Act. Because this subpart explicitly states that it applies to a state or local agency acting pursuant to a permit program approved under title V of the Clean Air Act, delegation is unnecessary.
 - d. Subpart E, which establishes procedures for the EPA approval of state rules, programs, or other requirements to implement and enforce section 112 Federal rules and is not delegable.
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. Note that certain authorities are automatically granted to you because you have an approved part 70 program (see for example, 40 CFR 63.6(i)(1)). *See* 66 FR 48211, 48213 (September 19, 2001). However, you must have authority to implement and enforce the particular standard against the source as a matter of state law in order to implement this authority as a matter of federal law.
5. The EPA is delegating the identified federal standards as in effect on December 8, 2021. New NESHAP or NESHAP 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 NESHAP standards and requirements.
 - b. The EPA encourages your agency to update your NESHAP delegation on an annual basis. This could coincide with the updating of the adoption by reference of the federal NESHAP standards, which is important for maintaining the EPA's approval of your part 70 permitting program.
6. The EPA is not delegating authorities under 40 CFR parts 61 and 63 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.
 7. The EPA is not delegating standards that have been vacated as a matter of federal law.
 8. This delegation is subject to the terms and conditions of the EPA's previous NESHAP delegations to NWCAA, 63 FR 66054 (December 1, 1998), 64 FR 7793 (February 17, 1999), 65 FR 10391 (February 28, 2000), and 67 FR 11417 (March 14, 2002), as updated by this letter.
 9. Implementation and enforcement of the delegated NESHAP 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.
 10. Enforcement of these delegated NESHAP in your jurisdiction will be the primary responsibility of your agency. Nevertheless, the EPA may exercise its concurrent enforcement authority pursuant to sections 112(l)(7) and 113 of the Clean Air Act and 40 CFR 63.90(d)(2) with respect to sources that are subject to the NESHAP.
 11. 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 61.16 and 63.15, 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.
 12. 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 NESHAP. The EPA may request notifications and reports from owners/operators and/or your agency, if needed.

13. Your agency will work with owners and operators of affected facilities subject to a NESHAP 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.
14. Your agency will require affected facilities to use the methods specified in 40 CFR parts 61 and 63, as applicable, in performing source tests pursuant to the regulations. *See* 40 CFR 61.7 and 63.7.
15. Changes and alternatives:
 - a. For part 61 standards, your agency is not delegated the authorities under 40 CFR 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16. Such authorities and approvals remain the responsibility of the EPA.
 - b. For part 63 standards, your agency is not delegated the Category II authorities in 40 CFR 63.91(g)(2)(ii). Such authorities and approvals remain the responsibility of the EPA.
 - 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 source to revert to the original monitoring, testing, recordkeeping, and reporting requirements, or more stringent requirements, if justified.
16. Your agency's authority to implement and enforce NESHAP 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 NESHAP in Indian Country because your agency has not demonstrated that it has authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.
17. The EPA Administrator delegated to the EPA, Region 10 the authority to delegate the NESHAP 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 NESHAP.
18. 40 CFR 63.96(b) contains the applicable procedures governing withdrawal of this delegation by the EPA or from this delegation by NWCAA, as applicable.

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.

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 delegation.

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

Enclosures

cc: Ms. Kathy Taylor
Washington Department of Ecology

Mr. Ned Ende
Washington Department of Ecology

Ms. Crystal Rau
NWCAA