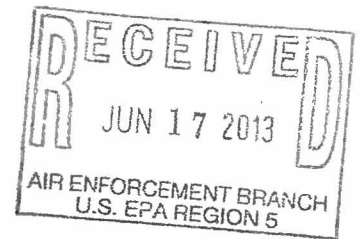




Minnesota Pollution Control Agency

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June 7, 2013



JUN 17 2013

Mr. George Czerniak
USEPA REGION 5
77 West Jackson Boulevard
Mail Code: A-18J
Chicago, IL 60604-3507

RE: Delegation as Administrator of the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants with Regard to Performance Testing

Dear Mr. Czerniak:

The August 25, 1986 stamped letter (1986 Delegation) from the U.S. Environmental Protection Agency (EPA) to the State of Minnesota Pollution Control Agency (MPCA) outlines the delegation the MPCA has as Administrator of the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP). The standards have roots in different parts of the Clean Air Act (Act), but the Act expressly relies on states to administer its provisions. The EPA is to act when a state declines or fails to act.

Upon delegation of the NSPS and NESHAP, the MPCA is responsible for the administration of performance testing within the standards. The MPCA is clarifying several aspects of this delegation in order to establish a standard operating procedure with regard to implementing federal test protocols. The MPCA will not make decisions that are likely to be nationally significant or alter the stringency of the underlying standards.

NSPS

The 1986 Delegation provides administrative authority of 40 CFR § 60.8 except for § 60.8(b)(2) and (3). Paragraphs b(2) and (3) allow for approving an equivalent test method or an alternative test method also referred to as "major changes" in EPA guidance. The MPCA may not make decisions on major changes to test methodology as defined in 40 CFR 63.90; the February, 1999 guidance document *How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring*; and the 2009 US EPA National Stack Testing Guidance (2009 Guidance). Major changes must be made by US EPA's Office of Air Quality Planning and Standards which is consistent with MPCA's historical policy and will continue as such.

The 1986 delegation states: *"Minnesota 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... however the State must inform the USEPA of such action."* The MPCA can approve minor changes as defined in 40 CFR § 63.90: *"Minor changes to monitoring are those that have no potential to decrease the stringency of the compliance monitoring measures, have no national significance, and are source specific."*

The delegation language above as well as that of 40 CFR 60.8(b)(4) allows for a performance test to be waived when *"the owner or operator of a source has demonstrated by other means ... that the affected facility is in compliance with the standard."* Thus, the MPCA has delegation to make determinations regarding test waivers on a case-by-case basis. Examples of this may include previous test data meeting the requirements of the standard, identical units are to be tested, or if the source has a continuous emissions monitoring system. The 2009 Guidance provides further explanation and instruction on how such situations are to be handled.

The MPCA has the authority to waive a test requirement for reasons as defined in NSPS rules, approve site specific stack test plans, approve shorter sampling times and volumes when necessitated by process variables, set the appropriate representative operating conditions at the time of a test, and allow for minor changes to test methodology as well as monitoring procedure. The MPCA will continue to approve minor changes to performance testing as allowed by the standard itself, the delegation agreement with the EPA, and the above referenced guidance. The EPA will be informed of such decisions by the MPCA.

NESHAP

The MPCA delegation of NESHAP Parts 61 and 63 is established via several documents including the 1986 Delegation; 2002 Approval of Minnesota's Section 112(l) Program Delegation as published in the Federal Register; the stamped February 28, 2005 Memorandum of Agreement (2005 MOA); and stamped February 30, 2009 Delegation Letter. With regard to NESHAP, it is important to make clear that the delegation agreements are such that the MPCA has been delegated authority over Part 70 sources. The EPA retains responsibility of non-Part 70 sources and any specific standard that the MPCA declines to accept or relinquishes.

The 2005 MOA states *"The MPCA has demonstrated that it has in place appropriate mechanisms for implementing and enforcing Section 112 standards with respect to Part 70 sources in accord with this MOA, and that its program is in compliance with the regulations at 40 CFR 63.91."* 40 CFR 63.91(g) outlines the authorities granted in Category I and those not delegated in Category II. These authorities are generally the same as those of NSPS which the 2009 Guidance further confirms. Individual NESHAP subparts may additionally describe what authorities are retained by the Administrator and not delegated.

The MPCA is not allowed under its delegation to approve the use of an alternative method or major change to a test method as defined in 40 CFR 63.90 and identified in 40 CFR § 61.13(h)(1)(ii) and §§ 63.7(e)(2)(ii) and 63.7(f). The MPCA is allowed to approve a minor or intermediate modification (if validated by Method 301) to a reference method or specified monitoring procedure as allowed for in 40 CFR § 63.7(e)(2)(i) and (ii); and §§ 61.13(h)(1)(i) and 61.14.

According to 40 CFR §§ 63.7(e)(2)(1v) and 61.13(h)(1)(iii), the MPCA can waive a NESHAP performance test for the same reasons as stated above for NSPS. Additionally with regard to NESHAP, an owner or operator may request a performance test waiver based on the requirements of 40 CFR 63.7(h)(2) whereby *"...in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request."*

The MPCA has the authority to waive a test requirement for reasons as defined in NESHAP rules, approve site specific stack test plans, approve shorter sampling times and volumes when necessitated by process variables, set the appropriate representative operating conditions at the time of a test, and allow for minor changes to test methodology as well as monitoring procedure. The MPCA will continue to approve minor changes to performance testing as allowed by the standard itself, the delegation agreement with US EPA, and the above referenced guidance.

NSPS/NESHAP PERFORMANCE TESTING SCHEDULES

Parts 60, 61, and 63 do not have provisions that allow for an extension of a test deadline. 2009 EPA stack testing guidance does state, *"Some EPA-approved SIPs may allow states authority to grant extensions of the deadline to conduct a stack test without the issuance of an enforcement order. Extensions of deadlines may be granted in such states where allowed by the EPA-approved SIP."* However, Minnesota's State Implementation Plan (SIP) does not allow for this. Because this authority is not contained within Minnesota's

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SIP, the MPCA cannot modify the NSPS and NESHAP performance test deadlines by modifying a Title V permit.

For situations other than force majeure, under existing delegation, performance test schedule revision requests must be addressed on a case-by-case basis at the discretion of MPCA enforcement. Review of the requests will include seeking input from permitting, stack testing, as well as other MPCA staff. The EPA input will be requested if the MPCA believes the situation warrants it; however, the EPA will not be routinely consulted. The 2009 Guidance provides some explanation on what may be considered an appropriate response to several hypothetical situations. A force majeure may be claimed according to the requirements of 40 CFR §§ 60.8(a)(1-4), 61.13(a)(3-6), and 63.7(a)(4).

The MPCA will act according to the SIP and delegations. Enforcement discretion will be exercised by MPCA on a case-by-case basis when test deadline extensions are requested by sources that cannot assert a force majeure claim.

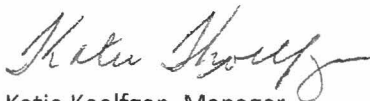
SUMMARY

In order to provide a timely response to regulated parties as well as oversee the State's air program implementation, the MPCA intends to administer the described actions unless such delegation is expressly not granted with a given subpart. EPA Region V will be informed of any decisions. The MPCA does not have delegation to grant waivers by class with regard to testing and each situation will be handled on a case-by-case basis.

The MPCA intends to inform the EPA Region V Air and Radiation Division at the time a decision is made to meet the system of communication requirement of the 1986 Delegation as well as stated in guidance. Most decisions will typically require some form of correspondence with the facility. The EPA will be copied on such correspondence to notify of any decisions or approvals granted by the MPCA. This correspondence may come in the form of a letter or an e-mail.

The MPCA looks forward to a continued collaborative working relationship with US EPA Region V.

Sincerely,



Katie Koelfgen, Manager
Land & Air Compliance Section
Industrial Division

KK/AP:rrs

cc: Kathleen Winters, MPCA General Counsel
Anne Jackson, MPCA
Sarah Kilgriff, MPCA
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