

SEP 14 1981

CERTIFIED MAIL - RETURN RECEIPT REQUESTED P21 7842427

Honorable Frank D. White  
Governor of Arkansas  
State Capitol  
Little Rock, Arkansas 72201

Dear Governor White:

This is in response to your letter of July 1, 1981, requesting delegation of authority for implementation and enforcement of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants (except demolition and renovation of buildings containing asbestos) to the Arkansas Department of Pollution Control and Ecology.

The pertinent laws of the State of Arkansas and the rules and regulations of the Arkansas Department of Pollution Control and Ecology have been reviewed and have been found to provide an adequate and effective procedure for implementation and enforcement of the New Source Performance Standards and National Emission Standards of Hazardous Air Pollutants by the Arkansas Department of Pollution Control and Ecology and the State of Arkansas. The resources and capabilities of the Arkansas Department of Pollution Control and Ecology have been found to be adequate to implement and enforce the programs.

Therefore, by virtue of authority granted by the Administrator, I hereby delegate authority to the Arkansas Department of Pollution Control and Ecology to implement and enforce New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, pursuant to Sections 111(c) and 112(d), respectively, of the Clean Air Act, as specified in your letter of July 1, 1981, and subject to the conditions and limitations stated in this letter. Except as specifically limited in this letter, all of the authority and responsibilities of the Administrator or the Regional Administrator which are found in 40 CFR Part 60 and 40 CFR Part 61 as of the date of this letter are delegated to the Arkansas Department of Pollution Control and Ecology. Any of such authority and responsibilities may be redelegated by the Department to its Director or staff.

BCC: K. Rhea (6AH-AS)  
C. Edlund (5E-A)  
L. Watson (6OPC)  
✓ C. Lindsey (6AH-AT)

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This delegation is based upon the following conditions:

1. State actions in carrying out the delegated authority shall be reported to the Region 6 EPA office semiannually with the semiannual report for the State Implementation Plan. Report format will be in accordance with instructions furnished by EPA. Additionally, activities with regard to New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) shall be reported monthly through appropriate Compliance Data System (CDS) updates.

2. Implementation and enforcement of NSPS and NESHAP in the State of Arkansas will be the primary responsibility of the Arkansas Department of Pollution Control and Ecology (ADPCE). If the State of Arkansas or the ADPCE determines that such implementation for enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the ADPCE shall within 30 days notify EPA, Region 6, of such impossibility or infeasibility so that EPA may timely exercise its concurrent authority with respect to sources within the State of Arkansas.

3. The ADPCE shall give notice to EPA, Region 6, of the initiation of any enforcement proceeding, administrative or judicial, with respect to any NSPS or NESHAP, or any source subject thereto. This condition may be satisfied by submitting a copy of any such initiation of proceedings before or at the time of the service of such notice on the affected party or facility.

4. Acceptance of this delegation for NSPS and NESHAP promulgated as of the date of this letter does not allow the State of Arkansas and the ADPCE to receive automatic delegation of future standards and requirements. Such delegations must be requested as future standards are promulgated.

5. Upon written approval of the Regional Administrator of the EPA, Region 6, the ADPCE may subdelegate its authority to implement and enforce NSPS and NESHAP to air pollution control authorities in the State when such authorities have demonstrated that they want the authority and have the resources and capabilities to exercise it. If subdelegation approval is granted, appropriate address changes will be made in the Federal Register.

6. Acceptance of this delegation constitutes agreement by the ADPCE to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61 including determinations of applicability. The ADPCE agrees to consult with the EPA Region 6 on questions of interpretations of the NSPS and of NESHAP. A copy of each interpretation made by the ADPCE shall be sent to EPA, Region 6.

7. The State of Arkansas and the ADPCE are not authorized to grant any exemption, variance, or waiver from compliance with any provision of 40 CFR Part 60 or 40 CFR Part 61. Should the State of Arkansas or the ADPCE grant any other exemption, variance or waiver to any source or category of sources pursuant to any state law, regulations, or practice, the ADPCE shall immediately notify EPA, Region 6, of the granting of such exemption, variance or waiver and shall notify any source affected by such an exemption, variance or waiver that the State is not authorized to grant any exemption, variance or waiver from the compliance with Federal requirements. EPA may consider any source receiving such relief to be violating or threatening to violate the applicable federal regulation and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of any exemption, variance, or waiver by the State of Arkansas or the ADPCE shall also constitute grounds for revocation of delegation by EPA, in whole or in part, at the discretion of the Regional Administrator of EPA, Region 6.

8. If at any time there is a conflict between any State regulation and any provision of 40 CFR Part 60 or 61, the federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of Arkansas or the ADPCE does not have the authority to enforce the more stringent federal regulation, the ADPCE shall immediately notify EPA, Region 6 pursuant to condition 2, above. The delegation may be revoked by EPA, Region 6, in whole or in part, in the event any such conflict makes implementation and enforcement of NSPS or NESHAP administratively impractical.

9. For NSPS and NESHAP, the State of Arkansas and the ADPCE shall utilize the methods and means of determining compliance specified in 40 CFR Part 60, including requiring performance tests within the time limit of 40 CFR 60.8, and 40 CFR Part 61. All performance tests are to be conducted at normal maximum production. All requests from sources for equivalent or alternate methods shall be forwarded to EPA, Region 6, with or without a recommendation. Authority is delegated to approve minor modifications to the reference test methods during either a pre-test meeting or the actual sampling period. These minor modifications would have to produce results essentially identical to the reference method results.

Approval of these minor modifications should be based on sound engineering judgement. Under no circumstances are modifications to be used which might result in the non-uniform application of the standards. In the event the State of Arkansas or the ADPCE is unable or unwilling to utilize the methods specified in 40 CFR Parts 60 and 61, the notification requirements of condition 2, above, shall apply.

10. If the Regional Administrator determines that, because of a State law or Board order, regulation, policy, practice, or procedure, the implementation and enforcement of the NSPS or NESHAP is inadequate, or not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the ADPCE.

11. In any instance where the State is unable under its own authority to obtain data or other information necessary to implement NSPS and NESHAP in the State, the State shall immediately so notify EPA, so that EPA may take action necessary to secure such data.

12. The State of Arkansas and the ADPCE shall permit access to and inspection by employees and agents of EPA of any and all reports or other records required by or pertaining to the implementation or enforcement of NSPS or NESHAP in the State of Arkansas. Access and inspection of reports and records shall be at any office where such reports or records may be filed, during the regular office hours for such office. Unless impractical to do so, the State of Arkansas and the ADPCE shall provide copies of such inspections or records upon request by EPA. If reproduction of such reports or records by the State of Arkansas or the ADPCE is impractical, the State of Arkansas and the ADPCE shall permit EPA to arrange for copies of such reports or records to be made.

13. If a claim of confidentiality or any other reason should ever legally prevent the State of Arkansas and the ADPCE from providing to EPA any and all information required by or pertaining to the implementation or enforcement of NSPS or NESHAP, the ADPCE shall, upon request, assist EPA Region 6 in obtaining that information directly from the source. As a minimum, such assistance shall consist of providing to EPA an identification of the nature of the information withheld, adequate to allow EPA to identify to the source the information which is to be sent directly to EPA.

14. Emission data must be made available to the public by the ADPCE. "Emission data" is defined in 40 CFR 2.301(a)(2). Emission data is to be correlated with applicable emission limitations or other measures in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions which are allowable under the applicable emission limitations or other measures. If any information which is defined as emission data is found to be not available to the public by reason of State law or other legal requirement, the ADPCE shall so notify EPA, Region 6, so that EPA may take the action necessary to release such data.

15. The State of Arkansas and the ADPCE acknowledge that:

(A) EPA and the ADPCE each has an independent, legal responsibility to ensure compliance by sources of air pollutant with the requirements of the NSPS and the NESHAP;

(B) EPA and the ADPCE each has the right and duty to select which sources covered it subjects to inspections and source tests and when it inspects and tests;

(C) EPA and the ADPCE, without participation by the other, may make source tests and inspections;

(D) EPA and the ADPCE, to the extent that it is reasonable, will coordinate inspections and source tests and will share results of these inspections and source tests with the other.

16. All matters in process at the time of delegation of authority may be processed through to completion by EPA, Region 6, or may, at the request of the ADPCE and at the discretion of EPA Region 6, be transferred to the ADPCE for completion. Appropriate reproduction of pertinent file material in the EPA, Region 6, files in relation to source regulation under NSPS and MESHAP shall be provided through mutual cooperation of the staffs of the respective offices.

A notice of this delegation will be published in the Federal Register in the near future. The notice will state, among other things, that effective immediately all reports required pursuant to the Federal NSPS and MESHAP by sources located in the State of Arkansas should be submitted to the ADPCE at 8001 National Drive, Little Rock, Arkansas 72209. Any such reports which have been or may be received by EPA, Region 6, will be promptly transmitted to the ADPCE.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State of Arkansas written notice of objection within ten days of the date of receipt of this letter, the State of Arkansas and the ADPCE will be deemed to have accepted all of the terms of the delegation.

Sincerely,

original signed by

Frances E. Phillips  
Acting Regional Administrator

cc: Jarrell E. Southall, Director  
Arkansas Department of Pollution Control  
and Ecology  
8001 National Drive  
Little Rock, Arkansas 72209