

Parts 60, 61 and 63.<sup>1</sup> In those actions EPA also delegated to West Virginia the authority to implement and enforce any future EPA NESHAP or NSPS on the condition that West Virginia legally adopt the future standards, make only allowed wording changes, and provide specified notice to EPA.

In a letter dated April 6, 2010, West Virginia informed the EPA that West Virginia had updated its incorporation by reference of federal NESHAP and NSPS to include many such standards, to the extent referenced in 40 CFR Parts 60, 61, and 63, effective June 1, 2009. West Virginia noted that it understood that it was automatically delegated the authority to implement these standards. West Virginia committed to enforcing the standards in conformance with the terms of EPA's previous delegations of authority. West Virginia made only allowed wording changes.

West Virginia provided copies of the revised West Virginia Legislative Rules which specify the NESHAP and NSPS which West Virginia has adopted by reference. These revised Legislative Rules are entitled 45 CSR 34—"Emission Standards for Hazardous Air Pollutants," and 45 CSR 16—"Standards of Performance for New Stationary Sources." These revised Rules have an effective date of June 1, 2010.

Accordingly, EPA acknowledges that West Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which West Virginia has adopted by reference in West Virginia's revised Legislative Rules 45 CSR 34 and 45 CSR 16, both effective on June 1, 2010.

Please note that on December 19, 2008, in *Sierra Club v. EPA*,<sup>2</sup> the United States Court of Appeals for the District of Columbia Circuit vacated certain provisions of the General Provisions of 40 CFR Part 63 relating to exemptions for startup, shutdown, and malfunction (SSM). On October 16, 2009, the Court issued the mandate vacating these SSM exemption provisions, which are found at 40 CFR 63.6(f)(1) and (h)(1).

Accordingly, EPA no longer allows sources the SSM exemption as provided for in the vacated provisions at 40 CFR 63.6(f)(1) and (h)(1), even though EPA has not yet formally removed the SSM exemption provisions from the General Provisions of 40 CFR Part 63. Because West Virginia incorporated 40 CFR Part 63 by reference, West Virginia should also no longer allow sources to use the former SSM exemption from the General Provisions of 40 CFR Part 63 due to the Court's ruling in *Sierra Club vs. EPA*.

EPA appreciates West Virginia's continuing NESHAP and NSPS enforcement efforts, and also West Virginia's decision to take automatic delegation of additional and more recent NESHAP and NSPS by adopting them by reference.

Sincerely,  
Diana Esher,

<sup>1</sup> EPA has posted copies of these actions at: [http://www.epa.gov/reg3artd/airregulations/delegate/wv\\_delegation.htm](http://www.epa.gov/reg3artd/airregulations/delegate/wv_delegation.htm).

<sup>2</sup> *Sierra Club v. EPA*, 551 F.3d 1019 (DC Cir. 2008).

Director, Air Protection Division.

This notice acknowledges the update of West Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Dated: April 26, 2011.

Diana Esher,

Director, Air Protection Division, Region III.

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9306-3]

### Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Toeroek Associates Inc., and Their Subcontractor, Science Applications International Corp.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for comment.

**SUMMARY:** The U. S. Environmental Protection Agency ("EPA") hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose confidential business information ("CBI") submitted to EPA Region 9 pursuant to CERCLA to EPA contractor Toeroek Associates Inc., of Lakewood, CO and their subcontractor, Science Applications International Corp., of San Diego, CA.

**DATES:** Comments may be submitted by May 31, 2011.

**ADDRESSES:** Comments should be sent to: Keith Olinger, Environmental Protection Agency, Region 9, SFD-7-5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3125.

#### FOR FURTHER INFORMATION CONTACT:

Keith Olinger, Superfund Division, Environmental Protection Agency, Region 9, SFD-7-5, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3125.

*Notice of Required Determinations, Contract Provisions and Opportunity To Comment:* The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended (commonly known as "Superfund"), requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract with Toeroek Associates Inc., Contract No EP-BPA-11-W-0001, for enforcement support in relation to Region 9 Superfund sites. Enforcement

support services will be provided to EPA by Toeroek Associates Inc., and their subcontractor, Science Applications International Corp. EPA has determined that disclosure of CBI to Toeroek Associates Inc., and Science Applications International Corp, and its employees, is necessary in order for the company to carry out its work for EPA under its contract. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Region 9 Superfund sites. The information would be disclosed to the above-named EPA contractors, for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.310(h)(2). EPA Region 9 will require that each of the contractor's and subcontractor's employees with access to CBI sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) will refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) will return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by the contractor for performance of the work required by the contract or upon completion of the contract.

Dated: May 5, 2011.

Nancy Lindsay,

Acting Director, Superfund Division, U.S. EPA, Region IX.

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## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Issuance of Statement of Federal Financial Accounting Standard 40, Definitional Changes Related to Deferred Maintenance and Repairs: Amending Statement of Federal Financial Accounting Standard 6, Accounting for Property, Plant, and Equipment

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory