

April 28, 2004

(A-18J)

G. Vinson Hellwig,
Chief, Air Quality Division
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, Michigan 48909

Dear Mr. Hellwig:

In May 1996, the Michigan Department of Environmental Quality (MDEQ) and the United States Environmental Protection Agency (EPA) entered into a Memorandum of Agreement (MOA) which set out a procedure to delegate to MDEQ: 1) implementation authority for the 40 C.F.R. part 63, National Emission Standards for Hazardous Air Pollutants (NESHAP) standards as they apply to sources subject to the part 70 operating permit program; and 2) implementation and enforcement authority for those standards which MDEQ adopts by reference. Based on that agreement, EPA delegated implementation authority or implementation and enforcement authority for certain NESHAP standards to Michigan in 1999. The enclosure to this letter updates Michigan's delegation authorities.

If you have any questions or comments on this action, please feel free to contact me.

Sincerely yours,

/s/

Stephen Rothblatt, Director
Air and Radiation Division

Enclosure

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cc: Steven E. Chester, Director
Michigan Department of Environmental Quality

Gerald Avery, Supervisor
Field Section

Delegation Agreement

**DELEGATION TO THE STATE OF MICHIGAN
NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)
40 C.F.R. PART 63**

HISTORY

On August 12, 1995, the Michigan Department of Environmental Quality (MDEQ) requested delegation of the Clean Air Act National Emissions Standards for Hazardous Air Pollutants program, pursuant to section 112(1) of the Clean Air Act.

In May 1996 MDEQ and the United States Environmental Protection Agency (U.S. EPA) entered into a Memorandum of Agreement (MOA) which set out a procedure to delegate to MDEQ 1) implementation authority¹ for NESHAP standards as they apply to sources subject to the part 70 operating permit program², and 2) implementation and enforcement authority for those standards which MDEQ adopts by reference. For NESHAP standards as applicable to part 70 sources, the MOA provides for delegation by letter to Michigan of authority to implement such NESHAP standards, unless the State

¹ State implementation of a standard involves such activities as notifying potentially affected sources, receiving notification and compliance certification from affected sources, issuing to affected sources new or revised construction and/or operating permits which include the Section 112 standards, and assuring compliance with the standards through enforcement of the 40 C.F.R. part 70 and construction permit requirements for those sources required to obtain permits. U.S. EPA's responsibilities include providing MDEQ with any information it has regarding applicable Michigan sources, blank notification forms, guidances, outreach documents, and any other supporting resources.

² 40 C.F.R. part 70 lists the requirements which states must meet in developing and implementing operating permit programs to comply with Title V of the Clean Air Act. A "part 70 source" is a source which, because of the quantity of its emissions or for other reasons enumerated in section 502(a) of the Act, 42 U.S.C. § 7661a(a), or 40 C.F.R. § 70.3, must apply for and operate in compliance with a part 70 operating permit.

declines delegation within 45 days of the U.S. EPA's promulgation of a standard. The MOA also notes that Michigan can enforce the NESHAP standards against any part 70 source² after the State incorporates the NESHAP requirements into the source's part 70 operating permit or against a source after incorporating the standards into a construction permit. For standards applicable to non-part 70 sources, the MOA states that Michigan will adopt U.S. EPA's standards by reference and will notify U.S. EPA when it has completed the adoption process. For any NESHAP MDEQ incorporates by reference, including standards applicable to part 70 and/or non-part 70 sources, U.S. EPA will then delegate by letter implementation and enforcement authority of these standards to Michigan.

On January 10, 1997 (62 Fed. Reg. 1387), U.S. EPA granted Michigan final interim approval of its Title V operating permits program. In the Federal Register notice, U.S. EPA also promulgated under section 112(1)(5) of the Act, 42 U.S.C. § 7412(1)(5), and 40 C.F.R. § 63.91, a mechanism for delegating to Michigan NESHAPs as applicable to part 70 sources. The details of the delegation mechanism are addressed in the MOU, as previously discussed.

On November 23, 1998 (63 Fed. Reg. 64632), U.S. EPA promulgated a mechanism for delegating to Michigan NESHAPs as applicable to non-part 70 sources³. U.S. EPA also approved a mechanism for delegating the part 63 General Provisions as applicable to both part 70 and non-part 70 sources, to the extent that the General Provisions are not reserved by U.S. EPA and are delegable. The details of the delegation mechanism are also addressed in the MOU. As part of this notice⁴, U.S. EPA also delegated implementation authority for NESHAP standards as applicable to part 70 sources, promulgated as of January 22, 1999 (the effective date of this action). In addition, U.S. EPA delegated

³ Michigan did not request, we did not delegate, and we are not delegating today implementation and enforcement of 1) the Prevention of Accidental Release requirements of Section 112(r) of the Clean Air Act or 2) the radionuclide standards.

⁴ Although the MOA provides for delegation of implementation and delegation of implementation and enforcement via letter, U.S. EPA consolidated certain delegations as described above with the November 23, 1998 Federal Register action approving certain mechanisms for delegation.

both implementation and enforcement authority for two standards that MDEQ had incorporated by reference into the State's rules: 40 C.F.R. part 63 subpart M (dry cleaning - R336.1619) and subpart T (halogenated solvent cleaning - R336.1651). Because subpart M and subpart T apply to part 70 and non-part 70 sources, U.S. EPA's delegation of implementation and enforcement authority for these subparts apply to all sources subject to these standards regardless of whether they are subject to the part 70 operating permit program.

TODAY'S DELEGATIONS

Pursuant to the procedures authorized in the January 10, 1997 and November 23, 1998 Federal Register actions, and detailed in the 1996 MOA, this document delegates to MDEQ the authority to implement NESHAP standards promulgated between January 22, 1999, and April 28, 2004 as applicable to part 70 sources. This document also delegates to MDEQ the authority to implement and enforce 40 C.F.R. part 63 subpart N, the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, which Michigan has adopted by reference, for both part 70 and non part 70 sources (see R336.1941.). Note that U.S. EPA has not delegated implementation and enforcement authority to Michigan for any standard which MDEQ has not adopted by reference. Please refer to the enclosed table for the delegation status of individual NESHAP standards.

Nothing in this document shall be construed to restrict in any way the authority of Michigan or U.S. EPA to fulfill its responsibilities under state or federal law.