



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

1201 ELM STREET  
DALLAS, TEXAS 75270

December 28, 1982

CERTIFIED MAIL - RETURN RECEIPT REQUESTED P 333 725 637

Honorable Bill Clements  
Governor of Texas  
State Capitol Building  
Austin, Texas 78711

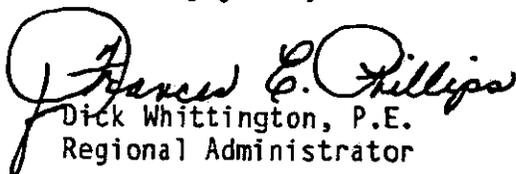
Dear Governor Clements:

This is in response to your letter of December 15, 1982, requesting a revision to the current delegation of responsibility to the State of Texas for implementing the New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and the Prevention of Significant Deterioration (PSD) programs.

The changes you requested primarily to simplify the delegations are approved. The revised delegation agreements are enclosed. Thus, this delegation letter supersedes the November 15, 1978, and February 5, 1981, delegation agreements for NSPS and NESHAP, and amends the PSD delegation agreement as you requested. Therefore, by virtue of authority granted by the Administrator, I hereby delegate to the State of Texas, and the Texas Air Control Board (TACB), authority to implement the provisions of these delegations, subject to the conditions and limitations stated in the enclosures.

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

Sincerely yours,

  
Dick Whittington, P.E.  
Regional Administrator

Enclosures

cc: Mr. Bill Stewart  
Executive Director  
Texas Air Control Board  
6330 Highway 290 East  
Austin, Texas 78723

AMENDMENT

DELEGATION OF ADDITIONAL AUTHORITY

for the

NEW SOURCE PERFORMANCE STANDARDS (NSPS)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS  
(NESHAP) PROGRAMS

to the

STATE OF TEXAS

(40 CFR Part 60 and 40 CFR Part 61)

EFFECTIVE DATE: December 28, 1982

Introduction

On November 15, 1978, and February 5, 1981, EPA delegated the authority to the State of Texas for implementation and enforcement of the existing NSPS and NESHAP programs in the State of Texas. Condition four (4) of the delegation agreement did not allow the State to assume the responsibilities for implementation and enforcement of the NSPS and NESHAP requirements adopted after the above delegation dates. Thus, I hereby delegate this additional authority to the State of Texas to implement and enforce all previously adopted and all future NSPS and NESHAP requirements pursuant to Sections 111(c) and 112(d) of the Clean Air Act subject to the conditions and limitations as specified in this agreement. However, the State may decline delegation of any standard within thirty (30) days after final promulgation. This amendment supersedes the November 15, 1978, and February 5, 1981, delegation agreements.

Specific Provisions

This delegation is based upon the following conditions:

1. Implementation and enforcement of NSPS and NESHAP in the State of Texas will be the primary responsibility of the Texas Air Control Board (TACB). If the State of Texas or the TACB determines that such implementation or enforcement is not possible or feasible, either with respect to an individual source, a class of sources, or generally, the TACB shall within thirty (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 Texas.

2. Upon written approval of the Regional Administrator of the EPA Region 6, the TACB 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.

3. Acceptance of this delegation constitutes agreement by the TACB to follow all interpretations, past and future, made by EPA of 40 CFR Parts 60 and 61 including determinations of applicability. The TACB 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 TACB shall be sent to EPA, Region 6.

4. The State of Texas and the TACB are not authorized to grant any exemption, variance, or waiver of compliance with any provision of 40 CFR Part 60, except for the waiver of emission tests authorized in 40 CFR 60.8(b). Furthermore, the State of Texas and the TACB are not authorized to grant any exemption, variance, or waiver from compliance with any provision of 40 CFR Part 61, except for the waiver of emission tests authorized in 40 CFR 61.13 and the waiver of compliance authorized in 40 CFR 61.11. A copy of any waiver of emission tests under 40 CFR 60.8(b) or 40 CFR 61.13, or of any waiver of compliance under 40 CFR 61.11 shall be sent to EPA, Region 6. Should the State of Texas or the TACB grant any other exemption, variance or waiver to any source or category of sources pursuant to any state law, regulations, or practice, the TACB 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 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 Texas or the TACB 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.

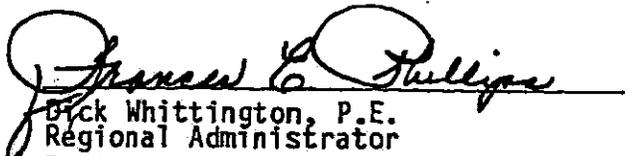
5. If at any time there is a conflict between any state regulation and any provision of 40 CFR Parts 60 or 61, the federal regulation must be applied to the extent that it is more stringent than that of the State. If the State of Texas or the TACB does not have the authority to enforce the more stringent federal regulation, the TACB shall immediately notify EPA, Region 6, pursuant to Condition 1 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.

6. For NSPS and NESHAP, the State of Texas and the TACB 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 judgment. 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 Texas or TACB is unable or unwilling to utilize the methods specified in 40 CFR Parts 60 and 61, the notification requirements of Condition 1, above, shall apply.

7. If a claim of confidentiality or any other reason should ever legally prevent the State of Texas and the TACB from providing to EPA any and all information required by or pertaining to the implementation or enforcement of NSPS or NESHAP, the TACB 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.

  
Jack Whittington, P.E.  
Regional Administrator  
Region 6  
U.S. Environmental Protection Agency  
Dallas, Texas

12.28.82  
Date

ADDITIONAL PSD DELEGATION OF AUTHORITY

FOR

SOURCE INSPECTION AND COMPLIANCE

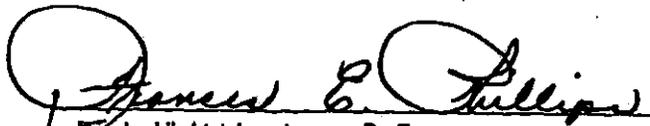
TO THE STATE OF TEXAS

(40 CFR 52.21)

EFFECTIVE DATE: December 28, 1982

ADDENDUM I (Section D)

EPA delegates to the State of Texas the authority to inspect sources located in Texas for compliance under 40 CFR 52.21 and to review all compliance test reports for sources permitted under the PSD regulations, 40 CFR 52.21. If the State of Texas finds an instance of noncompliance which it is unable to resolve within the terms of the PSD permit, it will notify EPA, Region 6, within thirty (30) days and provide all relevant information. EPA will exercise its enforcement authority to resolve the noncompliance.

  
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Dick Whittington, P.E.  
Regional Administrator  
Region 6  
United States Environmental Protection Agency

12.28.82  
Date