Message

From: Bertram, Emily [Bertram.Emily@epa.gov]
Sent: 11/13/2018 2:49:55 PM
To: Vyas, Himanshu [vyas.himanshu@epa.gov]
Subject: FW: Region 3 state delegations of authority for OOOO and OOOOa

Here is the info Doug compiled about a year ago on delegation of OOOO and OOOOa. I hope it is helpful.

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From: Snyder, Doug
Sent: Tuesday, September 19, 2017 3:00 PM
To: Mastro, Donna <mastro.donna@epa.gov>; Aquino, Marcos <Aquino.Marcos@epa.gov>; Linn, Emily <Bertram.Emily@epa.gov>
Subject: FW: Region 3 state delegations of authority for OOOO and OOOOa

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From: Snyder, Doug
Sent: Tuesday, September 19, 2017 2:59 PM
To: Fried, Gregory <Fried.Gregory@epa.gov>
Cc: Spina, Providence <Spina.Providence@epa.gov>
Subject: Region 3 state delegations of authority for OOOO and OOOOa

Greg,

Here is the rundown on NSPS OOOO and OOOOa delegations for the Region 3 states, except Delaware and DC. DC and Delaware have no current oil and gas activity so not sure you need that.

Maryland – New federal NSPS are automatically delegated to Maryland, with no further approval by EPA, as per a 1985 delegation (50 Fed Reg 34140 (8/23/1985). So, delegated OOOO and OOOOa authority.

Virginia – Adopts new NSPS on a yearly basis by legally adopting the requirements, informing EPA of adoption, and meeting other conditions. Va has been delegated OOOO (9 VAC5-50-410 [Designated Standards of Performance]) but not all of OOOOa has been delegated to Va. As stated in a "Note" to 9VAC5-50-410, "authority to enforce [OOOOa] is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-5-80-60 and subject to Article 1 (. . . Federal Operating Permits for Stationary Sources) of Part II of 9VAC5-80 (Permits for Stationary Sources) or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3 (9VAC5-80-360 et seq., Federal Operating Permits for Acid Rain Sources). . . . See also VAC5-50-405.B,

West Virginia – Adopts new federal NSPS on a yearly basis by incorporation by reference following notice to EPA and commitment to enforce those rules. The authority to do so is found in the WV Code of State Regulations (CSR) at 45 CSR-16-4.1, which states:

"The Secretary hereby adopts and incorporates by reference the provisions o 40 CFR Parts 60 and 65, to the extent referenced in 40 CFR Part 60, . . . effective June 1, 2016 . . . except as follows:"

There is no exception for OOOO or OOOOa listed, and by the text of the regulation it is clear that EPA approved the 2016 WV update. R3 is checking to see if EPA approved WVA's incorporation by reference of NSPS enacted after June 1, 2017.

Pennsylvania: Pa automatically incorporates by reference all new NSPS with no further input/delegation from EPA, per the 1985 initial delegation (See 50 Fed Reg. 34140 , 34142 [8/23/1995]). The Pa statutory cite allowing this is 25 Pa Code 122.1 and .3. **However,** 25 Pa Code 122.2 says that the NSPS are not automatically adopted by local air pollution control agencies (Phila Air Management Services and Allegheny County Health Department) and that those local agencies may adopt or not adopt NSPS as they deem appropriate.

Philadelphia AMS – Per the initial 1985 delegation, Philadelphia AMS was also delegated authority to enforce future NSPS with no further delegation/action by EPA. See 50 Fed. Reg. 34141, 34143. So, Phila AMS should have authority to implement OOOO and OOOOa.

ACHD – ACHD also automatically incorporates by reference all NSPS adopted by EPA. Article XXI, Section 2105.05.a of the Allegheny County regulations states that "All [NSPS] now or hereafter established by the EPA at 40 CFR part 60 in accordance with Section 111 of the [CAA] are hereby incorporated by reference into this Article." This section goes on to say that "Additions, revisions or deletions to these federal regulations . . . are incorporated into this Article and are effective on the date established by the federal regulations, unless otherwise established by regulation under this Article." I have not found any exceptions in Article XXI limiting OOOO or OOOOa. Section 2105.110 requires that ACHD be given notice before any unconventional well activity begins.

If you or Provi have any questions, please send an email or give a call. I wasn't sure how far to take this research based on your message.

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