

**MEMORANDUM OF AGREEMENT
BETWEEN
NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9
REGARDING
DELEGATION OF NATIONAL EMISSION STANDARDS
FOR HAZARDOUS AIR POLLUTANTS**

I. INTRODUCTION

This Memorandum of Agreement (hereinafter "Agreement") establishes procedures to facilitate delegation to the Nevada Division of Environmental Protection ("NDEP") 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 9 ("EPA"), and NDEP will coordinate their respective responsibilities to ensure expeditious delegation of the Section 112 federal rules to NDEP. EPA and NDEP 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(1), a state 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 states in developing programs for submittal under Section 112(1). While a state's submission of rules or programs under 112(1) is voluntary, a state 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 state rules or programs would be federally enforceable and would substitute for the otherwise applicable Section 112 federal rule within that state's jurisdiction. Regardless of whether a state 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(1)(7) and 40 C.F.R. § 63.90(c)(2).

Subpart E includes several options for requesting approval of state rules or programs. Under one of these options, a state may request delegation of Section 112 federal rules as promulgated without changes. To obtain approval under this option, a state need only meet the criteria in 40 C.F.R. § 63.91. On December 12, 1995, EPA promulgated approval under Section 112(1)(5) and 40 C.F.R. § 63.91 of NDEP'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 63631. During this approval process, NDEP 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 state codes of regulation. *See* 60 Federal Register 40140, 40145. This Agreement establishes procedures to facilitate this delegation process.

II. POLICY STATEMENT

EPA and NDEP are responsible for ensuring that their respective obligations under this Agreement are met. In summary, NDEP has the responsibility to incorporate the Section 112 federal rules into state 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 NDEP with information regarding upcoming Section 112 federal rules and to review NDEP's applications. EPA and NDEP 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 NDEP 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 NDEP 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 NDEP with the names, 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 NDEP that the implementation and enforcement of any new Section 112 federal rule may require additional legal, technical, or financial resources on the part of NDEP.
3. EPA will provide NDEP with any information EPA may have collected regarding sources within NDEP's jurisdiction that may be subject to a Section 112 federal rule.

C. NDEP

1. NDEP will work cooperatively with EPA to identify all sources within NDEP's jurisdiction that may be subject to a Section 112 federal rule.
2. NDEP agrees to notify EPA in advance of any proposed program changes that may affect NDEP's ability to implement or enforce any Section 112 federal rule for which NDEP has received delegation or will request delegation. Program changes of concern include modification of NDEP'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. NDEP understands that EPA may request NDEP to provide the information or the demonstrations referenced in 40 C.F.R. § 63.96(a).

IV. DELEGATION PROCEDURES

A. NDEP

1. As noted above, NDEP intends to obtain the regulatory authority necessary to accept delegation of the Section 112 federal rules by incorporating these rules into state codes of regulation by reference. For the Section 112 federal rules for which NDEP will seek delegation, NDEP agrees to propose to the State Environmental Commission to incorporate the Section 112 federal rules by reference into the Nevada Administrative Code as expeditiously as possible.
2. For each Section 112 federal rule (or group of rules) for which NDEP will seek delegation, NDEP agrees to submit a letter as soon as practicable (if possible, immediately after the relevant state regulatory action is complete and within one year of EPA's promulgation of the Section 112 federal rule) to the Director of EPA Region 9's Air Division requesting delegation of the Section 112 federal rule. NDEP shall include with this letter proof that NDEP 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 a state board resolution of adoption 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 9'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 NDEP 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 NDEP for any Section 112 federal rules for which NDEP has received delegation (i.e., upon delegation affected sources need only submit required notifications and reports to NDEP). 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.

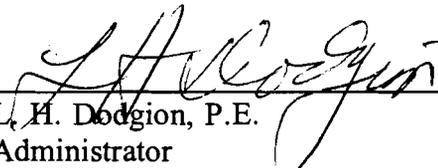
B. NDEP

1. NDEP 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. NDEP understands that certain authorities are retained by EPA and are not delegable to NDEP. See, for example, 40 C.F.R. § 63.90(c). 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.

VI. DISCLAIMERS

1. This Agreement is for the benefit of EPA and NDEP. 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.



L. H. Dodgion, P.E.
Administrator
Nevada Division of
Environmental Protection

Date: _____

8/25/97



David P. Howekamp
Director
Air Division
U.S. EPA Region 9

Date: _____

9/3/97