

**MEMORANDUM OF AGREEMENT
BETWEEN
CLARK COUNTY, NEVADA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX
REGARDING
DELEGATION OF NATIONAL EMISSION STANDARDS
FOR HAZARDOUS AIR POLLUTANTS**

I. INTRODUCTION

This Memorandum of Agreement (hereinafter "Agreement") establishes procedures to facilitate delegation to Clark County ("County") of the authority to implement and enforce federal rules, emission standards, and requirements promulgated under Section 112 of the Clean Air Act, 42 U.S.C. §7412 (hereinafter referred to as the "Section 112 federal rules"). This Agreement further sets forth the manner in which the United States Environmental Protection Agency, Region IX ("EPA"), and County will coordinate their respective responsibilities to ensure expeditious delegation of the Section 112 federal rules to County. EPA and County will review this Agreement as the need arises.

Pursuant to Section 112, EPA promulgates national emission standards for hazardous air pollutants, i.e., the Section 112 federal rules. Under Section 112(l), a local air pollution control agency (hereinafter "local agency") may develop and submit to EPA for approval a program for the implementation and enforcement of promulgated Section 112 federal rules, provided certain specified approval criteria have been met. On November 26, 1993, EPA promulgated regulations, codified at 40 C.F.R. Part 63, Subpart E (hereinafter "Subpart E"), to provide guidance useful to state and local agencies in developing programs for submittal under Section 112(l). Subpart E was later revised on September 14, 2000. *See 65 Federal Register 55809*. While submission of local rules or programs under 112(l) is voluntary, a local agency seeking to implement and enforce some provisions of its own program in lieu of a Section 112 federal rule needs to obtain EPA approval under Subpart E. Once granted approval, the approved local rules or programs would be federally enforceable and would substitute for the otherwise applicable Section 112 federal rule within that local agency's jurisdiction. Regardless of whether a local rule or program is approved or disapproved, nothing shall prohibit EPA from enforcing any applicable emission standard or requirement under Section 112. *See Section 112(l)(7) and 40 C.F.R. § 63.90(d)(2)*.

Subpart E includes several options for requesting approval of local rules or programs. Under one of these options, a local agency may request delegation of Section 112 federal rules as promulgated without changes. To obtain approval under this option, a local agency need only meet the criteria in 40 C.F.R. § 63.91. On July 13, 1995, EPA promulgated approval under Section 112(l)(5) and 40 C.F.R. § 63.91 of the Clark County Health District's program for receiving delegation of Section 112 federal rules that are unchanged from the Section 112

federal rules as promulgated. *See* 60 Federal Register 36070. In 2001, County was designated the air pollution control agency and took over responsibility of the air quality program from the Health District , including the delegated authority. County has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of the Section 112 federal rules by incorporating by reference these rules into local codes of regulation. This Agreement establishes procedures to facilitate this delegation process.

II. POLICY STATEMENT

EPA and County are responsible for ensuring that their respective obligations under this Agreement are met. In summary, County has the responsibility to incorporate the Section 112 federal rules into local codes of regulation by reference and to initiate the delegation process by submitting an application that conforms with Subpart E; while EPA has the responsibility to provide County with information regarding upcoming Section 112 federal rules and to review County's applications. EPA and County agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective delegation of the Section 112 federal rules.

III. INFORMATION SHARING

A. GENERAL

EPA and County agree to participate in conference calls, as needed, to discuss legal, policy, resource, or technical issues related to delegation of Section 112 federal rules.

B. EPA

1. EPA will update County periodically on important developments under Section 112, including progress on the proposal and promulgation of Section 112 federal rules and development of EPA policies. EPA agrees to provide County with the names, addresses, email addresses, and phone and fax numbers of the EPA contacts for each Section 112 federal rule, as well as any information regarding delegation.
2. EPA agrees, when reasonably foreseeable, to communicate to County that the implementation and enforcement of any new Section 112 federal rule may require additional legal, technical, or financial resources on the part of County.
3. EPA will provide County with any information EPA may have collected regarding sources within County's jurisdiction that may be subject to a Section 112 federal rule.

C. County

1. County will work cooperatively with EPA to identify all sources within County's jurisdiction that may be subject to a Section 112 federal rule.

2. County agrees to notify EPA in advance of any proposed program changes that may affect County's ability to implement or enforce any Section 112 federal rule for which County has received delegation or will request delegation. Program changes of concern include modification of County's legal authorities (e.g., statutes, regulations, or judicial or legislative actions affecting those authorities), modification of resource levels, modification of implementation schedules, etc., that were part of any approval under Section 112 or Subpart E.
3. County understands that EPA may request County to provide the information or the demonstrations referenced in 40 C.F.R. § 63.96(a).

IV. DELEGATION PROCEDURES

A. County

1. As noted above, County intends to obtain the regulatory authority necessary to accept delegation of the Section 112 federal rules by incorporating these rules into local codes of regulation by reference. For the Section 112 federal rules for which County will seek delegation, County agrees to incorporate the Section 112 federal rules by reference into the Clark County Air Quality Regulations as expeditiously as possible.
2. For each Section 112 federal rule (or group of rules) for which County will seek delegation, County agrees to submit a letter as soon as practicable (if possible, immediately after the relevant local regulatory action is complete and within one year of EPA's promulgation of the Section 112 federal rule) to the Director of EPA Region IX's Air Division requesting delegation of the Section 112 federal rule. County shall include with this letter proof that County has obtained the necessary regulatory authority to fully implement and enforce the Section 112 federal rule for which it is seeking delegation. This proof shall include the Clark County Board of County Commissioners' adoption by ordinance and a copy of the regulatory provisions by which the Section 112 federal rule was adopted.

B. EPA

1. In response to a letter requesting delegation of a Section 112 federal rule, EPA agrees to expeditiously review the request and respond in writing as to whether the delegation is approved or disapproved.
2. If the delegation request is approved, the effective date of the delegation of the Section 112 federal rule will be the date when the Director of EPA Region IX's Air Division signs the approval letter.
3. Periodically, EPA will publish in the Federal Register an updated list of the Section

112 federal rules that have been delegated.

V. POST-DELEGATION

A. EPA

1. After delegation of a Section 112 federal rule, EPA agrees to continue to provide assistance to County in the implementation or enforcement of the Section 112 federal rule.
2. Pursuant to 40 C.F.R. §§ 63.9(a)(4)(ii) and 63.10 (a)(4)(ii), EPA hereby waives the requirements that notifications and reports be submitted to EPA as well as to County for any Section 112 federal rules for which County has received delegation (i.e., upon delegation affected sources need only submit required notifications and reports to County). EPA reserves the right to reevaluate the appropriateness of such a broad waiver in the event of programmatic changes or on a source category basis.

B. County

1. County understands that for any Section 112 federal rule for which it requests and receives delegation, it will be the primary implementing agency and will be responsible for implementing and enforcing the Section 112 federal rule independent of and in addition to the conditions of any affected source's operating permit under 40 C.F.R. Part 70.
2. County agrees to retain records required by Section 112 federal rules, and make records available to EPA upon request.
3. County understands that certain authorities are retained by EPA and are not delegable to County. *See*, for example, 40 C.F.R. §§ 63.90(d) and 63.91(g)(2). In general, authorities that are not delegable include those functions that require rulemaking in the Federal Register or those situations where federal oversight is the only way to ensure national consistency in the application of the standards.
4. County agrees that delegation of 40 C.F.R. Part 63, Subpart A will include the "Category I" authorities listed in 40 C.F.R. §63.91(g)(1)(i). EPA retains the authority to make decisions according to the "Category II" authorities listed in 40 C.F.R. §63.91(g)(2)(ii).
5. County agrees to forward to EPA a copy of all decisions made pursuant to "Category I" authorities (as mentioned in 40 C.F.R. §63.91(g)(1)), as well as any determinations made pursuant to 40 C.F.R. §§ 63.6(i) or 63.5(f). In addition, County agrees to

provide EPA with a copy of any requests sent to County for minor or intermediate alternatives to test methods or monitoring requirements in Section 112 federal rules, prior to approval or disapproval by County.

VI. DISCLAIMERS

1. This Agreement is for the benefit of EPA and County. This Agreement does not create any rights, duties, or obligations, implied or otherwise, in any third parties.
2. As stated above, nothing shall prohibit EPA from enforcing any applicable emission standard or requirement under Section 112.

This Agreement shall become effective when signed by both parties.



Director
Clark County Department of Air Quality
and Environmental Management

Date: 08-09-2010



Deborah Jordan
Director
Air Division
U.S. EPA Region IX

Date: 8-26-2010