



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF  
AIR AND RADIATION

Carol McCoy, Chief  
Air Resources Division  
Natural Resource Stewardship  
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National Park Service-Air  
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Denver, Colorado 80225-0287

Dear Ms. McCoy:

Thank you for your email of April 8, 2016, to Deborah Jordan, while she was on detail as a Senior Policy Advisor in the U.S. Environmental Protection Agency's Office of Air and Radiation. Ms. Jordan asked me to respond to your inquiry. In the email, you shared the concerns of the National Park Service (NPS) and the Fish and Wildlife Service (FWS) regarding the Federal Land Managers (FLMs) notification process for New Source Review (NSR) permit applications for new and modified major sources that may impact Federal Class I areas.

In your email, you identified some areas of concern for the FLMs and provided your thoughts for addressing them. Specifically, two issues were identified for EPA's consideration:

- Ensuring that states provide to the FLMs timely and complete materials related to permit applications; and
- Eliminating the practice by some states of only notifying the FLMs of permit applications for sources within 100 kilometers (km) of a Class I area.

As noted in more detail below, the existing EPA regulations require both timely notification of permit applications and transmittal of the appropriate information related to those applications that may affect Class I areas, regardless of distance. In addition, the EPA has provided guidance on implementing these

requirements in previous EPA memoranda, which include those dated March 19, 1979<sup>1</sup>, April 8, 1981<sup>2</sup>, October 19, 1992<sup>3</sup>, March 9, 2011<sup>4</sup> and April 16, 2013.<sup>5</sup>

Please note the following key elements of the FLM notification process, as described in existing EPA regulations and guidance:

- Provide written notice of the permit application to the FLM of any lands within a Class I area whose visibility may be affected<sup>6</sup> by emissions from a proposed new facility or major modification in either attainment<sup>7</sup> or nonattainment<sup>8</sup> areas.
- Provide the FLM with notification within 30 days of receipt of NSR/Prevention of Significant Deterioration (PSD) permit applications and at least 60 days before public hearing on the application.<sup>9</sup> Include in the written notification to the FLM all information relevant to the permit application, and an analysis of the anticipated impacts on visibility in any Federal Class I area, or other visibility protected area.<sup>10</sup>
- Consider any FLM analysis of the facility's adverse impact on visibility in any Federal Class I area provided within 30 days of the written notification and receipt of all information relevant to the permit application.<sup>11</sup> If the state finds that the FLM's analysis does not demonstrate that an adverse impact will result in the Federal Class I area, the state's notice of public hearing must either explain its decision or provide notice as to where such explanation can be obtained.<sup>12</sup>
- Notify the FLM of permit applications of not only facilities that will be located within 100 km of a Class I area, but also large sources located at distances greater than 100 km if there is reason to believe that such sources could affect the air quality in the Class I area.<sup>13</sup>

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<sup>1</sup> "Notification to Federal Land Managers Under Section 165(d) of the Clean Air Act," March 19, 1979, EPA memorandum to Regional Administrators calling for timely notification of PSD permit applications to the FLMs for all sources located within 100 km of the Class I area and for "very large sources" on a case-by-case basis beyond 100 km.

<sup>2</sup> April 8, 1981, EPA letter to Russell Dickenson (Director, NPS) reaffirming EPA's 1979 policy for timely EPA transmittal of PSD permits affecting Class I areas.

<sup>3</sup> "Clarification of Prevention of Significant Deterioration (PSD) Guidance for Modeling Class I Area Impacts," October 19, 1992, EPA memorandum to Regional Offices recommending the use of long-range models and the need for routine FLM notification for PSD permit applications within 100 km of Class I area, as well as the need to consider sources located more than 100 km "if there is reason to believe that such sources could affect the air quality in the Class I area."

<sup>4</sup> March 9, 2011, EPA letter to Sheila C. Holman (Director, Division of Air Quality, North Carolina Department of Environment and Natural Resources) explaining that EPA expects the state to notify the FLM in writing of any proposed new or modified source locating within 100 km of a Class I area or any proposed source that would be "located further than 100 km from a Class I area but other factors (such as the proposed source's size) raise concerns about potential visibility impacts." It also explains that EPA's regulations require that the notification "include an analysis of the anticipated impacts on visibility in any Federal Class I area."

<sup>5</sup> April 16, 2013, EPA letter to Kathleen Waylett (Senior Deputy Attorney General, North Carolina Department of Justice) and Sheila C. Holman, explaining that under NC state law "it is North Carolina's obligation to identify proposed new or modified sources that may affect visibility in a Class I area, and to provide the Federal Land Manager(s) with timely notice of such proposed sources along with required visibility analysis."

<sup>6</sup> 40 CFR 51.307(a)(1), 40 CFR 52.21(p)(1)

<sup>7</sup> 40 CFR 52.27(d)(1)

<sup>8</sup> 40 CFR 51.307(b)(2); 40 CFR 52.28(e)(2)

<sup>9</sup> 40 CFR 51.307(a)(1), 40 CFR 52.27(d)(1), 40 CFR 52.28(e)(2), 40 CFR 52.21(p)(1)

<sup>10</sup> 40 CFR 51.307(a)(1), 40 CFR 52.27(d)(1), 40 CFR 52.28(e)(2), 40 CFR 52.21(p)(1)

<sup>11</sup> 40 CFR 51.307(a)(3), 40 CFR 52.21(p)(3)

<sup>12</sup> 40 CFR 51.307(a)(3), 40 CFR 52.21(p)(3)

<sup>13</sup> See, generally, memorandum noted in footnote 3.

- Where the state requires or receives advance notification (e.g., early consultation with the source prior to submission of a permit application of a source that may affect visibility) the state must notify all affected FLMs within 30 days of such advance notification.<sup>14</sup> In some areas, depending on the size of the facility and its proximity to a Class I area, it may also be appropriate to notify the FLMs of the pre-application meeting with the owner of a proposed facility.<sup>15</sup>
- Send a copy of the notice of opportunity for public comment to the FLM whose lands may be affected by emissions from the facility.<sup>16</sup>

We understand that some states may not be properly implementing the FLM notification requirements as set forth in the applicable regulations and guidance noted above. The EPA is committed to working with the states to ensure that they notify the FLMs where appropriate and provide the appropriate documents for FLM review.

We plan to share this list of key elements with the EPA Regional offices and ask them to encourage the states to follow such steps to notify FLMs when any proposed new major stationary source or major modification may affect a Class I area. Further, we intend to make it clear that “relevant” information provided to FLMs should include, but not be limited to, the complete permit application, modeling input/output data and results, staff analyses, and the draft permit. We believe that this effort will improve communication between the states and FLMs, and minimize future misunderstandings and frustration for FLMs.

The agency looks forward to continuing to work with you to improve air quality in Class I areas. If you or your staff have any questions, please contact Raj Rao, of my staff, at (919) 541-5344 or [Rao.Raj@epa.gov](mailto:Rao.Raj@epa.gov).

Sincerely,



Anna Marie Wood  
Director

Air Quality Policy Division

cc: Linda Geiser, U.S. Forest Service  
Tamara McCandless, U.S. Fish & Wildlife Service

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<sup>14</sup> 40 CFR 51.307(a)(2)

<sup>15</sup> March 1979 memorandum at FN 1

<sup>16</sup> 40 CFR 51.166(q)