

8. Following page 65869, insert "2.8.3.6 In Figure 6, areas of the State included within MPA's are shown within heavy solid lines. Two MPA's are illustrated. Areas in the State outside the MPA's will also include monitors, but this monitoring coverage may be limited. This portion of the State will also be represented by SAZ's (shown by areas enclosed within dotted lines). Monitors eligible for comparison to the NAAQS are indicated by "X." The appropriate monitors within an SAZ would be averaged for comparison to the annual NAAQS and examined individually for comparison to the daily NAAQS. Other monitors are only eligible for comparison to the daily NAAQS. Both within the MPA's and in the remainder of the State, some special study monitors might not satisfy applicable Part 58 requirements or will not be included in the State Monitoring Plan and will not be eligible for comparison to the NAAQS. The latter may include SLAMS monitors designated to study regional transport or to support secondary NAAQS in unpopulated areas."

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40 CFR Part 63

[FRL-5676-9]

Request for Approval of Section 112(l) Delegated Authority; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval and delegation.

SUMMARY: EPA invites public comment on today's proposal to approve the Oregon Department of Environmental Quality (ODEQ) and the Lane Regional Air Pollution Authority (LRAPA) (collectively referred to as "Oregon") request for delegation of authority to implement and enforce state-adopted hazardous air pollutant regulations which adopt by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) contained in 40 CFR Parts 61 and 63 as these regulations apply to sources required to obtain a federal operating permit under Title V of the Clean Air Act (CAA). EPA as well invites public comment on its proposal to approve specific state rules in order to recognize conditions and limitations established pursuant to these rules, or the rules themselves, as federally enforceable.

DATES: All comments on the Oregon submittal must be received by the close of business on February 14, 1997.

ADDRESSES: Copies of the Oregon submittal are available during normal business hours at the following addresses for inspection and copying: U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101-9797, and the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon, 97204-1390. Written comments should be addressed sent to: Chris Hall, U.S. EPA Region 10, 1200 Sixth Avenue (OAQ-107), Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Chris Hall, U.S. EPA Region 10, at (206) 553-1949.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the amended Clean Air Act of 1990 ("the Act" or "CAA") established new, more stringent requirements upon a State or Local agency that wishes to implement and enforce an air toxics program pursuant to section 112 of the Act. Prior to November 15, 1990, delegation of NESHAP regulations to a State or Local agency could occur without formal rulemaking by EPA. However, the new section 112(l) of the Act requires EPA to approve State and Local toxics rules and programs under section 112 through formal notice and comment rulemaking. Now State and Local air agencies that wish to implement and enforce a federally-approved air toxics program must make a showing to EPA that they have adequate authorities and resources. Approval is granted by the EPA through the authority contained in section 112(l), and implemented through the Federal rule found in 40 Code of Federal Regulations (CFR) Part 63, subpart E (58 FR 62262, November 26, 1993), if the Agency finds that: (1) The State or Local program or rule is "no less stringent" than the corresponding Federal rule or program, (2) adequate authority and resources exist to implement the State or Local program or rule, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the State or Local program or rule is otherwise in compliance with Federal guidance.

II. Discussion of the Oregon 112(l) Submittal

On November 15, 1993, Oregon submitted to EPA an application requesting the delegation of authority to implement and enforce the state-adopted rules for "Hazardous Air Pollutants" found in Oregon Administrative Regulations (OAR) Chapter 340, Division 32 in lieu of the Federal NESHAP regulations contained

within 40 CFR Part 61. In the submittal, Oregon also requested that comparable delegation be provided to LRAPA to enforce the state regulations in Lane County.

On August 3, 1994, Oregon supplemented its initial application by providing additional documentation to support its initial request and seeking approval of its 112(g) rules and its rules for creating synthetic minor sources. On March 29, 1996, Oregon further supplemented its application by limiting its initial request for delegation to apply to Part 70 sources only; requested delegation for Part 70 sources only the authority to implement and enforce certain 40 CFR Part 63 NESHAP standards; and requested approval for Part 70 sources only to substitute the State asbestos regulations for the asbestos NESHAP. In the March 1996 supplement, Oregon also requested deferral of delegated federal authority to implement sections 112(g) of the federal CAA until the conclusion of federal rulemaking on this program element. By letter dated December 11, 1996, Oregon rescinded its request to substitute its state asbestos rule for the asbestos NESHAP, therefore EPA will take no action in this regard at this time.

Oregon's section 112(l) application contains the following documents: (1) A written finding by the State Attorney General and the independent legal counsel for LRAPA stating that Oregon has the legal authority to implement and enforce state-adopted regulations as well as assure compliance by all sources within their jurisdiction; (2) a copy of OAR Chapter 340, Division 32¹ (hereafter referred to as "OAR 340-032"), which contains the fully adopted State NESHAP regulations which would be substituted for the Federal NESHAP regulations upon approval; (3) a copy of OAR Chapter 340, Division 28² (hereafter referred to as "OAR 340-28"), which contains the permitting requirements for each source subject to OAR-340-032, including the State synthetic minor rules, the State Air

¹ As in effect October 6, 1995.

² As in effect on July 1, 1995.

Contaminant Discharge Permit (ACDP) program rules, and the State federal operating permit (FOP) program rules; and (4) a complete program description. The full program submittal is available for review for more detailed information.

A. Emission Standards for Hazardous Air Pollutants

Pursuant to 40 CFR 63.91, Oregon is requesting delegation of authority to implement and enforce the federal NESHAP regulations contained in 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF, as adopted by reference in OAR 340-032-05520 through -5580, as these rules apply to Part 70 sources. Oregon is also seeking delegation of authority to implement and enforce 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340-032-0510, as these rules apply to Part 70 sources.

Also, EPA proposes to approve a mechanism for Oregon to receive delegation of future NESHAP regulations that are adopted by reference into state law unchanged. The details of this mechanism are outlined in section IV.C.

B. Voluntary Limits on Emissions

Oregon requests section 112(l) approval of state-adopted regulations which would allow Oregon permitting authorities to establish federally-enforceable emission limitations by permit limiting a source's potential to emit hazardous air pollutants (HAP) below major source thresholds.

Oregon's voluntary emission limitation rules are contained in OAR 340-028-110(114); -1050; -1740; and -2110. The provisions of these sections are applicable as a matter of state law to any air contaminant and not just applicable to the criteria pollutants regulated under the EPA-approved Oregon state implementation plan (SIP).

Oregon's ACDP program regulations (OAR 340-28-1700 through 1790) provide the mechanism for the owner or operator of a source to apply for and obtain enforceable permit conditions that limit the source's potential to emit. Such limitations would be inserted into an ACDP issued by Oregon, after public notice and an opportunity for comment, and would include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source complies with these limitations. If approved by EPA, limits established pursuant to these regulations would be considered federally enforceable. Therefore, Oregon would have the ability to set limits

which would be sufficient to exempt a source from the requirement to obtain a FOP and/or comply with Federal, State or Local hazardous air pollutant regulations. Approval of federally enforceable permit limits under section 112(l) is necessary because the Oregon SIP approved ACDP program only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOCs or PM-10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b)³, however, section 112 of the Act provides the underlying authority for controlling all HAP emissions. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR Part 63, the regulations promulgated to implement section 112(l) of the Act. In this respect, EPA is proposing to approve OAR 340-028-1740, Oregon's synthetic area source permit program, under the authority of section 112(l) of the Act. Furthermore, EPA proposes that, after final approval of this section, synthetic area source permits issued pursuant to these EPA-approved regulations including terms and conditions for HAP contained therein, would be enforceable by the EPA and by citizens under section 304 of the Act regardless of whether such permits were issued prior to EPA approval of this section. However, such permits would have to have been issued after the effective date of OAR 340-028-1740 (i.e., after November 4, 1993) in accordance with all of the provisions set forth in that section. It is EPA's position that further actions approving OAR 340-028-1740 will not be necessary even though 40 CFR part 63, subpart E potential to emit language revisions may not be finalized by the time this proposed action is finalized.

III. Authority and Commitments for Section 112 Implementation

Under 40 CFR Part 63, subpart E, the minimum documentation needed as part of this 40 CFR 63.91 delegation request is: A written finding by the State attorney general (and the independent counsel for LRAPA) confirming that Oregon has adequate legal authorities to implement and enforce State rule(s) or program(s); copies of the State statutes,

³ See the Kathie A. Stein guidance memo of January 25, 1995, titled "Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits" which addresses the technical aspects of how criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

regulations and other documents which contain the appropriate provisions for which Oregon is requesting delegation; a demonstration of adequate resources to implement and enforce all aspects of the delegated rules or program; a schedule demonstrating expeditious implementation of the delegated rules or program; a plan that assures expeditious compliance by all sources; and a demonstration of adequate legal authority to implement and enforce all delegated rules or program and to assure compliance by all sources upon approval.

A. Written Findings by Legal Counsel

40 CFR 63.91(b)(1) requires that, at a minimum, the State have the following authorities: (1) Enforcement authorities that meet the requirements of 40 CFR 70.11 of this chapter; (2) authority to request information from regulated sources regarding their compliance status; (3) authority to inspect sources and any records required to determine a source's compliance status; and (4) if ODEQ delegates authorities to a Local agency, ODEQ must retain enforcement authority unless the Local agency's authorities meet the requirements of 40 CFR 70.11. Oregon has provided to EPA legal opinions from the State Attorney General and the independent legal counsel for LRAPA which clearly outline Oregon's enforcement authorities as they pertain to the requirements of 40 CFR 63.91(b)(1).⁴

B. Copies of State Statutes and Regulations

Complete copies of the Oregon regulations, OAR 340-032 (1995) and OAR 340-28 (1995), and Oregon Revised Statutes (ORS) 468 and 468A (1993) have been provided to EPA as required by 40 CFR 63.91(b)(2). OAR 340-032 "Hazardous Air Pollutants" establishes Oregon's procedures for regulating sources subject to 40 CFR Part 61 and Part 63. OAR 340-032-0130 "List of Hazardous Air Pollutants" incorporates into state law all of the HAP listed in section 112(b) of the Act. OAR 340-032-0240 "Permit to Operate" requires all new, existing and modified major sources of HAPs to obtain a FOP. OAR 340-032-0500 "Emission Limitations for New Major Sources" requires new major sources of hazardous air pollutants to obtain a permit prior to construction or reconstruction, as well as requires such

⁴ Since the original submission of this delegation application, EPA has fully approved Oregon's Part 70 operation permit program after determining that Oregon's enforcement authorities meet the requirements of 40 CFR Part 70.11. 60 FR 50106 (November 27, 1995).

new sources to utilize maximum achievable control technology (MACT). OAR 340-032-0510 through -0620 adopts by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to new major sources. OAR 340-032-2500 "Emission Limitations for Existing Major Sources" requires existing major sources of HAP to comply with applicable federal MACT standards and if such standards are not timely promulgated, then comply with state-adopted MACT regulations and to obtain a state-issued FOP permit. OAR 340-032-2600 through -3010 adopt by reference 40 CFR Part 63, subparts A, F through I, M through O, Q, R, T, and EE as they apply to existing major sources. OAR 340-032-4500 "Requirements for Modifications of Existing Major Sources" requires existing major sources of HAP to apply MACT whenever that source is modified and the modification results in an increase in HAP emissions above de minimis levels.

OAR 340-032-5500 "Applicability" indicates which sections of OAR 340-032 with which a stationary source identified in OAR 340-032-5530 through 5650 must comply with. OAR 340-032-5510 "General Requirements" requires all new sources subject to the state HAP regulations to notify Oregon prior to and after start-up. OAR 340-032-5520 "Federal Regulations Adopted by Reference" adopt by reference 40 CFR 61, subparts A through F, I, J, L, N through P, V, and Y through FF as in effect on July 1, 1993. OAR 340-032-5530 through OAR 340-032-5580 contain brief descriptions for each of the Federal NESHAP standards adopted by reference under OAR 340-032-5520 which helps a source determine whether it is potentially subject to the state-adopted standard without having to refer to the Code of Federal Regulations. OAR 3440-032-5590 through OAR 340-032-5650 contains the state asbestos rule language. Finally, OAR 340-32-5520 provides that if a discrepancy exists between 40 CFR Part 61 and OAR 340-32-5530 through 340-32-5650, then the applicable section of 40 CFR Part 61 shall apply.

C. Demonstration of Adequate Resources

40 CFR 63.91(b)(3) requires Oregon to provide for adequate resources to implement and enforce all aspects of the program or rule. Specifically, 40 CFR 63.91(b)(3) requires Oregon to provide: 1) a description in narrative form of the scope, structure, coverage, and processes of the State program; 2) a description of the organization and structure of the agency or agencies that

will have responsibility for administering the program; and 3) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

EPA believes Oregon has taken the necessary steps to provide for adequate resources to support implementation and enforcement of its air toxics program which are at least as stringent as the federal program. OAR 340-032 and OAR 340-28 provide the regulatory framework for administering Oregon's HAP program. OAR 340-32-0105 now provides that the provisions of OAR 340-032 apply "to any new, modified, or existing source that emits or has the potential to emit any HAP" which is defined in OAR 340-32-0120(23) as "an air pollutant listed by the EPA pursuant to § 112(b) of the Federal CAA." Oregon has defined "HAP" such that their program at a minimum covers the same list of HAPs found in the CAA.

Oregon has adopted by reference into state law all of the 40 CFR Part 61 and Part 63 subparts for which they are requesting delegation under the authority of 40 CFR 63.91. Therefore, Oregon's air toxics programs covers the same sources and the same pollutants which are presently being covered under the Federal NESHAP regulations.

ODEQ will be implementing and enforcing OAR 340-032 and OAR 340-28 throughout the State of Oregon (with the exception of Lane County) under the authority of ORS 468 and ORS 468A. Implementation and enforcement of OAR 340-032 and 340-028 or similar local regulations will be administered by LRAPA in Lane County. OAR 340-032-0110 and ORS 468A.135 gives LRAPA authority to implement and enforce OAR regulations or adopt their own more stringent regulations.

Resources to fund implementation and enforcement of the Oregon air toxics program for sources subject to the Federal NESHAP regulations but which are not subject to FOP requirements are covered by a three-part fee system comprised of a filing fee, a processing fee, and a compliance determination fee administered through its ACDP program. Oregon has been operating this fee program since 1972. Program costs for major sources subject concurrently to NESHAP regulations and FOP requirements are covered through a separate three-part fee system composed of an emission fee, a base fee and user fees administered through its FOP program. EPA believes that Oregon assess fees which are adequate to cover the costs of implementing and enforcing

the terms of each permit issued under these programs.⁵

Oregon was granted full approval of its FOP program on November 27, 1995. See 60 FR 50106. As part of this approval, EPA found that Oregon possessed adequate legal authorities and resources to implement and enforce its statewide FOP program as it applies to Part 70 sources.⁶ Since Oregon has met the requirements of Part 70 for an approved Title V operating permit program, EPA considers this finding of adequate resources and authorities to be sufficient for section 112(l) purposes as well as it applies to Part 70 sources.⁷

D. Demonstration of Expedient Implementation

Oregon has the broad legal authority to implement and enforce all Federal NESHAP regulations adopted into State law or included in a State-issued permit pursuant to OAR 340-28. EPA believes that Oregon's statutory and regulatory authorities are adequate to expeditiously implement those 40 CFR Parts 61 and 63 regulations adopted by reference in OAR 340-032 for which they are requesting delegation.

Oregon will adopt all new and amended NESHAP regulations into OAR 340-032. Oregon will implement and enforce these regulations for Part 70 sources through its FOP program. All existing major sources of HAP will be required to obtain a FOP. See OAR 340-032-0220(1) and OAR 340-28-2110(1). New major sources of HAP must obtain an ACDP construction permit prior to commencing construction. See OAR 340-032-0230(1).

E. Demonstration of Expedient Compliance

The EPA believes that Oregon's FOP program provides for an expeditious schedule for assuring compliance with NESHAP requirements as required by 63.91(b)(5). The FOP program regulations contain adequate authority

⁵ For further discussion of ODEQ's FOP fee system, see the September 14, 1994 Federal Register (59 FR 47105) rulemaking granting interim approval to the state of Oregon of its FOP program, including its three part fee system.

⁶ For further discussion regarding Oregon's authorities and resources for implementing its FOP program please refer to the language contained in the September 14, 1994, Federal Register (59 FR 47105) notice proposing interim approval of the Oregon FOP program and the December 2, 1994, Federal Register (59 FR 61820) notice granting interim approval of the Oregon FOP program, and the September 28, 1995 Federal Register proposal (60 FR 50166) and direct final Federal Register (60 FR 50106) which granted full approval of ODEQ's FOP program.

⁷ See the December 10, 1993, EPA policy memo from John Seitz of OAQPS titled "Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V."

to provide for an expeditious schedule for assuring compliance with all NESHAP requirements. Nothing in OAR 340-032 or OAR 340-028 would allow a source to avoid or delay compliance with any CAA requirement beyond the compliance date required by the Federal NESHAP regulations.

EPA also believes that the Oregon synthetic area source program meets the requirements of 40 CFR 63.91(b)(5) since this program does not allow for the waiver of any NESHAP requirement. To be more specific, sources that become minor through a permit issued pursuant to this program will still be required to meet all NESHAP requirements applicable to non-major sources.

F. Demonstration of Adequate Legal Authority

40 CFR 63.91(b)(6) requires Oregon to demonstrate that it has adequate legal authority to assure compliance as well as assure minimum enforcement authority which includes: (1) enforcement authorities that meet the requirements of 40 CFR 70.11; and (2) ability to retain enforcement authority in jurisdictions where this program has been re-delegated by the State to a local authority, unless the local authority has enforcement authorities that meet the requirements of 40 CFR 70.11. As previously indicated, ODEQ and LRAPA have enforcement authorities that meet the requirements of 40 CFR 70.11.

IV. Programs for Proposed Approval

A. Adoptions by Reference

It is EPA's belief that the Oregon submittal substantially meets the requirements of 40 CFR 63.91. Therefore, with this notice EPA proposes to grant full approval to Oregon's request for delegated authority to implement and enforce 40 CFR Part 61, subparts A through F, J, L, N through P, V, and Y through FF; and 40 CFR Part 63, subparts A, F through I, N, O, Q, R, T, and EE, as adopted into OAR 340-032. This delegation of authority to implement and enforce these rules applies only as these rules apply to 40 CFR part 70 sources. EPA will continue to administer and enforce these regulations as they apply to non-Part 70.

B. Voluntary Limits on HAP Emissions

EPA is proposing to grant approval of OAR 340-028 sections -110(114), -1050, -1740, and -2110 under the authority of section 112(l) of the Act to recognize the Oregon ACDP program as federally enforceable for the purpose of establishing potential to emit limitations. Approval of these

regulations will allow Oregon to create federally enforceable emission limitations by permit for sources who have the potential to emit HAP above major threshold levels but have actual HAP emissions which are below major source levels.⁸

C. Mechanism for Delegation of Future NESHAP Standards

In addition, EPA proposes to approve a mechanism for future delegation of those Federal NESHAP regulations that Oregon adopts by reference into state law.⁹ Under this streamlined approach, upon adoption of a NESHAP regulation Oregon would only need to send a letter to EPA requesting delegation for that regulation. EPA would in turn respond to this request by sending a letter back to Oregon delegating the NESHAP regulation as requested. No further formal response from Oregon would be necessary at this point, and if a negative response from Oregon is not received within 10 days of this letter of delegation from EPA, the delegation would then become final.

V. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposed approval. Copies of the Oregon submittal and other information relied upon for this action are contained in a docket maintained at the EPA Regional Office. The docket is a file of information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 14, 1997.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant

impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

NESHAP rule or program delegation approvals under section 112(l) of the Act do not create any new requirements, but simply confer federal authority for those requirements that the State of Oregon is already imposing. Therefore, because the section 112 delegation approvals do not impose any new requirements, the Agency has determined that it would not have a significant impact on any small entities affected.

D. Unfunded Mandates Reform Act

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. Summary of Action

EPA is soliciting public comment on its proposed delegation and approval of implementation and enforcement authority to Oregon pursuant to the authority of section 112(l) of the Act. EPA is also proposing to approve a mechanism for Oregon to receive future delegation of section 112 standards that are unchanged from the federal standards, but only as these standards apply to Part 70 sources. At the request of Oregon, EPA is proposing to take no action at this time in regard to their 40 CFR 63.93 rule substitution request for the state asbestos regulations contained in OAR 340-32-5590 through 340-32-5650. Interested parties are invited to comment on all aspects of this proposed rule. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by February 14, 1997 will be considered in the final rulemaking action taken by EPA. Issues raised by those comments will be carefully reviewed and considered in the decision to approve or disapprove the submittal. The EPA expects to make a final decision on whether or not to approve the Oregon submittal by July 14, 1997 and will give notice of the decision in the Federal Register. The notice will include a summary of the reasons for

⁸The source would thereby become a "synthetic area source" or a "synthetic minor source."

⁹See section 5.1.2.b of the document "Interim Enabling Guidance for the Implementation of 40 CFR part 63, subpart E" (EPA-453/R-93-040, November 1993).

the final determination and a response
to all major comments.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 6, 1997.

Chuck Clark,

Regional Administrator.

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