

Date: July 15, 2010
To: Board of Directors
Puget Sound Clean Air Agency
Subject: Briefing on Proposed Regulation Changes – Updates to Federal Rule Delegations, Civil Penalty Amount and Regulation Reference Date

Honorable Members:

Staff expects to propose several regulation changes and updates for hearing and action in September. This memorandum has been prepared to provide you with a summary of those changes which are technical in nature or in response to regulatory actions by EPA.

Technical Amendments

There are two technical amendments to agency regulations that will be proposed: an update to the maximum civil penalty amount and an update to the federal regulation reference date.

As allowed by law, the agency typically adjusts the maximum civil penalty amount (found in Agency Regulation I, Section 3.11) to reflect cost of living increases and to keep the penalty amount relevant to current costs. The final proposed increase has not been established yet, but is expected to be a modest adjustment amount due to the low level of inflation in the economy over the past year.

The federal regulation reference date (found in Agency Regulation I, Section 3.25) states the date referenced by all agency regulations to be clear which version of federal rules are in effect. The proposed update will be for a new effective date of July 1, 2010, which corresponds to the annually updated publication date of the Code of Federal Regulation in paper form.

Federal Regulation Delegations

Background

The EPA adopts a variety of regulations which are frequently delegated to state and/or local agencies for implementation with the affected sources. Specifically, the programs which this agency has had a historical role in implementing are the Standards of Performance for New Stationary Sources (often referred to as New Source Performance Standards or NSPS, found in 40 CFR Part 60) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). In the NESHAP regulations, the original rules were promulgated in 40 CFR Part 61 and the newer rules are being promulgated in 40 CFR Part 63.

Historically, this agency has requested and received delegation of these federal regulations from EPA with very few exceptions. The exceptions have included rules where other agencies have the authority and mandate to implement the EPA rules, such as rules which apply to chemical pulp mills (reserved for the Washington Department of Ecology) and rules which apply to sources of radionuclides (reserved for the Washington State Department of Health).

Another exception was a choice the agency previously made to not request delegation of the NESHAP rule for perchloroethylene dry cleaning operations. In that circumstance, the agency had adopted a rule for dry cleaners prior to the EPA rule adoption and concluded that the agency's rule was equivalent or better than the EPA rule with respect to environmental performance. The agency sought an equivalency determination from the EPA for the dry cleaner rule and EPA granted that determination. The end result was that this agency implemented its own regulation for dry cleaners rather than the EPA rule. Thus, no delegation was sought for the perchloroethylene dry cleaning NESHAP (40 CFR 63, Subpart M).

The EPA has promulgated a significant number of rules under the current NESHAP program. Most of these regulations apply to sources that are classified as major sources of hazardous air pollutants (HAPs), meaning their potential emissions of HAPs are greater than regulatory thresholds (10 tons per year for a single HAP or 25 tons per year of combined HAPs). Sources that qualify as "major" are required to obtain air operating permits. This means that most of the NESHAPs apply only to the sources in the air operating permit program. Presently, the agency has 34 sources in the air operating permit program.

Recent Changes

In its first round of NESHAP rulemaking, EPA only included a few NESHAP regulations for area sources ("area sources" means sources that are not major). The area sources that were covered included source categories such as chrome plating, chlorinated solvent cleaning, perchloroethylene dry cleaners, and large ethylene oxide sterilizers.

The EPA has a mandate to develop NESHAP regulations for a long list of additional area sources. EPA is working to complete these area source NESHAP regulations to satisfy court deadlines for rule development. During the two year period prior to last year, EPA had adopted area source NESHAPs for 16 different source categories. Since then, the EPA has adopted final rules for the following five categories:

- 40 CFR 63 Subpart VVVVVV – Chemical Manufacturing Area Sources
- 40 CFR 63 Subpart AAAAAA – Asphalt Processing & Asphalt Roofing Manufacturing
- 40 CFR 63 Subpart BBBB BB – Chemical Preparations Industry
- 40 CFR 63 Subpart CCCCCC – Paint & Allied Products Manufacturing
- 40 CFR 63 Subpart DDDDDDD – Prepared Feeds Manufacturing

As described below, agency staff have reviewed these federal rules and recommend seeking delegation of all five regulations.

Impacts to the Agency

Since EPA adopted a significant number of area source NESHAP regulations, the agency needed to reexamine its assumptions regarding requesting delegation of rules. This is because most of the previous NESHAP regulations were directed at a limited number of sources, whereas the newer area source NESHAP regulations apply to large numbers of sources in the agency's registration program.

When the agency takes delegation of a federal rule, the compliance staff implements and enforces the rule to fulfill the obligations associated with delegation. Presently, any source subject to a federal regulation for which the agency has an approved delegation meets our registration program applicability criteria. For these sources, the agency conducts annual unannounced inspections and the results of the inspections (and any resulting enforcement actions) are reported to EPA Headquarters under our compliance assurance agreement with EPA Region 10. Sources subject to these delegated regulations are charged additional annual registration program fees to pay for the additional work. If a significant number of sources which had not previously been subject to annual inspection requirements became subject to one of these new area source NESHAP regulations, this means a considerable increase in workload for agency compliance staff.

Staff Analysis

When the staff reviewed the new area source NESHAP regulations two years ago to assess the potential impacts of each regulation to the agency and the sources in our area, our initial conclusion was that we needed a set of principles to use in making recommendations about whether to request delegation for a new regulation. We identified the following criteria as principles that would support a request for delegation:

- EPA rule provides some environmental benefit which matches or supplements our existing programs and requirements.
- Work can easily be integrated with existing priorities and programs at this agency.
- Sources we currently work with may have an interest in the agency receiving delegation to reduce the number of agencies they must deal with regarding air quality compliance issues and are willing to fund our additional efforts.
- The public supports delegation of a rule to the agency.

Some of these principles can also provide good reasons to not request a rule delegation or consider possible reasons to recommend relinquishing a currently delegated regulation. These principles could be stated as follows:

- The new rule has little or no environmental benefit beyond our current requirements.
- Resources may not be available to implement a regulation.
- EPA rule would shift or alter environmental priorities inconsistent with agency policy directions.
- Other parties or agencies may be addressing the issue, possibly in more effective ways.

These principles were previously reviewed with the Board as a part of the policy discussion leading to the recommendations and rule adoption on delegation requests. These principles have been used again this year as the staff considers recommendations for a rule proposal on delegations.

Many other agencies are struggling with these choices and the resources necessary to implement new regulations. The current structure of the registration program supports full cost recovery to implement delegated regulations. However, we will continue to evaluate the assumption that full implementation of an EPA regulation means annual inspections and data reports to EPA. We will also reevaluate the assumptions we make regarding the level of effort necessary to implement various delegated regulations.

The EPA Office of Enforcement and Compliance Assistance issued a memorandum on June 4, 2010 regarding guidance for area source rule implementation. This guidance memorandum identified some principles EPA was suggesting to prioritize the area source regulations in terms of environmental benefits and importance. It also suggested alternative approaches to implementing rules which are based more on outreach and assistance rather than compliance and potential enforcement of the rules. The agency is reviewing this EPA memorandum and will discuss it further with EPA staff. As the agency considers these alternative approaches to implementing EPA regulations, we will also need to consider possible registration program changes that would be necessary to incorporate a different approach.

Recommendation

Using the principles identified above, the staff have reviewed the current list of new, final area source NESHAP regulations (current to July 1, 2010) and recommends the agency adopt, implement, and seek delegation of all five regulations:

- 40 CFR 63 Subpart VVVVVV – Chemical Manufacturing Area Sources
- 40 CFR 63 Subpart AAAAAA – Asphalt Processing & Asphalt Roofing Manufacturing
- 40 CFR 63 Subpart BBBB BB – Chemical Preparations Industry
- 40 CFR 63 Subpart CCCCCC – Paint & Allied Products Manufacturing
- 40 CFR 63 Subpart DDDDDDD – Prepared Feeds Manufacturing

Each of these new regulations has applicability criteria that are defined very narrowly and it appears there are no currently registered sources which would be subject to any of them, with the exception of the regulation for Asphalt Processing and Asphalt Roofing Manufacturing. In that category, we believe there are three currently registered sources subject to the rule which we actively inspect and work on compliance issues with those plants. The new regulation will merge logically with the ongoing work with these sources.

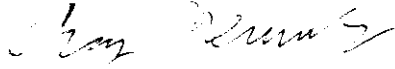
Changes to Agency regulations

Implementing the above-mentioned area source NESHAP recommendations will require a change to agency Regulation III, Section 2.02 (references to delegation status with regard to NESHAP regulations).

Public Involvement

The proposed regulation amendments will be published for a thirty day public comment period and available on the agency website. An announcement of the proposed changes will also be sent to all regulation change e-mail subscribers. It is anticipated that the proposed changes, along with comments received and responses to those comments, will be presented to the Board of Directors for public hearing and action at the September Board meeting.

Respectfully submitted,



Craig Kenworthy
Executive Director

cvp