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

RECEIVED
APR 25 1988
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
STATE OF ILLINOIS

Richard J. Carlson, Director
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Dear Mr. Carlson:

Enclosed are two copies of a revised agreement between the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency, setting forth the terms and conditions of implementing the New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPS), and the inspection, monitoring, and entry program. The agreement is revised to include a list of NSPS and NESHAPS sections which cannot be delegated to the State because they invoke regulation setting and amending action that requires notification in the Federal Register.

If you will sign and return a copy to me, we will publish the agreement in the Federal Register.

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

Enclosures

RECEIVED IN THE
OFFICE OF AIR INSPECTION
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Joint USEPA - IEPA Agreement for Delegation of Authority for New Source Performance Standards (Section 111 of the Clean Air Act), National Emission Standards for Hazardous Air Pollutants (Section 112), and Inspection, Monitoring, and Entry (Section 114)

The undersigned, on behalf of the Illinois Environmental Protection Agency and the United States Environmental Protection Agency, hereby agree that in the State of Illinois, the Illinois Environmental Protection Agency will have primary responsibility to implement and enforce Federal New Source Performance Standards (NSPS), 40 CFR Part 60, and Federal National Emission Standards for Hazardous Air Pollutants, (NESHAPS), 40 CFR Part 61, and authority for Inspection, Monitoring, and Entry of Emission Sources.

The United States Environmental Protection Agency (USEPA) has reviewed the pertinent procedures of the Illinois Environmental Protection Agency (IEPA) and supporting regulations of the State of Illinois, and has determined that the IEPA has an adequate program for the implementation and enforcement of the NSPS and NESHAPS and for undertaking inspection of sources. Therefore, in accordance with Clean Air Act Sections 111(c), 112(d), and 114(b), and subject to the specific terms and conditions set forth below, the USEPA hereby delegates authority to the IEPA as follows:

A. Authority for all sources located or to be located in the State of Illinois which are 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, unless such standard is accompanied by a requirement for individual delegation. The delegation of authority to enforce future standards, revisions, and amendments will be effective as of the date that such standards become applicable.

B. Authority for all sources located or to be located in the State of Illinois which are 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, unless such standard is accompanied by a requirement for individual delegation. The delegation of authority to enforce future standards, revisions, and amendments will be effective as of the date that such standards become applicable.

C. Authority to require any person who owns or operates a source in Illinois, subject to the requirements of the Clean Air Act, to engage in activities relative to air pollutant emissions, and for the IEPA to oversee the conduct of such activities, as provided by Section 114(b) of the Clean Air Act.

The terms and conditions of this delegation are as follows:

1. The IEPA shall enforce the NSPS and NESHAPS whenever applicable, independent of the existence of a less stringent State regulation.

2. The Federal regulations in 40 CFR Parts 60 and 61, as amended, do not have provisions for granting waivers by class of source of testing requirements, hence this delegation does not convey to the IEPA authority to grant waivers by class of source of testing requirements from NSPS or NESHAPS regulations. IEPA 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 under 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 IEPA must inform USEPA of such actions within 30 days of taking the action.

3. The IEPA will require the utilization of the methods specified in appendices and Subparts of 40 CFR Parts 60 and 61 for source tests and monitoring, pursuant to the regulations.

4. Enforcement of NSPS and NESHAPS in the State of Illinois will primarily be the responsibility of the IEPA, as it represents the State of Illinois. However, this delegation in no way limits the USEPA's concurrent authority as provided in Sections 111(c)(2) and 112(d)(2) of the Clean Air Act. Enforcement shall be consistent with USEPA's "Timely and Appropriate" guidance.

5. The IEPA and the USEPA Region V will maintain a system of communication for the purpose of insuring that each office is informed of: (a) the current compliance status of subject sources in the State of Illinois; (b) the interpretation of applicable 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 notifications provisions in 40 CFR Parts 60 and 61 requiring industry to make submissions to the USEPA, are met by sending such submissions to the IEPA. The IEPA 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 IEPA.

   IEPA's quarterly reports submitted to USEPA pursuant to 40 CFR Part 51 shall provide data for any source subject to 40 CFR Parts 60 or 61 which the IEPA believes to be in violation of applicable requirements of such Parts. These reports shall also include lists of all sources subject to 40 CFR Parts 60 or 61, with name, location address, type, and date of most recent performance test.

   IEPA's inspection reports for sources subject to 40 CFR Parts 60 or 61 shall also be sent to USEPA, further describing such sources and providing the surveillance actions undertaken by IEPA, compliance actions initiated by IEPA, and the results of IEPA's review of emission data and compliance reports submitted for the source.

6. a. In its implementation and enforcement of NSPS and NESHAPS, the IEPA shall follow the interpretations of their provisions made by the USEPA, as formally presented to the IEPA.

   b. The IEPA shall consult with the USEPA on interpretations of matters which are similar in nature to those addressed by USEPA guidance, which arise in the IEPA's implementation and enforcement of the NSPS and NESHAPS. If it is IEPA's initial interpretation of these programs that emission standards or other requirements are not applicable, the IEPA shall formally consult with USEPA. The consultation shall provide adequate opportunity for USEPA's review and response, for which at least 30 days shall be provided. If it is the IEPA's initial interpretation that program requirements are applicable, the IEPA may consult with USEPA or, alternatively, shall notify the USEPA by sending it a copy of the relevant document in which the interpretation is made.

   c. The IEPA shall also notify the USEPA, by a copy of the relevant document, of determinations made, based upon USEPA interpretations.

7. If the IEPA determines that a violation of a delegated NSPS or NESHAPS exists, it shall 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. Violations of NESHAPS which threaten public health will be immediately reported to USEPA by phone; violations of the NSPS and other violations of the NESHAPS will be reported as part of monthly enforcement discussions between IEPA and USEPA; progress of compliance efforts will be reported in the quarterly compliance report. Furthermore, if the IEPA determines that it is unable to enforce a NSPS or NESHAPS standard, the IEPA shall immediately notify USEPA, Region V. If USEPA decides to pursue an enforcement action for violation of NSPS or NESHAPS it shall notify IEPA.

8. The authority of the Administrator of USEPA to approve various equivalent, alternative, or site-specific provisions is not delegated to IEPA. 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 regulation 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 authority for implementing such decisions by the Administrator.

9. If a delegated NSPS or NESHAPS is not in effect as a matter of Illinois law or rule, then the appropriate standards, testing, monitoring, and reporting requirements are to be placed as conditions on construction and operating permits issued to sources subject to such standards.

10. The IEPA is not delegated the authority to grant waivers of compliance as provided in 40 CFR 61.11 for new NESHAPS, which authority shall remain with USEPA.

11. The use of the authority of Section 114 of the Clean Air Act shall be in accordance with Sections 7 and 7.1 of the Illinois Environmental Protection Act and the regulations adopted pursuant thereto.

12. As part of its implementation of NSPS and NESHAPS the IEPA shall perform the following actions:

    a. The IEPA shall respond to any requests for "Determination of Construction or Modifications" (40 CFR 60.5 and 40 CFR 61.06) by sources in Illinois within 30 days of receipt of the request, with consultation with USEPA, as appropriate.

    b. The IEPA shall review plans for modification, reconstruction, or construction of affected sources under this delegation as an integral part of the State's air pollution control permit programs.

    c. The IEPA shall condition permits issued under this delegation to highlight the applicable requirements of 40 CFR Part 60 and 40 CFR Part 61 for notification, recordkeeping, emission tests, performance tests and monitoring.

    d. The IEPA shall receive notifications from permittees for affected sources, pursuant to the notification requirements contained in 40 CFR 60.7 and 40 CFR 61.09.

       The IEPA shall receive information from owners of existing sources who report in accordance with 40 CFR 61.10.

    e. The IEPA shall observe the performance tests and emission tests for affected sources, pursuant to 40 CFR 60.8, 40 CFR 61.12, and Appendix B of 40 CFR 61.

    f. The IEPA shall conduct field investigations for sources in Illinois which are subject to 40 CFR Part 60 and 40 CFR Part 61. The investigations will include verification of whether the recordkeeping requirements of 40 CFR 60.7(d) and the monitoring requirements of 40 CFR 60.13 and 40 CFR 61.12 are being met, and whether the source remains in compliance with the applicable emission standard. The IEPA shall conduct such field investigations in accordance with general IEPA strategies, priorities, and resources, which are subject to USEPA review as part of the annual program planning process.

13. a. The USEPA shall examine the procedures used by the IEPA to implement the provisions of 40 CFR Parts 60 and 61 at times mutually agreeable to both agencies.

    b. USEPA shall advise IEPA of any deficiencies in the IEPA administration of this agreement in writing. USEPA shall then provide IEPA with an opportunity to respond, prior to taking action on any deficiencies which may be discovered during the examination of procedures.

    c. In disputes between the IEPA and the Regional Office of the USEPA, the IEPA may pursue resolution with higher levels within the USEPA.

14. a. This delegation is effective 30 days from the date of execution of this Agreement, superseding the previous delegation of August 18, 1982, and shall remain in effect until it is terminated by either party or revoked by the USEPA.

b. This delegation may be terminated in part or in whole by either party, provided 30 days written notice is given to the other party.

c. In the event that IEPA fails to carry out its responsibility under this Agreement, the USEPA may revoke this delegation immediately in part or in whole, after consultation with the IEPA. Such revocation shall be effective as of the date of written notice of such revocation to the IEPA.

d. In the event that IEPA determines that, for any reason, including budget reductions, that the State is unable to administer any NSPS or NESHAP, the IEPA will notify the USEPA. Upon such notification, the responsibility for the administration of such standard will return to the USEPA.

e. This delegation may be amended at any time by a formal written Agreement of both parties, including any amendment to add, change, or remove conditions or terms of this Agreement.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Valdas V. Adamkus
Regional Administrator, Region V
U.S. Environmental Protection Agency

April 8th, 1988
Date

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Richard J. Carlson, Director
Illinois Environmental Protection Agency

4-28-88
Date

Appendix A June 1986

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

1. Subpart A
   60.8(b)(2)
   60.8(b)(3)
   60.11(e)

2. Subpart Da
   60.45a

3. Subpart Ka
   60.114a

4. Subpart S
   60.195(b)

5. Subpart DD
   60.302(d)(3)

6. Subpart GG
   60.332(a)(3)
   60.335(a)(1)(ii)

7. Subpart VV
   60.482-1(c)(2)
   60.484

8. Subpart WW
   60.493(b)(2)(i)(A)*
   60.496(a)(1)

9. Subpart GGG
   60.592(c)

10. Subpart JJJ
    60.623

* For last sentence only concerning values of Se and Sh

Appendix B June 1986

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

1. Subpart A
   61.04(b)
   61.12(d)(1)
   61.13(h)(1)(ii)

2. Subpart E
   61.53(c)(4)*

3. Subpart J
   61.112(c)

3. Subpart N
   61.164(a)(2)
   61.164(a)(3)

4. Subpart O
   61.172(b)(2)(ii)(B)
   61.172(b)(2)(ii)(C)
   61.174(a)(2)
   61.174(a)(3)

5. Subpart V
   61.242-1(c)(2)
   61.244

* Restricted delegation applies only to development of list.