

Honorable _____
Governor of _____
(City), (State)

Dear Governor _____:

Section 112(1) of the Clean Air Act Amendments of 1990, P.L. 101-549 (November 15, 1990) provides for delegation of authority to a State to implement and enforce the radionuclide NESHAPS published at 40 cfr Part 61, 54 FR 51654 (December 15, 1989) if such State submits an adequate procedure for doing so. We are hereby transmitting a statement of "Requirements for Approval of State Requests for Delegation of Authority." Any such request must be submitted by either you or your designee. We have forwarded a copy of these requirements, along with a copy of this letter, to the Director of your State's air pollution control agency.

While the assumption of delegated authority is voluntary on the part of the State, it is the policy of the Environmental Protection Agency to both encourage and facilitate such delegations, to the maximum extent permissible under the Clean Air Act, since the prevention and control of air pollution is primarily a State responsibility under the Act. Consequently, we will give careful consideration to these requests and will work with your State agency personnel in correcting any deficiencies in the proposed State procedure for carrying out the delegation. We intend to allow States to implement and enforce the Federal standards in whatever manner they consider the most effective, as long as the State procedures are appropriately designed to assure compliance with the federal standards and are consistent with the Act and the regulations.

If you have any questions concerning the requirements or if you need assistance in preparing your request for delegation, please feel free to contact _____ of the Radiation Division at (phone number) _____.

Sincerely yours,

Regional Administrator

Enclosure

cc: Director, State Air Pollution Control Agency

ENVIRONMENTAL PROTECTION AGENCY

National Emission Standards for Hazardous Air Pollutants:
Radionuclides

Notice of Delegation of Authority to Name of State

Pursuant to Section 112 of the Clean Air Act, of 1977, P.L. 95-95 (August 7, 1977), the Administrator published national emission standards for hazardous air pollutants - radionuclides, at 40 CFR Part 61, 54 FR 51654 (December 15, 1989). The Act was amended by the Clean Air Act Amendments of 1990, P.L. 101-549 (November 15, 1990). Under Section 112(l) of the amendments, the Administrator is authorized to delegate the authority to implement and enforce emission standards to any State which submits an adequate procedure. The Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to a State, where the State is unwilling or unable to enforce the delegated standards.

On _____, the Regional Administrator forwarded to the State information setting forth the requirements for an adequate procedure for implementing and enforcing the radionuclide standards that are published at 40 CFR Part 61. On _____, the Governor of _____ submitted to the EPA Regional Office in _____ a request for delegation of the authority to implement and enforce the radionuclide standards. The Regional Administrator determined that the State's procedure for implementing and enforcing the radionuclide standards was adequate, and pursuant to the authority delegated to him by the Administrator, notified the Governor on _____ that the authority to implement and enforce the national

emission standards for radionuclides was delegated to the State of _____ as follows:

(List of delegated authority)

Copies of the request for delegation of authority are available for public inspection at the Environmental Protection Agency, Region _____ Office _____ (Address)_____.

Effective immediately, all reports required pursuant to the national emission standards for hazardous air pollutants- radionuclides should be submitted to the State Agency at _____ (Address)_____.

(Date)

Assistant Administrator
for Air and Radiation

REQUIREMENTS FOR APPROVAL OF STATE REQUESTS
FOR DELEGATION OF AUTHORITY

Section 112(d) of the Clean Air Act (CAA), 42 U.S.C. §§7401 et. seq., provides for establishment of National Emission Standards for Hazardous Air Pollutants ("NESHAPS"). Pursuant to this section, the Administrator published regulations at 40 CFR Part 61, 54 FR 51654 (December 15, 1989), establishing emission standards for radionuclides for the following source categories: radon emissions from underground uranium mines (Subpart B), emissions of radionuclides other than radon from Department of Energy (DOE) facilities (Subpart H), radionuclide emissions from Nuclear Regulatory Commission (NRC) licensees and non-DOE Federal facilities (Subpart I), radionuclide emissions from elemental phosphorus plants (Subpart K), radon emissions from DOE facilities (Subpart Q), radon emissions from phosphogypsum stacks (Subpart R), radon emissions from the disposal of uranium mill tailings (Subpart T), and radon emissions from operating mill tailings (Subpart W). Existing sources were required to be in compliance within 90 days of the date of promulgation or to obtain a waiver of compliance. New or modified sources were required to be in immediate compliance.

Under section 112(l)(1) of the Clean Air Act Amendments of 1990, P.L. 101-549 (November 15, 1990), States are authorized to submit a program to EPA for the implementation and enforcement of emission standards, including radionuclides. The State program may seek either partial or complete delegation of EPA's authorities and responsibilities to implement and enforce these standards, as long as the State's emission standards are not less stringent than the federal emission standards. Under §112(l)(2), the Agency is required to develop and publish guidance to assist States in developing these program submissions. Section 112(l)(5) requires the Administrator to either approve or disapprove a State's program submission within 180 days after receipt and public notice and comment. The State's program will be disapproved by the Administrator if:

- (1) the authorities contained in the program are not adequate to assure compliance by all sources within the state with each applicable standard, regulation or requirement established by the Administrator under this section;
- (2) adequate authority does not exist, or adequate resources are not available, to implement the program;
- (3) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(4) the program is otherwise not in compliance with the guidance issued by the Administrator for the development of State program submissions, or is not likely to satisfy, in whole or in part, the objectives of this Act.

Procedural Requirements

The procedures set forth below must be followed by a state requesting delegation of authority pursuant to 112(1).

1. The Governor of the state or his designee shall submit to the appropriate Regional Administrator of the Environmental Protection Agency a written request for delegation of authority pursuant to Section 112(1). The request must describe in detail the state procedure that will be followed in implementing and enforcing one or more radionuclide-NESHAPS, identify the state officers or agencies responsible for carrying out the state procedure, and demonstrate the adequacy of the state procedure with respect to the criteria set forth in this statement of requirements.

2. The request may seek a delegation of authority to implement and enforce any radionuclide NESHAPS which has been finally promulgated at the time of the request. The request should specify the source categories for which delegation is sought, and may be approved with respect to one or more such categories and denied as to others.

3. The Regional Administrator shall notify the Governor or his designee in writing whether and to what extent the request has been approved or disapproved. If the request is disapproved in whole or in part, the notification to the Governor shall specify the reasons for such disapproval.

4. If the request is approved in whole or in part, the Regional Administrator shall delegate to the Governor or his designee authority to carry out the approved portions of the state procedure. Such delegation shall be effective upon receipt by the Governor or his designee of a written Notice of Delegation. The Notice of Delegation shall identify the approved state procedure by reference to the request and to any additional submission by the Governor or his designee supplementing or modifying the state procedure and shall specify which portions of the proposed state procedure, if any, are disapproved. The Notice of Delegation will subsequently be published in the Federal Register.

5. A delegation of authority pursuant to Section 112(l) shall not authorize implementation and enforcement of NESHAPS according to a state procedure which is different from the approved state procedure identified in the Notice of Delegation unless a revised state procedure is submitted by the Governor or his designee and approved by the Regional Administrator. Notice of the approval of any revised state procedure will be published in the Federal Register. This provision applies only to the adequacy of state procedures for implementing and enforcing Federal standards, and is not meant to be in derogation of state authority pursuant to Section 116. (Section 116 allows States to adopt and enforce their own emission standards, as long as they are not less stringent than federal standards.)

6. As additional radionuclide NESHAPS are promulgated, the Governor or his designee may submit additional requests for delegation of authority in accordance with the foregoing procedure.

Substantive Requirements

In order to delegate its authority, EPA must make a finding that the State's procedures for implementing and enforcing the radionuclide NESHAPS are adequate. The following elements must be considered by the Regional Administrator to support a finding that a State agency can implement and enforce the NESHAP program effectively: emission limits consistent with federal regulations, reporting and monitoring requirements; enforcement; surveillance; public notification and disclosure of information; resources; and reporting to EPA.

Emission Standards Consistent with Federal Regulations

Any radionuclide emission standard established by State regulations must be consistent with, and at least as stringent as, the NESHAP promulgated at 40 CFR Part 61. The State agency shall not grant immunities that are not granted by federal regulations.

Test Methods Consistent with Federal Regulations

The State must use the test methods published in 40 CFR Parts 60 and 61, or any equivalent or alternative test method that has been approved by EPA. To ensure uniformity and technical quality in the enforcement of national standards, EPA will not delegate to the State the authority to approve any equivalent or alternative test methods.

Reporting and Monitoring Requirements

State agencies shall have a mechanism for implementing the radionuclide NESHAP reporting and monitoring requirements.

Enforcement Against Noncomplying Sources

A state procedure cannot be considered adequate if it does not provide for requiring full compliance with the radionuclide-NESHAPS by legal action in its State court system. The state must demonstrate that it has authority under state law to institute suits for injunctive relief and for the recovery of significant fines or penalties to enforce the radionuclide NESHAPS. The Agency will work with States and their Attorneys General in determining whether the implementing State agency has adequate enforcement provisions.

Surveillance

The state procedure must, as a minimum, provide for access to and use of monitoring, recordkeeping and reporting required by Federal regulations. Required reports and notices from sources will be submitted to states to which authority has been delegated. The addresses in the Federal Register will be changed accordingly. In addition, an adequate state procedure must include a field investigation system for detecting violations and for conducting or observing source emission tests. The state procedure may require sources to keep records and make reports not required by Federal regulations.

Public Notification and Disclosure

The state procedure shall provide for making all emission data, as well as all other non-confidential source information available to the public in the air quality control region in the state where the source is located. If State law does not allow such disclosure, then EPA may delegate §114 authority along with the NESHAP delegation. If the State cannot accept §114 authority, then the NESHAP transfer can be conditioned upon cooperative effort between EPA and the State whereby the State agrees to release the information to EPA, which will then release the information requested by the public.

Resources

The Agency must be assured that the State will have sufficient resources to perform the required reviews and to take appropriate action necessary to implement and enforce the NESHAP.

Reporting to EPA

State agencies with delegated program authority must report on the status of their programs according to a schedule established by the Regional Office. Ongoing reporting requirements should be modified to include NESHAP sources.

Revocation

If the Regional Administrator determines that a state procedure for implementing and enforcing the NESHAPS is inadequate, or is not being effectively carried out, the authority may be revoked in whole or in part. Any such revocations shall be effective as of the time specified in a Notice of Revocation to the Governor or his designee. The Notice of Revocation may provide that pending enforcement actions by the state shall not be affected by the revocation. Notice of any such revocation shall be published in the Federal Register.

Local Agencies

The state may specify that a local agency be responsible for implementation and enforcement of the radionuclide-NESHAPS for sources in its jurisdiction. The state will ultimately be responsible, however, for effective enforcement.

Authority Conferred by Delegation

Delegation to a state pursuant to §112(l) confers authority to implement and enforce the radionuclide-NESHAPS in accordance with the approved state procedure. The authority not conferred under §112(l) includes the authority to approve or prescribe alternative test methods, and any other authority not provided for in the State's procedure. Radionuclide NESHAP delegation may involve the entire program; individual emission standards; or portions of emission standards.

Upon receipt of delegation of authority to implement and enforce radionuclide NESHAPS, the state shall have the primary responsibility for enforcing the standards to the full extent of its delegated authority.

Concurrent Federal Authority

Pursuant to Section 112(l)(7), EPA retains the authority to enforce the radionuclide NESHAPS in federal court where a State is unwilling or unable to pursue legal action in its own State court system. After delegation to a State, EPA will only exercise its concurrent authority when necessary to secure effective enforcement of radionuclide NESHAPS. In exercising its concurrent authority, EPA is not bound by any state action or determination in carrying out authority delegated to the state pursuant to Section 112(l).