

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 61 and 63

[FRL-7223-3]

#### Approval of the Clean Air Act, Section 112(l), Delegation of Authority to the Oregon Department of Environmental Quality and Lane Regional Air Pollution Authority

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency, Region 10 (EPA) approves the Oregon Department of Environmental Quality's (ODEQ) request, on behalf of itself and the Lane Regional Air Pollution Control Authority (LRAPA), for program approval and delegation of authority to implement and enforce certain National Emission Standards for Hazardous Air Pollutants (NESHAPs).

Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that state law, regulations, and agency resources meet the requirements for program approval and delegation of authority specified in regulations pertaining to the criteria for delegation common to all approval options, and in applicable EPA guidance (*see* 40 CFR 60.91).

The purpose of this delegation is to acknowledge ODEQ and LRAPA's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to ODEQ and LRAPA. Although EPA will look to ODEQ and LRAPA as the leads for implementing the delegated NESHAPs in their respective jurisdictions, EPA retains authority under section 113 of the Act to enforce any applicable emission standard or requirement, if needed. With program approval, ODEQ and LRAPA may choose to request newly promulgated or updated standards by way of a streamlined request and approval process, described below.

Concurrent with this direct final rule, EPA is publishing a proposed rule in today's **Federal Register**. If no adverse comments are received in response to the direct final rule, this rule will become final and no further activity is contemplated. If EPA receives adverse comments on the direct final rule, it will be withdrawn and all public comments will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Any parties interested in

commenting on this action should do so at this time.

**DATES:** This direct final rule is effective on August 9, 2002, without further notice, unless EPA receives adverse comment by July 10, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be submitted to the address below:

Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

Copies of delegation requests and other supporting documentation are available for public inspection at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, during normal business hours. Please contact Jeff KenKnight to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Jeff KenKnight, Manager, Federal and Delegated Air Programs Unit, Office of Air Quality (OAQ-107), U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6641.

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### I. Background and Purpose

#### a. What Is the NESHAP Program?

Hazardous air pollutants are defined in the Clean Air Act (Act) as pollutants that threaten human health through inhalation or other type of exposure. These pollutants are commonly referred to as "air toxics" and are listed in section 112(b)(1) of the Act.

National Emission Standards for Hazardous Air Pollutants (NESHAPs) control emissions of hazardous air pollutants from specific source categories and implement the requirements of section 112 of the Act. These standards are found in 40 CFR parts 61 and 63.

Section 112(l) of the Act enables EPA to approve state and local air toxics programs or rules such that these agencies can accept delegation of authority for implementing and enforcing the NESHAPs. Typically, a state or local agency requests delegation based on federal rules adopted unchanged into state or local rules.

#### b. What Are the Requirements for Delegation?

Requirements for delegation of NESHAPs adopted unchanged into state or local law are set forth in 40 CFR 63.91(d).

#### c. Are There Any Other Requirements Tied to NESHAP Program Delegation?

The Clean Air Act (CAA) Amendments of 1990 required all State and local permitting authorities to develop operating permits programs that meet the requirements of 40 CFR part 70. EPA gave full approval to Oregon's title V operating permits program in 1995. (*see* 60 FR 50106 (September 28, 1995)).

Interim or final Title V program approval satisfies approval criteria for delegation of the NESHAP program. This is because the authority and enforcement requirements for approval of a part 70 program are equivalent to the requirements for NESHAP delegation found in 40 CFR 63.91(d). Also, the approval of a Title V program already confers the responsibility to implement and enforce all requirements applicable to major sources, including requirements of section 112.

Alternatively, 40 CFR 63.91(d) requires that an agency show it: (1) Has the authority necessary to implement and enforce the NESHAPs and ensure compliance from sources; (2) has the resources and ability to carry out the

responsibility; (3) is capable of assuring expeditious compliance by sources; and (4) is otherwise in compliance with federal requirements.

Once an agency demonstrates that it meets this approval criteria, it need only reference that demonstration and reaffirm it still meets the criteria in future requests for updated delegation.

*d. What Is the history of this delegation?*

On January 24, 2002, ODEQ submitted a request on behalf of itself and LRAPA for delegation of authority to implement and enforce certain NESHAPs in effect on July 1, 2001. This was a follow-up to an original delegation request submitted November 15, 1993.

EPA considered ODEQ's original 1993 request, including additional supporting materials, and published a **Federal Register** document proposing delegation on January 15, 1997 (see 63 FR 2074). However, EPA did not take final action on this proposal because of EPA's concern that Oregon's Audit Privilege Act, Oregon Revised Statute 468.963 (1993), interfered with Oregon's ability to meet federal requirements for approval of EPA programs, including the NESHAP. During the 2001 Legislative Session, the Oregon Legislature passed House Bill 3536, which amended ORS 468.963 to ensure that the Audit Privilege Law does not apply to criminal investigations or proceedings. These statutory amendments became effective January 1, 2002. With these amendments, the Oregon Audit Privilege law no longer poses a barrier to the delegation of the NESHAPs to Oregon and LRAPA.

*e. How Have ODEQ and LRAPA Satisfied the requirements for NESHAP Delegation?*

ODEQ's January 24, 2002 submittal consists of a letter of request and supporting documentation, which includes: (1) A copy of state statutes, regulations and requirements that grant authority to implement and enforce a

NESHAP program upon approval; (2) a demonstration that the agency has an approved Title V program; and (3) copies of revised statutes and discussion pertaining to the resolution of audit law and standing issues. ODEQ and LRAPA have met the requirements for delegation because they have full approval of their Title V program.<sup>1</sup>

**II. EPA Action**

*a. What Specific Emission Standards Is EPA Delegating to ODEQ and LRAPA?*

EPA is delegating certain 40 CFR part 61 and 63 subparts in effect on July 1, 2001, to ODEQ and LRAPA. These are: (1) 40 CFR part 61, subparts A, C, D, E, F, J, L, N, O, P, V, Y, BB, FF; and (2) 40 CFR part 63, subparts A, F, G, H, I, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, RRR, TTT, VVV, XXX, CCCC, GGGG. These subparts are also summarized in the parts 61 and 63 informational tables at the end of this direct final rule.

*b. What Specific Standards Is EPA Not Delegating?*

Typically, EPA delegates all standards adopted and requested by an air agency and in effect as of a certain date, regardless of whether or not there are any applicable sources within that agency's jurisdiction. As an exception, EPA does not usually delegate subparts pertaining to radon or radionuclides (part 61, subparts B, Q, H, I, K, R, and W). This is due to the specific expertise required to implement them. For this reason, EPA is not delegating part 61, subparts B and I, even though ODEQ and LRAPA requested them.

*c. What General Provisions Authorities Are Automatically Granted as Part of Oregon's Title V Operating Permits Program Approval?*

Certain General Provisions authorities are automatically granted to ODEQ and

LRAPA as part of Oregon's Title V operating permits program approval. These are 40 CFR 63.6(i)(1), "Extension of Compliance with Emission Standards," and 63.5(e) and (f), "Approval and Disapproval of Construction and Reconstruction."<sup>2</sup> Additionally, for 40 CFR 63.6(i)(1), ODEQ and LRAPA do not need to have been delegated a particular standard or have issued a Title V operating permit for a particular source to grant that source a compliance extension. However, ODEQ and LRAPA must have authority to implement and enforce the particular standard against the source in order to grant that source a compliance extension.

*d. What General Provisions Authorities Is EPA Delegating?*

In 40 CFR 63.90 and in a memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, titled, "Delegation of 40 CFR part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies," EPA clarifies which of the authorities in the General Provisions may and may not be delegated to state and local agencies under 40 CFR part 63, subpart E. Based on these guidelines, EPA is delegating to ODEQ and LRAPA certain part 63, subpart A authorities listed below.

Delegation of these General Provisions authorities will enable ODEQ and LRAPA to carry out the EPA Administrator's responsibilities in these sections of subpart A. In delegating these authorities, EPA grants ODEQ and LRAPA the authority to make decisions which are not likely to be nationally significant or alter the stringency of the underlying standard. The intent is that these agencies will make decisions on a source-by-source basis, not on a source category-wide basis.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS DELEGATING

Section	Authorities
63.1 .....	Applicability Determinations.
63.6(e) .....	Operation and Maintenance Requirements—Responsibility for Determining Compliance.

<sup>1</sup> EPA issued a Notice of Deficiency for Oregon's Title V program on November 30, 1998, (see 63 FR 65783) because of a 1996 court decision that restricted representational standing in Oregon, which EPA believes is a requirement for full Title V approval. Specifically, this kept organizations from challenging state issued Title V permits. Representational standing relates to the ability of an association or organization to act on behalf of their members in judicial proceedings, in this case,

challenging Title V permits. During the 1999 Legislative Session, the Oregon legislature passed House Bill 2180 which clarified that an association or organization has standing to seek judicial review of Title V permits in Oregon. EPA has concluded that these changes address the Notice of Deficiency. This correction is published in another section of today's **Federal Register**.

<sup>2</sup> Sections 112(i)(1) and (3) state that "Extension of Compliance with Emission Standards" and

"Approval and Disapproval of Construction and Reconstruction" can be implemented by the "Administrator (or a State with a permit program approved under Title V)." EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of its Title V operating permits program approval provided the State has authority to implement those NESHAP standards in the Title V permit.

TABLE 1.—PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS DELEGATING—Continued

Section	Authorities
63.6(f) .....	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)] .....	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance.
63.7(c)(2)(i) and (d) .....	Approval of Site-Specific Test Plans.
63.7(e)(2)(i) .....	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f) .....	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii) .....	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (3) .....	Waiver of Performance Testing.
63.8(c)(1) and (e)(1) .....	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f) .....	Approval of Minor Alternatives to Monitoring.
63.8(f) .....	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 [except 63.10(f)] .....	Approval of Adjustments to Time Periods for Submitting Reports.

In delegating 40 CFR 63.9 and 63.10, “Approval of Adjustments to Time Periods for Submitting Reports,” ODEQ and LRAPA have the authority to approve adjustments to the timing of the reports that are due, but do not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by part 70 and nothing herein will change that requirement.

*e. What General Provisions authorities are not delegated?*

In general, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal oversight is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. The types of authorities that EPA retains are: Equivalency determinations; approval of alternative test methods; decisions where federal oversight is needed to ensure national consistency; and any decision that requires rulemaking to implement. The authorities listed in the table below (also mentioned in the footnotes of the parts 61 and 63 delegation tables at the end of this rule) are the specific General Provisions authorities that cannot be delegated to any state or local agency, which EPA therefore retains sole authority to implement.

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS NOT DELEGATING

Section	Authorities
61.04(b) .....	Waiver of Recordkeeping.
61.12(d)(1) .....	Approval of Alternative Means of Emission Limitation.
61.13(h)(1)(ii) .....	Approval of Major Alternatives to Test Methods.

TABLE 2.—PART 61 AND 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES EPA IS NOT DELEGATING—Continued

Section	Authorities
61.14(g)(1)(ii) .....	Approval of Major Alternatives to Monitoring.
61.16 .....	Availability of Information.
61.53(c)(4) .....	List of Approved Design, Maintenance, and House-keeping Practices for Mercury Chlor-alkali Plants.
63.6(g) .....	Approval of Alternative Non-Opacity Emission Standards.
63.6(h)(9) .....	Approval of Alternative Opacity Standard.
63.7(e)(2)(ii) and (f) .....	Approval of Major Alternative to Test Methods.
63.8(f) .....	Approval of Major Alternatives to Monitoring.
63.10(f) .....	Waiver of Recordkeeping—all.

**III. Implications**

*a. How Will This Delegation Affect the Regulated Community?*

Once a state or local agency has been delegated the authority to implement and enforce a NESHAP, they become the primary point of contact with respect to that NESHAP. As a result of today’s action, sources in Oregon subject to a delegated NESHAP should direct questions and compliance issues to their respective air agency.

For authorities that are NOT delegated—those noted in Table 2 or any section of 40 CFR parts 61 and 63 that says authority cannot be delegated—affected sources should continue to work with EPA as their primary contact and submit materials directly to EPA for Administrator decision. In these cases, ODEQ or LRAPA should be copied on all submittals, questions, and requests.

EPA continues to have primary responsibility to implement and enforce Federal regulations that do not have current state or local agency delegations. Several part 61 and 63 subparts are excluded from this delegation. Therefore, EPA is the only agency that can implement and enforce NESHAPs as they apply to Oregon’s sources.

Also, EPA is delegating specific federal standards in effect on July 1, 2001. EPA has authority for any NESHAP that changes substantially after this date until these agencies update their delegation.

*b. Where Will the Regulated Community Send Notifications and Reports?*

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to ODEQ and LRAPA for their action, and send copies to EPA. For authorities that are not delegated, sources should send EPA required notifications, reports, and requests, and send copies to ODEQ or LRAPA. Generally speaking, the transfer of authority from EPA to ODEQ and LRAPA in this delegation changes EPA’s role from primary implementor and enforcer to overseer.

*c. How Will This Delegation Affect Indian Country?*

This delegation to ODEQ and LRAPA to implement and enforce NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. “Indian country” is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States,

whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe, even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NESHAPs in Indian country, because these agencies have not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

*d. What Will ODEQ and LRAPA's Reporting Requirements to EPA Be?*

In delegating the authority to implement and enforce these rules, EPA requires that ODEQ and LRAPA submit the following to EPA:

(1) ODEQ and LRAPA must input all minimum data reportable (MDR) requirements into the AIRS Facility Subsystem (AFS) of the Aerometric Information Retrieval System (AIRS) for stationary sources;

(2) ODEQ and LRAPA must also provide any additional compliance related information to EPA as agreed upon in the Compliance Assurance Agreement between EPA and ODEQ and LRAPA;

(3) ODEQ and LRAPA must submit to EPA copies of determinations issued pursuant to delegated General Provisions authorities, listed in Table 1, above;

(4) ODEQ and LRAPA must also forward to EPA copies of any notifications received pursuant to 40 CFR 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

(5) ODEQ and LRAPA must submit to EPA's Emission Measurement Center, of the Emissions Monitoring and Analysis Division, copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate, and minor alternative test methods or monitoring methods, see 40 CFR 63.90 and the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods, or monitoring changes, should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD-19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-1039.

*e. How Will ODEQ and LRAPA Receive Delegation of Future and Revised Standards?*

ODEQ and LRAPA will receive delegation of future standards by the following streamlined process: (1) ODEQ and/or LRAPA will send a letter to EPA requesting delegation for future NESHAP standards adopted by reference into Oregon regulations; (2) EPA will send a letter of response back to ODEQ and/or LRAPA granting this delegation request (or explaining why EPA cannot grant the request); (3) ODEQ and/or LRAPA do not need to send a response back to EPA; (4) If EPA does not receive a negative response from ODEQ and/or LRAPA within 10 days of EPA's letter, then the delegation will be final 10 days after the date of the letter from EPA; and (5) Periodically, EPA will publish a notice in the **Federal Register** informing the public of the updated delegation.

*f. How Frequently Should ODEQ and LRAPA Update Their Delegations?*

ODEQ and LRAPA are not obligated to receive future delegations. However, they are encouraged to revise their rules to incorporate newer 40 CFR parts 61 and 63 standards and request updated delegation annually. Preferably, ODEQ and LRAPA should adopt federal regulations effective July 1, of each year; this corresponds with the publication date of the CFR.

#### IV. Summary

EPA approves ODEQ and LRAPA's request for program approval and delegation of authority to implement and enforce specific NESHAPs. Pursuant to the authority of section 112(l) of the Act, this approval is based on EPA's finding that state law, regulations, and agency resources meet the requirements for program approval and delegation of authority specified in 40 CFR 63.91 and applicable EPA guidance.

The purpose of this delegation is to acknowledge ODEQ and LRAPA's ability to implement a NESHAP program and to transfer primary implementation and enforcement responsibility from EPA to ODEQ and LRAPA. Although EPA will look to these agencies as the lead for implementing delegated NESHAPs for their sources, EPA retains authority under section 113 of the Act to enforce any applicable emission standard or requirement, if needed. With program approval, ODEQ and LRAPA may request newly promulgated or updated standards by way of a streamlined process.

Sources subject to delegated NESHAPs (specified in the part 61 and part 63 tables at the end of the rule) will now send required notifications and reports to ODEQ and LRAPA for their action, and send a copy to EPA. Sources should continue to send notifications, reports, requests, etc. pursuant to Authorities not delegated to these agencies to EPA for our action, and send a copy to ODEQ or LRAPA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full delegation of NESHAP standards to ODEQ and LRAPA should adverse comments be filed. This rule will be effective August 9, 2002, without further notice unless the Agency receives adverse comments by July 10, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time.

If no comments are received, the public is advised that this rule will be effective on August 9, 2002, and no further action will be taken on the proposed rule.

#### V. Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Delegation of authority to implement and enforce unchanged federal standards under section 112(l) of the CAA does not create any new requirements but simply transfers primary implementation authorities to the state (or local) agency. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it approves pre-existing requirements under State law and does not impose any additional

enforceable duties beyond that required by State law.

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The action merely approves a State and local program and rules implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. Although section 6 of the Executive Order does not apply to this rule, EPA did consult with representatives of state government in developing this rule, and this rule is in response to the State's delegation request. This action, also, is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. See CAA section 307(b)(2).

**List of Subjects**

*40 CFR Part 61*

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride.

*40 CFR Part 63*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 24, 2002.

**Ronald A. Kreizenbeck,**

*Acting Regional Administrator, Region 10.*

Title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 61—[AMENDED]**

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

**Subpart A—General Provisions**

2. Section 61.04 is amended by revising the table in paragraph (c)(10) to read as follows:

**§ 61.04 Address.**

\* \* \* \* \*  
(c) \* \* \*  
(10) \* \* \*

**DELEGATION STATUS FOR PART 61 STANDARDS—REGION 10<sup>1</sup>**

Subpart <sup>2</sup>	Washington											
	AK ADEC <sup>3</sup>	ID IDEQ <sup>4</sup>	Oregon ODEQ <sup>5</sup> LRAPA <sup>6</sup>		Ecology <sup>7</sup>	BCAA <sup>8</sup>	NWAPA <sup>9</sup>	OAPCA <sup>10</sup>	PSCAA <sup>11</sup>	SCAPCA <sup>12</sup>	SWAPCA <sup>13</sup>	YRCAA <sup>14</sup>
A General Provisions <sup>15</sup>	X	X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
B Radon from Underground Uranium Mines												
C Beryllium		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
D Beryllium Rocket Motor Firing		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
E Mercury	X	X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
F Vinyl Chloride		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
H Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J Equipment Leaks of Benzene	X	X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
K Radionuclides from Elemental Phosphorus Plants												
L Benzene from Coke Recovery		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
M Asbestos	X <sup>3</sup>	X <sup>4</sup>			X <sup>7</sup>	X <sup>8</sup>	X	X <sup>10</sup>	X	X	X	X
N Arsenic from Glass Plants		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
O Arsenic from Primary Copper Smelters		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
P Arsenic from Arsenic Production Facilities		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks												
T Radon from Disposal of Uranium Mill Tailings		X <sup>4</sup>										
V Equipment Leaks	X	X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
W Radon from Operating Mill Tailings												
Y Benzene from Benzene Storage Vessels	X	X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
BB Benzene from Benzene Transfer Operations		X <sup>4</sup>	X	X	X	X	X	X	X	X	X	X
FF Benzene Waste Operations	X		X	X	X	X	X	X	X	X	X	X

<sup>1</sup> Table last updated on August 9, 2002.

<sup>2</sup> Any authority within any subpart of this part (i.e. under "Delegation of Authority") that is identified as not delegatable, is not delegated.

<sup>3</sup> Alaska Department of Environmental Conservation (01/18/1997) Note: Alaska received delegation for §61.145 and §61.154 of subpart M (Asbestos), along with other sections and appendices which are referenced in §61.145, as §61.145 applies to sources required to obtain an operating permit under Alaska's regulations. Alaska has not received delegation for subpart M for sources not required to obtain an operating permit under Alaska's regulations.  
<sup>4</sup> Idaho Department of Environmental Quality (07/01/2000) Note: Delegation of these part 61, Subparts applies only to those sources in Idaho required to obtain an operating permit under Title V of the Clean Air Act.  
<sup>5</sup> Oregon Department of Environmental Quality (07/01/2001)  
<sup>6</sup> Lane Regional Air Pollution Authority (07/01/2001)  
<sup>7</sup> Washington Department of Ecology (02/20/2001) Note: Delegation of part 63, subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act, including Hanford. (Pursuant to RCW 70.105.240, only Ecology can enforce regulations at Hanford)  
<sup>8</sup> Benton Clean Air Authority (02/20/2001) Note: Delegation of part 63, subpart M excludes Hanford, see note #6.  
<sup>9</sup> Northwest Air Pollution Authority (07/01/2000)  
<sup>10</sup> Olympic Air Pollution Control Authority (07/01/2000) Note: Delegation of part 63, subpart M applies only to sources required to obtain an operating permit under Title V of the Clean Air Act  
<sup>11</sup> Puget Sound Clean Air Agency (07/01/1999)  
<sup>12</sup> Spokane County Air Pollution Control Authority (02/20/2001)  
<sup>13</sup> Southwest Air Pollution Control Authority (08/01/1998)  
<sup>14</sup> Yakima Regional Clean Air Authority (07/01/2000)  
<sup>15</sup> General Provisions Authorities which are not delegated include: §§61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; §61.14(g)(1)(ii) for approval of major alternatives to monitoring; §61.16; §61.53(c)(4); and any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring. For definitions of *minor*, *intermediate*, and *major* alternatives to test methods and monitoring, see 40 CFR 63.90.

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

2. Section 63.99 is amended by adding paragraph (a)(37) to read as follows:

**§ 63.99 Delegated federal authorities.**

\* \* \* \* \*

(a) \* \* \*

(37) Oregon.

(i) The following table lists the delegation status of specific part 63 subparts that have been delegated to state and local air pollution control agencies in Oregon. An "X" indicates the subpart has been delegated, subject to all the conditions and limitations set forth in federal law, regulations, policy, guidance, and determinations. Some

authorities cannot be delegated and are retained by EPA. These include certain General Provisions authorities and specific parts of some standards. The dates noted at the end of this table indicate the effective dates of federal rules that have been delegated. Any amendments made to these rules after this effective date are not delegated.

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF OREGON<sup>1</sup>

Subpart <sup>2</sup>	ODEQ <sup>3</sup>	LRAPA <sup>4</sup>
A General Provisions <sup>5</sup> .....	X	X
D Early Reductions .....	X	X
F HON-SOCMI .....	X	X
G HON-Process Vents .....	X	X
H HON-Equipment Leaks .....	X	X
I HON-Negotiated Leaks .....	X	X
L Coke Oven Batteries .....	X	X
M Perchloroethylene Dry Cleaning .....	X	X
N Chromium Electroplating .....	X	X
O Ethylene Oxide Sterilizers .....	X	X
Q Industrial Process Cooling Towers .....	X	X
R Gasoline Distribution .....	X	X
S Pulp and Paper .....	X	X
T Halogenated Solvent Cleaning .....	X	X
U Polymers and Resins I .....	X	X
W Polymers and Resins II-Epoxy .....	X	X
X Secondary Lead Smelting .....	X	X
Y Marine Tank Vessel Loading .....	X	X
AA Phosphoric Acid Manufacturing Plants .....	X	X
BB Phosphate Fertilizers Production Plants .....	X	X
CC Petroleum Refineries .....	X	X
DD Off-Site Waste and Recovery .....	X	X
EE Magnetic Tape Manufacturing .....	X	X
GG Aerospace Manufacturing & Rework .....	X	X
HH Oil and Natural Gas Production Facilities .....	X	X
II Shipbuilding and Ship Repair .....	X	X
JJ Wood Furniture Manufacturing Operations .....	X	X
KK Printing and Publishing Industry .....	X	X
LL Primary Aluminum .....	X	X
MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills ....	X	X
OO Tanks—Level 1 .....	X	X
PP Containers .....	X	X
QQ Surface Impoundments .....	X	X
RR Individual Drain Systems .....	X	X
SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process .....	X	X
TT Equipment Leaks—Control Level 1 .....	X	X
UU Equipment Leaks—Control Level 2 .....	X	X
VV Oil-Water Separators and Organic-Water Separators .....	X	X
WW Storage Vessels (Tanks)—Control Level 2 .....	X	X
YY Source Categories: Generic MACT .....	X	X
CCC Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants .....	X	X
DDD Mineral Wool Production .....	X	X

DELEGATION STATUS OF PART 63 NESHAPS—STATE OF OREGON<sup>1</sup>—Continued

Subpart <sup>2</sup>	ODEQ <sup>3</sup>	LRAPA <sup>4</sup>
EEE Hazardous Waste Combustors .....	X	X
GGG Pharmaceuticals Production .....	X	X
HHH Natural Gas Transmission and Storage Facilities .....	X	X
III Flexible Polyurethane Foam Production .....	X	X
JJJ Polymers and Resins IV .....	X	X
LLL Portland Cement Manufacturing .....	X	X
MMM Pesticide Active Ingredient Production .....	X	X
NNN Wool Fiberglass Manufacturing .....	X	X
OOO Manufacture of Amino Phenolic Resins .....	X	X
PPP Polyether Polyols Production .....	X	X
RRR Secondary Aluminum Production .....	X	X
TTT Primary Lead Smelting .....	X	X
VVV Publicly Owned Treatment Works .....	X	X
XXX Ferroalloys Production: Ferromanganese & Silico manganese .....	X	X
CCCC Manufacture of Nutritional Yeast .....	X	X
GGGG Extraction of Vegetable Oil .....	X	X

<sup>1</sup> Table last updated on August 9, 2002; see 40 CFR 61.04(b)(WW) for agency addresses.

<sup>2</sup> Any authority within any subpart of this part (i.e. under "Delegation of Authority") that is identified as not delegatable, is not delegated.

<sup>3</sup> Oregon Department of Environmental Quality (07/01/2001).

<sup>4</sup> Lane Region Air Pollution Authority (07/01/2001).

<sup>5</sup> General Provisions Authorities which may not be delegated include: §§ 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; § 63.9(f) for approval of major alternatives to monitoring. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see 40 CFR 63.90.

[FR Doc. 02-13974 Filed 6-7-02; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[ME 067-7016a; FRL-7227-1]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Maine; Negative Declaration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the sections 111(d)/129 negative declaration submitted by the Maine Department of Environmental Protection (DEP) on January 24, 2002. This negative declaration adequately certifies that there are no existing commercial and industrial solid waste incineration units (CISWIs) located within the boundaries of the state of Maine. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (e.g., CISWIs). The state of Maine submitted this negative declaration in lieu of a state control plan.

**DATES:** This direct final rule is effective on August 9, 2002, without further notice unless EPA receives significant

adverse comment by July 10, 2002. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** You should address your written comments to: Mr. Steven Rapp, Chief, Air Permit Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** John J. Courcier, (617) 918-1659.

**SUPPLEMENTARY INFORMATION:**

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- I. What action is EPA taking today?
- II. What is the origin of the requirements?
- III. When did the requirements first become known?
- IV. When did Maine submit its negative declaration?
- V. Administrative Requirements

**I. What Action Is EPA Taking Today?**

EPA is approving the negative declaration of air emissions from CISWI units submitted by the state of Maine.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section

of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by July 10, 2002, this action will be effective August 9, 2002.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective August 9, 2002.

**II. What Is the Origin of the Requirements?**

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.