

**§ 49.122 Partial delegation of administrative authority to a Tribe.**

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to an Indian Tribe partial authority to administer one or more of the Federal requirements in effect in subpart M of this part for a particular Indian reservation. The Federal requirements administered by the delegated Tribe will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request partial delegation of administrative authority?* In order to be delegated authority to administer one or more of the Federal requirements that are in effect in subpart M of this part for a particular Indian reservation, the Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that it meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested.

(c) *How is the partial delegation of administrative authority accomplished?* (1) A Partial Delegation of Administrative Authority Agreement will set forth the terms and conditions of the delegation,

will specify the provisions that the Tribe will be authorized to administer on behalf of EPA, and will be entered into by the Regional Administrator and the Tribe. The Agreement will become effective upon the date that both the Regional Administrator and the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Clean Air Act, to the extent specified in the Agreement, for administering one or more of the Federal requirements that are in effect in subpart M of this part for the particular Indian reservation and will act on behalf of the Regional Administrator.

(2) A Partial Delegation of Administrative Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe. Any substantive modifications or amendments will be subject to the procedures in paragraph (d) of this section.

(d) *How will any partial delegation of administrative authority be publicized?* (1) Prior to making any final decision to delegate partial administrative authority to a Tribe under this section, EPA will consult with appropriate governmental entities outside of the specified reservation and city and county governments located within the boundaries of the specified reservation.

(2) The Regional Administrator will publish a notice in the FEDERAL REGISTER informing the public of any Partial Delegation of Administrative Authority Agreement for a particular Indian reservation and will note such delegation in the implementation plan for the Indian reservation. The Regional Administrator will also publish an announcement of the partial delegation agreement in local newspapers.

**§ 49.123 General provisions.**

(a) *Definitions.* The following definitions apply for the purposes of the "General Rules for Application to Indian Reservations in EPA Region 10." Terms not defined herein have the meaning given to them in the Act.

*Act* means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

*Actual emissions* means the actual rate of emissions, in tons per year, of

an air pollutant emitted from an air pollution source. For an existing air pollution source, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that did not operate during the preceding calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

*Administrator* means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

*Agricultural activities* means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

*Agricultural burning* means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

*Air pollutant* means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

*Air pollution source (or source)* means any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.

*Allowable emissions* means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate,

hours of operation, or both) and the most stringent of the following:

(1) The applicable standards in 40 CFR parts 60, 61, 62, and 63;

(2) The applicable implementation plan emission limitations, including those with a future compliance date; or

(3) The emissions rates specified in Federally-enforceable permit conditions.

*Ambient air* means that portion of the atmosphere, external to buildings, to which the general public has access.

*British thermal unit (Btu)* means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

*Coal* means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by ASTM International in ASTM D388-99 (Reapproved 2004)<sup>e1</sup>, Standard Classification of Coals by Rank (incorporated by reference, see § 49.123(e)).

*Combustion source* means any air pollution source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

*Continuous emissions monitoring system (CEMS)* means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

*Continuous opacity monitoring system (COMS)* means the total equipment used to sample, analyze, and provide a permanent record of opacity.

*Distillate fuel oil* means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396-04, Standard Specification for Fuel Oils (incorporated by reference, see § 49.123(e)).

*Emission* means a direct or indirect release into the atmosphere of any air pollutant, or air pollutants released into the atmosphere.

*Emission factor* means an estimate of the amount of an air pollutant that is released into the atmosphere, as the result of an activity, in terms of mass of emissions per unit of activity (for example, the pounds of sulfur dioxide emitted per gallon of fuel burned).

*Emission unit* means any part of an air pollution source that emits, or may emit, air pollutants into the atmosphere.

*Federally enforceable* means all limitations and conditions that are enforceable by the Administrator.

*Forestry or silvicultural activities* means those activities associated with regeneration, growing, and harvesting of trees and timber including, but not limited to, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, fertilization, logging operations, and forest management techniques employed to enhance the growth of stands of trees or timber.

*Forestry or silvicultural burning* means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

*Fuel* means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

*Fuel oil* means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

*Fugitive dust* means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

*Fugitive particulate matter* means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

*Garbage* means food wastes.

*Gaseous fuel* means any fuel that exists in a gaseous state at standard conditions including, but not limited to, natural gas, propane, fuel gas, process gas, and landfill gas.

*Grate cleaning* means removing ash from fireboxes.

*Hardboard* means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

*Heat input* means the total gross calorific value [where gross calorific value is measured by ASTM Method D240-02, D1826-94(Reapproved 2003), D5865-04, or E711-87(Reapproved 2004) (incorporated by reference, see § 49.123(e))] of all fuels burned.

*Implementation plan* means a Tribal implementation plan approved by EPA pursuant to this part or 40 CFR part 51, or a Federal implementation plan promulgated by EPA in this part or in 40 CFR part 52 that applies in Indian country, or a combination of Tribal and Federal implementation plans.

*Incinerator* means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

*Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

*Marine vessel* means a waterborne craft, ship, or barge.

*Mobile sources* means locomotives, aircraft, motor vehicles, nonroad vehicles, nonroad engines, and marine vessels.

*Motor vehicle* means any self-propelled vehicle designed for transporting people or property on a street or highway.

*New air pollution source* means an air pollution source that begins actual construction after the effective date of the "General Rules for Application to Indian Reservations in EPA Region 10".

*Noncombustibles* means materials that are not flammable, capable of catching fire, or burning.

*Nonroad engine* means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes, and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

*Nonroad vehicle* means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

*Oil-fired boiler* means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

*Opacity* means the degree to which emissions reduce the transmission of

light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

*Open burning* means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

*Owner or operator* means any person who owns, leases, operates, controls, or supervises an air pollution source.

*Part 71 source* means any source subject to the permitting requirements of 40 CFR part 71, as provided in §§ 71.3(a) and 71.3(b).

*Particleboard* means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

*Particulate matter* means any airborne finely divided solid or liquid material, other than uncombined water. Particulate matter includes, but is not limited to, PM10 and PM2.5.

*Permit to construct or construction permit* means a permit issued by the Regional Administrator pursuant to 40 CFR part 49 or 40 CFR part 52, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

*Permit to operate or operating permit* means a permit issued by the Regional Administrator pursuant to § 49.139 or 40 CFR part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

*Plywood* means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

*PM10* means particulate matter with an aerodynamic diameter less than or equal to 10 micrometers.

*PM2.5* means particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers.

*Potential to emit* means the maximum capacity of an air pollution source to

emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

*Press/Cooling vent* means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

*Process source* means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

*Rated capacity* means the maximum sustainable capacity of the equipment.

*Reference method* means any method of sampling and analyzing for an air pollutant as specified in the applicable section.

*Refuse* means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

*Regional Administrator* means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

*Residual fuel oil* means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396-04, Standard Specification for Fuel Oils (incorporated by reference, see § 49.123(e)).

*Smudge pot* means a portable heater/burner that produces thick heavy smoke and that fruit growers place around an orchard in the evening to prevent the crop from freezing at night.

*Solid fuel* means wood, refuse, refuse-derived fuel, tires, tire-derived fuel,

and other solid combustible material (other than coal), including any combination thereof.

*Solid fuel-fired boiler* means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

*Soot blowing* means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

*Source* means the same as *air pollution source*.

*Stack* means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

*Standard conditions* means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

*Start-up* means the setting into operation of a piece of equipment.

*Stationary source* means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

*Tempering oven* means any facility used to bake hardboard following an oil treatment process.

*Uncombined water* means droplets of water that have not combined with hygroscopic particles or do not contain dissolved solids.

*Used oil* means petroleum products that have been recovered from another application.

*Veneer* means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

*Veneer dryer* means equipment in which veneer is dried.

*Visible emissions* means air pollutants in sufficient amount to be observable to the human eye.

*Wood* means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

*Wood-fired boiler* means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

*Wood-fired veneer dryer* means a veneer dryer that is directly heated by

the products of combustion of wood in addition to, or exclusive of, steam or natural gas or propane combustion.

*Woodwaste burner* means a wigwam burner, teepee burner, silo burner, olive burner, truncated cone burner, or other such woodwaste-burning device used by the wood products industry for the disposal of wood wastes.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the "General Rules for Application to Indian Reservations in EPA Region 10" by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, record-keeping, and reporting.* Nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" precludes the Regional Administrator from requiring monitoring, record-keeping, and reporting, including monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the "General Rules for Application to Indian Reservations in EPA Region 10" precludes the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appro-

priate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at EPA's Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, D.C. 20004, at EPA Region 10, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(1) The materials listed below are available for purchase from at least one of the following addresses: ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388-99(Reapproved 2004)€<sup>1</sup>, Standard Classification of Coals by Rank, Incorporation by reference (IBR) approved for § 49.123(a).

(ii) ASTM D396-04, Standard Specification for Fuel Oils, IBR approved for § 49.123(a).

(iii) ASTM D240-02, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826-94(Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

(v) ASTM D5865-04, Standard Test Method for Gross Calorific Value of

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Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711-87(Reapproved 2004) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880-03, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294-03, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021-96(Reapproved 2001) <sup>1</sup>, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177-02, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239-04a, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492-02, Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775-87(Reapproved 2004), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072-90(Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246-96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084-94(Reapproved 1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504-01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468-85(Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622-03, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228-98(Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

### § 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this section?* This section limits the visible emissions of air pollutants from certain air pollution sources operating within the Indian reservation to control emissions of particulate matter to the atmosphere and ground-level concentrations of particulate matter, to detect the violation of other requirements in the "General Rules for Application to Indian Reservations in EPA Region 10", and to indicate whether a source is continuously maintained and properly operated.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State, or local government, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?* (1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (d)(3) of this