



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION V
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO ATTENTION OF:
5AMD

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carroll D. Besadny, Secretary
Bureau of Air Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707

Dear Mr. Besadny:

In response to your August 10, 1983 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Pollutants (NESHAPS). Since the original delegation on September 28, 1976, a number of additional NSPS and NESHAPS have been promulgated and changes in delegation policy have been made. Therefore this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the State of Wisconsin and the State's history of implementing the programs, and we have determined that the State of Wisconsin has the resources and the ability to implement and enforce the NSPS and NESHAPS programs for the regulations appropriately promulgated by the State, and to implement the additional responsibilities requested in your August 10, 1983 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the State of Wisconsin to implement and enforce the NSPS and NESHAPS as follows:

- A. Authority for all sources located or to be located in the State of Wisconsin subject to the NSPS promulgated in 40 CFR Part 60. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.
- B. Authority for all sources located or to be located in the State of Wisconsin subject to the NESHAPS promulgated in 40 CFR Part 61. This delegation includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions.

1. This delegation letter replaces the previous NSPS and NESHAPS delegation letter of September 28, 1976.

2. Certain provisions of the NSPS and NESHAPS regulations allow the Administrator to take further standard setting actions. Such standard setting provisions cannot be delegated and these are as follows:
 - a. Alternative means of emission limitations in Clean Air Act (CAA) 111(b)(3) which is exemplified in 40 CFR 60.114 a.
 - b. Innovative technology waivers in CAA Section 111(j).
 - c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(d).
 - d. Approval of equivalent and alternate test methods in 40 CFR 60.8 (b)(2) and (3).
 - e. Establishment of alternative opacity standards in 40 CFR 60.11(e).
 - f. Issuance of commercial demonstration permits under 40 CFR 60.45a.
 - g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).
3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the State must notify USEPA Region V in accordance with the reporting procedures referred to in item 10 of the conditions and exceptions.
 - a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4), or make minor modifications in accordance with 40 CFR 60.3(b)(1).
 - b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.3(c).
 - c. Approval of smaller sampling times or sampling volumes under 40 CFR 60.46(b) or (d).
 - d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.23(b) and also the use of filtering equipment as explained in 40 CFR 61.23(c).
 - e. Approval of sampling techniques as specified in 40 CFR 61.43(a).
4. The Federal NSPS regulations in 40 CFR Part 60, as amended, do not provide for granting waivers by source class of testing requirements or granting variances, hence this delegation does not convey to the State of Wisconsin authority to grant waivers by source class of testing requirements or grant variances from NSPS regulations.

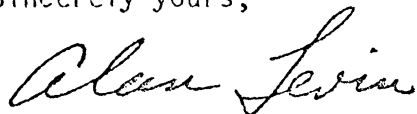
5. For Federal NSPS and NESHAPS pollutants and source categories and for amendments to existing Federal NSPS and NESHAPS for which the State of Wisconsin has not promulgated regulations or amendments, the State will exercise a partial delegation by performing the administrative and engineering responsibilities with respect to plan review, notifications and record keeping, and performance testing all in accordance with items 9 and 12 of the conditions and exceptions. The partial delegation does not include applicability determinations or enforcement actions. The administrative and engineering responsibilities shall continue until such time as the State promulgates appropriate regulations or amendments at which time the State is given fully delegated responsibility as is cited in item 6 of the conditions and exceptions.
6. Implementation and enforcement of the NSPS and NESHAPS in the State of Wisconsin will be the primary responsibility of the State of Wisconsin for those standards for which the State has promulgated appropriate regulations and for which the State has notified the Regional Administrator. The authority includes but is not limited to those responsibilities in item 5, routine applicability determinations in accordance with item 7, and enforcement actions.
7. The State will make routine applicability determinations pertaining to sources subject to NSPS and NESHAPS regulations. Where previous determinations exist in the form of written guidance from USEPA, the State's source specific determinations will be in accordance with such written guidance. The U.S. EPA will periodically forward such U.S. EPA compiled determinations to the Wisconsin Department of Natural Resources (WDNR). If a non-routine situation arises which is not covered by a U.S. EPA determination, the State will forward the details to U.S. EPA Region V for final resolution. A U.S. EPA resolution is to be obtained on any matter involving the non-routine interpretation of Sections 111 or 112 of the Clean Air Act and of 40 CFR Parts 60 and 61 to the extent that application, implementation, administration, or enforcement of these sections have not been covered by determinations or guidance sent to the WDNR.
8. If, after appropriate discussions with the WDNR, the Regional Administrator determines that a State procedure is inadequate for implementing or enforcing any NSPS or NESHAPS in accordance with item 5 or 6 of the conditions and exceptions, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the dates specified in a Notice of Revocation to the Secretary of WDNR.
9. If the State of Wisconsin determines that a violation of a NSPS or NESHAPS exists, the WDNR shall immediately notify U.S. EPA, Region V, of the nature of the violation together with a brief description of the State's efforts or strategy to secure compliance. With respect to those NSPS and NESHAPS for which the State has only administrative and engineering responsibilities and during the time which the State has

only administrative and engineering responsibility, any violations will be immediately referred to U.S. EPA, Region V. The U.S. EPA may at any time exercise its concurrent enforcement authority pursuant to Section 113 of the Clean Air Act, as amended, with regard to any violation of an NSPS or NESHAPS regulation.

10. The WDNR and the U.S. EPA Region V will develop a system of communication for the purpose of insuring that both agencies are informed on (a) the current compliance status of subject sources in the State of Wisconsin; (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR Sections 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submissions to the WDNR. The State will make available this information to the U.S. EPA on a case-by-case basis.
11. At no time shall the State of Wisconsin enforce a State NSPS or NESHAPS regulation less stringent than the Federal requirements for NSPS or NESHAPS (40 CFR Parts 60 or 61 as amended) in accordance with 116 of the CAA.
12. The WDNR will utilize the methods specified in 40 CFR Parts 60 and 61 in performing source tests pursuant to the regulations.
13. From time to time when appropriate, the State will revise its NSPS and NESHAPS to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAPS pollutant and source categories.

A notice announcing this delegation will be published in the Federal Register in the near future. This delegation becomes effective as of the date of this letter. Unless the U.S. EPA receives written notice from the WDNR of objections within 10 days of receipt of this letter, it will be deemed that the State has accepted all the conditions and exceptions of this delegation.

Sincerely yours,



Alan Levin
Acting Regional Administrator