

for denying Westar's request both alone and together justify this policy: (1) The regulations expressly required filing of corrections by a date certain; (2) waiving the deadline would undermine the certainty that the annual charges would not be indefinitely subject to change; and (3) the Commission has never suggested it would ignore the deadline spelled out in its regulations.<sup>16</sup>

11. We also announce a policy, going forward, as to when we will waive the regulation and allow untimely submissions. The Commission's policy going forward will be to grant waiver and accept only those late-filed corrections discovered through a Commission-conducted audit in order to remedy an underreporting of transmission volumes (and thus where other utilities have subsidized the underreporting utility).

12. As stated above, the Commission allocates its collectible electric regulatory program costs among public utilities. A reduction in the amount owed by one utility necessarily has an effect, an increase, on the amount owed by all of the others. Therefore, if a utility does not accurately report its transmission volumes, the Commission cannot charge it appropriately.<sup>17</sup> The allocation of costs based on transmission volumes creates a natural incentive for utilities to underreport their transmission volumes in a given year. Just as public utilities have a natural incentive to "abuse their market power,"<sup>18</sup> so, by analogy, public utilities subject to reporting transmission volumes for purposes of calculating their proportionate share of the Commission's collectible electric regulatory program costs have similar incentives to underreport their transmission volumes and thereby reduce the costs allocated to them. The

<sup>16</sup> 473 F.3d, at 1241-42. As noted above, it was the Commission's failure to adequately explain the fourth reason that led to the remand.

<sup>17</sup> As we have noted, the transmission volumes utilities report are the utilities' data. These data are, moreover, filed under oath. 18 CFR 382.201(c)(1) (2006); see *Revision of Annual Charges to Public Utilities (PJM Interconnection)*, 105 FERC ¶ 61,093 at P 8 (2003); *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,048 at P 13-14, *reh'g denied*, 104 FERC ¶ 61,060 (2003); *CAISO*, 101 FERC ¶ 61,326 at P 9; *CAISO*, 101 FERC ¶ 61,043 at P 10. While utilities are thus required to report complete and accurate data (by April 30 of each year), we nevertheless recognize that utilities may err in their reporting, and so we allow corrections to be filed up to eight months following their original filing, *i.e.*, by the end of the calendar year.

<sup>18</sup> *Pennsylvania Elec. Co. v. FERC*, 11 F.3d 207, 211 n.5 (D.C. Cir. 1993); *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 834-835 (D.C. Cir. 2006); *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1122 & n.4 (D.C. Cir. 1996); *Associated Gas Distribs. v. FERC*, 824 F.2d 981, 1010 (D.C. Cir. 1987).

effect of such underreporting is an inequitable subsidization by other utilities of any utility that underreported. The agency's audit process provides a check on that natural incentive. Therefore, the Commission will allow late-filed corrections resulting from an audit revealing that a utility has underreported its transmission volumes and consequently forced other utilities to bear costs that should have been borne by the underreporting utility. The Commission thus retains its ability to make right the situation where the remainder of the industry has paid amounts which rightfully were owed by another.<sup>19</sup>

13. However, the reverse is not true. Overreporting does not raise the same concerns as underreporting; if a company overreports its transmission volumes and fails to file corrections by the deadline, it does so to its detriment and harms no one but itself. Errors of overreporting discovered after the deadline, by Commission-conducted audit or otherwise, thus may not be corrected. The D.C. Circuit acknowledged that any one of the first three justifications provided by the Commission, described above, justify a Commission policy of not accepting a corrected FERC 582 after the deadline. Indeed, the Commission need not have structured its regulation to allow corrections at all. The data the utilities must report is, after all, the utilities' data, and that data must be filed under oath; in other words, full and complete reporting at the outset should be the norm. The Commission, however, elected to build leniency into its requirement to submit transmission volumes, in the form of an 8-month window from the April 30 filing deadline to the December 31 corrections deadline. That 8-month window provides more than sufficient time for utilities to identify and correct their overreporting.

#### *The Commission orders:*

(A) The Commission hereby grants waiver of the annual charges reporting requirement, FERC 582, to allow Westar to submit corrected information for FY 2002 (reporting corrected calendar year 2001 transmission data). The upcoming annual charges will be calculated to reflect this corrected information.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

<sup>19</sup> If the Commission finds that the underreporting was intentional, it may seek to invoke its civil penalty authority as well.

By the Commission.

**Philis J. Posey,**

*Acting Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[MSN-2006-1; FRL-8290-4]

### New Stationary Sources; Supplemental Delegation of Authority to the Mississippi Department of Environmental Quality

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

**ACTION:** Delegation of authority.

**SUMMARY:** The Mississippi Department of Environmental Quality (MSDEQ or agency) has requested that EPA delegate authority for implementation and enforcement of existing New Source Performance Standards (NSPS) which have been previously adopted by the agency but have remained undelegated by EPA, and has requested that EPA approve the mechanism for delegation (adopt-by-reference) of future NSPS. The purpose of MSDEQ's request for approval of its delegation mechanism is to streamline existing administrative procedures by eliminating any unnecessary steps involved in the Federal delegation process. With this NSPS delegation mechanism in place, a new or revised NSPS promulgated by EPA will become effective in the State of Mississippi on the date the NSPS is adopted-by-reference pursuant to a rulemaking of the MSDEQ, if the agency adopts the NSPS without change. "Adopt-by-reference" means the EPA promulgated standard has been adopted directly into the State regulations by reference to the Federal law. No further agency requests for delegation will be necessary. Likewise, no further **Federal Register** notices will be published.

In this action, EPA is delegating authority to MSDEQ for implementation and enforcement of existing NSPS which have been previously adopted by MSDEQ and which are identified in the Supplementary Information section below. In addition, EPA is approving MSDEQ's "adopt-by-reference" mechanism for delegation of future NSPS.

**DATES:** *Effective Date:* The effective date is March 22, 2007.

**ADDRESSES:** Copies of the request for delegation of authority are available for public inspection during normal

business hours at the following locations:

Environmental Protection Agency, Region 4, Air Toxics and Monitoring Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303;

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289-0385.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address:

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289-0385.

**FOR FURTHER INFORMATION CONTACT:**

Keith Goff, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, 404-562-9137. Mr. Goff can also be reached via electronic mail at [goff.keith@epa.gov](mailto:goff.keith@epa.gov).

**SUPPLEMENTARY INFORMATION:** Sections 101, 110, 111(c)(1), and 301 of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS. On November 30, 1981, EPA initially delegated the authority for implementation and enforcement of the NSPS program to the MSDEQ. This agency has subsequently requested a delegation of authority for implementation and enforcement of the previously adopted, undelegated part 60 NSPS categories listed below.

1. 40 CFR part 60, subpart Eb, adopted January 25, 1996.

2. 40 CFR part 60, subpart Ec, adopted January 22, 1998.

3. 40 CFR part 60, subpart WWW, adopted August 22, 1996.

4. 40 CFR part 60, subpart AAAA, adopted August 22, 2002.

5. 40 CFR part 60, subpart CCCC, adopted August 22, 2002.

EPA's review of Mississippi's pertinent laws, rules, and regulations has shown them to be adequate for implementation and enforcement of these existing, previously adopted, undelegated NSPS. Based on this review, EPA has determined that delegation of the above-referenced NSPS is appropriate, with the non-delegable exceptions noted below. All sources subject to the delegable requirements in these NSPS subparts will now be under the jurisdiction of the MSDEQ, although EPA reserves the right to implement the Federal NSPS directly and continues to retain concurrent enforcement

authority. The NSPS subparts and portions of subparts that may not be delegated, and are therefore not delegated by this action are:

1. Subpart A—§ 60.8(b) (2) and (3), § 60.11(e) (7) and (8), § 60.13 (g), (i) and (j)(2)
2. Subpart B—§ 60.22, § 60.27, and § 60.29
3. Subpart Da—§ 60.45a
4. Subpart Db—§ 60.44b(f), § 60.44b(g), § 60.49b(a)(4)
5. Subpart Dc—§ 60.48c(a)(4)
6. Subpart Ec—§ 60.56c(i)
7. Subpart J—§ 60.105(a)(13)(iii), § 60.106(i)(12)
8. Subpart Ka—§ 60.114a
9. Subpart Kb—§ 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), § 60.116b(f)(2)(iii)
10. Subpart O—§ 60.153(e)
11. Subpart EE—§ 60.316(d)
12. Subpart GG—§ 60.334(b)(2), § 60.335(f)(1)
13. Subpart RR—§ 60.446(c)
14. Subpart SS—§ 60.456(d)
15. Subpart TT—§ 60.466(d)
16. Subpart UU—§ 60.474(g)
17. Subpart VV—§ 60.482-1(c)(2) and § 60.484
18. Subpart WW—§ 60.496(c)
19. Subpart XX—§ 60.502(e)(6)
20. Subpart AAA—§ 60.531, § 60.533, § 60.534, § 60.535, § 60.536(i)(2), § 60.537, § 60.538(e), § 60.539
21. Subpart BBB—§ 60.543(c)(2)(ii)(B)
22. Subpart DDD—§ 60.562-2(c)
23. Subpart III—§ 60.613(e)
24. Subpart NNN—§ 60.663(e)
25. Subpart RRR—§ 60.703(e)
26. Subpart SSS—§ 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), § 60.716
27. Subpart TTT—§ 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b)
28. Subpart VVV—§ 60.743(a)(3)(v)(A) and (B), § 60.743(e), § 60.745(a), § 60.746
29. Subpart WWW—§ 60.754(a)(5)
30. Subpart CCCC—§ 60.2030(c)

In addition, EPA is approving MSDEQ's "adopt-by-reference" delegation mechanism for future NSPS. EPA's review of the pertinent laws, rules, and regulations for the agency has shown them to be adequate for implementation and enforcement of existing, previously adopted, undelegated NSPS and future NSPS. Future NSPS regulations will contain a list of sections that cannot be delegated for that subpart. With this NSPS "adopt-by-reference" delegation mechanism in place, a new or revised NSPS promulgated by EPA will become effective in the State of Mississippi on the date the NSPS is adopted-by-reference pursuant to a rulemaking of the Mississippi Department of Environmental Quality, if the agency adopts the NSPS without change. EPA reserves the right to implement the Federal NSPS directly and continues to retain concurrent enforcement authority.

**Statutory and Executive Order Reviews**

Under Executive Order 12866 (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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action 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.*). Because this action delegates pre-existing requirements under Federal law and does not impose any additional enforceable duty beyond that required by Federal law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This action 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 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely delegates the implementation and enforcement of an existing Federal standard and approves a delegation mechanism for future Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. 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), because it is not economically significant. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

In reviewing delegation requests and mechanisms for delegation, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation request or disapprove a proposed delegation mechanism for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a delegation request or proposed delegation mechanism, to use VCS in place of a delegation request or proposed delegation mechanism that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This action granting delegation authority for implementation and enforcement of existing NSPS and approving a delegation mechanism for future NSPS is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, 42 U.S.C. 7401, 7410, 7411, and 7601.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 1, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 281

[FRL-8290-7]

### Colorado; Final Approval of State Underground Storage Tank Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Final Determination on the State of Colorado's Application for Final Approval.

**SUMMARY:** The State of Colorado has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Colorado application and has reached a final determination that Colorado's underground storage tank program satisfies all of the requirements necessary to qualify for

approval under the regulations. Thus, the EPA is granting final approval to the State of Colorado to operate its Underground Storage Tank Program for petroleum and hazardous substances.

**DATES:** *Effective Date:* Final approval for the State of Colorado's Underground Storage Tank Program is effective on April 23, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-UST-2006-0295. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the following addresses: (1) Colorado Department of Labor & Employment, Division of Oil and Public Safety, Public Records Center, 633 17th Street, Suite 200, Denver, CO 80202 from 8 a.m. to Noon, and (2) U.S. EPA, Library, Region 8, 1595 Wynkoop Street, Room 2139, Denver, CO 80202-1129 from 10 a.m. to 4 p.m. We recommend that you contact Francisca Chambus, UST Team, at 303.312.6782 before visiting the Region 8 office.

**FOR FURTHER INFORMATION CONTACT:** Francisca Chambus U.S. EPA, Region 8, MC: 8P-W-GW, 1595 Wynkoop Street, Denver, CO 80202-1129 or at 303.312.6782.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: Is "no less stringent" than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its

authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

##### II. Colorado

The Colorado Department of Labor & Employment, Division of Oil & Public Safety (OPS) is the lead implementing agency for the UST program in Colorado.

On November 13, 2002 the EPA received Colorado's application for State Program Approval (SPA) of Colorado's UST program. EPA reviewed their application and determined it to be complete. On November 27, 2006, the EPA published a tentative decision announcing its intent to grant Colorado final approval. Along with the tentative determination, EPA announced the availability of the application for public comment and provided notice that a public hearing would be provided if significant public interest was shown. EPA did not receive any comments or requests for a public hearing.

##### III. Decision

I conclude that the State of Colorado's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Colorado is granted final approval to operate its Underground Storage Tank Program in lieu of the Federal program. This final determination to approve the Colorado program applies to all areas within the State except for land within formal Indian reservations located within or abutting the State of Colorado, including: the Ute Mountain Ute and Southern Ute Indian Reservations, any off-reservation land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C. 1151. The State of Colorado now has the responsibility for managing underground storage tank facilities within its borders and carrying out all aspects of the UST program except for facilities located within "Indian Country," where EPA will retain regulatory authority. Colorado also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA 42 U.S.C. 6991d and to take