

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5927-3]

Full Delegation of Authority to Commonwealth of Virginia for the Prevention of Significant Deterioration Site-Specific Rulemaking for Merck & Co., Inc. Stonewall Plant**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Information notice.

SUMMARY: The EPA is delegating to the Commonwealth of Virginia the authority to implement and enforce the site-specific rule for the Prevention of Significant Deterioration of Air Quality (PSD) for the Merck & Co., Inc. Stonewall Plant in Elkton, Virginia. The Commonwealth of Virginia has requested that EPA delegate to the Commonwealth the authority to implement and enforce this site-specific PSD rule. The Regional Administrator has determined that such a delegation is appropriate, with the conditions described in this notice.

DATES: This delegation is effective on November 24, 1997.

ADDRESSES: *Docket.* Copies of the delegation of authority request and accompanying support documents are available for public inspection during normal business hours at the following offices: U.S. EPA, Region III, 841 Chestnut Street, Philadelphia, PA, 19107-4431, (215) 566-2064. Virginia Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801-1129, (540) 574-7800.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Moran, U.S. Environmental Protection Agency, Region III, Air, Radiation & Toxics Division, 841 Chestnut Street (3AT23), Philadelphia, PA 19107-4431, (215) 566-2064.

SUPPLEMENTARY INFORMATION: In a final rule published on October 8, 1997, EPA promulgated a site-specific PSD rule which applies only to the Merck & Co., Inc. (Merck) Stonewall Plant in Elkton, Virginia, in order to implement a project under the Project XL program. See 62 FR 52622 (October 8, 1997) and 40 CFR 52.2454. This site-specific PSD rule authorizes the Administrator to delegate the responsibility to implement and enforce this rule. The Commonwealth of Virginia currently implements the federal PSD program regulations codified at 40 CFR 52.21 under a delegation of authority from EPA effective on June 3, 1981. See 40 CFR 52.2451 and 46 FR 29753 (June 3, 1981). On October 27, 1997, the Director of the

Virginia Department of Environmental Quality (VADEQ) sent to EPA Region III a letter which requested full delegation of authority for the implementation and enforcement of the site-specific PSD rule for the Merck Stonewall Plant.

In the preamble to the proposed site-specific rulemaking for the Merck XL project, and in the Merck's Project XL proposed Final Project Agreement, EPA had stated its intention to delegate the final site-specific PSD rule to the Commonwealth of Virginia. See 62 FR 15310 (March 31, 1997). EPA received no adverse comments on this approach during the public comment period for the proposed site-specific rulemaking. In the notice of final rulemaking for the Merck XL project, EPA also explained its intent to delegate to VADEQ the authority to implement and enforce the PSD site-specific rule. See 62 FR 52623 (October 8, 1997).

Section 301 of the Clean Air Act, in conjunction with sections 101 and 110, authorizes the Administrator to delegate her authority to implement and enforce the PSD regulations to any state which has submitted adequate implementation and enforcement procedures. Further, 40 CFR 52.2454(o) authorizes the Administrator to delegate the site-specific PSD rule for the Merck Stonewall Plant. The Regional Administrator has determined that the Commonwealth's request for delegation of the site-specific PSD rule for the Merck Stonewall Plant is appropriate, subject to the conditions set forth below. EPA has reviewed the pertinent laws of the Commonwealth of Virginia and the rules and regulations thereof, and has determined that they provide an adequate and effective procedure for the implementation of Merck's site-specific PSD regulation. On September 11, 1997, the State Air Pollution Control Board of the Commonwealth of Virginia (Board) approved an order granting a variance (9 VAC 5 Chapter 190) to the Merck Stonewall Plant for purposes of implementing the XL project. The variance contains site-specific PSD provisions consistent with those of EPA's final rulemaking. On October 1, 1997, the Board approved a regulation (9 VAC 5-190-110) which incorporated by reference the provisions of EPA's final site-specific PSD rule (as signed by the EPA Administrator on September 30, 1997). EPA has determined that the order and the variance regulation provide the Commonwealth with the authority to implement and enforce the site-specific PSD rule. Therefore, pursuant to 40 CFR 52.2454(o), EPA hereby delegates authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR

52.2454, to the Commonwealth of Virginia as follows:

1. Authority is delegated for 40 CFR 52.2454 only for the Merck Stonewall Plant in Elkton, Virginia, since that is the only source subject to this regulation.

2. If at any time there is a conflict between a Commonwealth regulation and a Federal regulation (40 CFR 52.2454), the Federal regulation must be applied if it is more stringent than that of the Commonwealth. If the Commonwealth does not have the authority to implement a Federal regulation that is more stringent than the applicable Commonwealth regulation, the pertinent portion of the authority may be revoked.

3. If the Regional Administrator determines that the Commonwealth's procedures for implementing all portions of the site-specific PSD regulation are inadequate, or that the site-specific PSD regulation is not being effectively carried out, this authority may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the VADEQ.

4. Enforcement of the Merck site-specific PSD rule in the Commonwealth of Virginia will be the primary responsibility of the VADEQ. If the Commonwealth determines that such enforcement is not feasible and so notifies EPA, or where the Commonwealth acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Sections 113 and 167 of the Clean Air Act. In accordance with Sections 113 and 167 of the Clean Air Act, EPA reserves the right to commence an enforcement action against Merck in violation of the site-specific PSD requirements should the Commonwealth of Virginia fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.

5. Acceptance of this delegation of the presently promulgated site-specific PSD regulation does not commit the Commonwealth of Virginia to request or implement enforcement authority for future standards and requirements.

6. The Commonwealth and EPA will develop a system of communication sufficient to guarantee a program that includes, at a minimum, the items described below:

a. Each agency is informed of the current compliance status of the Merck Stonewall Plant;

b. The VADEQ shall send a copy of the preliminary determination and public comment notices required under

paragraph (m) of 40 CFR 52.2454 to EPA Region III at the same time the notice is being forwarded for publication in the newspaper.

c. The VADEQ will forward to EPA Region III copies of the final PSD permit and any future permit modifications at the time of issuance.

7. The VADEQ will obtain prior EPA concurrence on any matter involving the interpretation of sections 160–169 of the Clean Air Act or 40 CFR 52.2454 to the extent that implementation, review, administration or enforcement of these sections have not been covered by determinations or guidance sent by EPA to the VADEQ.

8. This delegation of authority should not be construed as a transfer of PSD responsibility under section 110(a)(2)(J) of the Clean Air Act, since such a transfer would involve different procedures and considerations.

Delegation: Pursuant to the authority delegated to him by the Administrator, the Regional Administrator is formally notifying the Director of the VADEQ that the Commonwealth is hereby delegated the authority to implement and enforce the site-specific PSD rule for the Merck Stonewall Plant, 40 CFR 52.2454, as of the publication date of this notice.

ADDITIONAL INFORMATION:

A. Effective Date

Pursuant to 5 U.S.C. 553(d)(3) and 42 U.S.C. 6930(b)(3), the Regional Administrator finds good cause for making this delegation of authority effective immediately because it is an administrative change and not one of substantive content. Further, the Merck & Co., Inc. Stonewall Plant is the only regulated entity affected by this delegation. Merck has full notice of this delegation and is prepared to comply immediately with the permit to be issued expeditiously under the rule that is being delegated to the Commonwealth of Virginia.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 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. This delegation would not have a significant impact on a substantial number of small entities because it only affects one source, the Merck Stonewall Plant, which is not a small entity. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

As noted above, this delegation is limited to Merck’s facility in Elkton, Virginia. EPA has determined that this delegation contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this delegation does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today’s delegation is not subject to the requirements of sections 202 and 205 of the UMRA.

Dated: November 17, 1997.

W. Michael McCabe,

Regional Administrator.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–5926–5]

Notice of Availability of and Initiation of a 30 Day Public Comment Period for Two Administrative Orders on Consent for de minimis Waste Contributors and One Administrative Order on Consent for a de micromis Waste Contributor Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 15, 1997, 3 administrative orders on consent (“Orders”) between the United States Environmental Protection Agency, Region VIII and various parties potentially responsible for costs incurred by the United States for cleaning up the Summitville Mine Superfund Site (collectively, “the Settling Parties”) were approved by the Assistant Attorney General of the Department of Justice, Environment and Natural Resources Division, on behalf of the Attorney General of the United States.

Because of the minimal nature, by volume and toxicity, of the hazardous substances allegedly contributed by the Settling Parties to the Site, EPA determined that the Settling Parties are eligible for either a *de minimis* or *de micromis* settlement in accordance with Section 122(g) of CERCLA.

The first settlement is a *de micromis* Order with Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (collectively, “Newmont”). It settles Newmont’s potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for extremely limited historic exploration activities Newmont undertook at the Site. Because of the minuscule nature of Newmont’s contribution of waste at the Site, and in accordance with EPA guidance, EPA is entering into this without requiring the payment of a settlement amount.

EPA is also entering into 2 *de minimis* Orders—one with ASARCO, Inc. and one with ARCO Environmental Remediation, L.L.C. These Orders settle ARCO and ASARCO’s potential liabilities under CERCLA Sections 106 and 107 and RCRA Section 7003 for the limited historic exploration activities they undertook at the Site. ASARCO and ARCO are paying the United States settlement amounts of \$86,052.73 and \$95,000, respectively. All 3 Orders are based on the respective applicable EPA model Orders.

EPA Region VIII will receive comments relating to the proposed