

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

A-96-01
II-A-645

JUL 16 1986

MEMORANDUM

SUBJECT: Approval of Revision to "Noise Control Act"
Delegations--DECISION MEMORANDUM

FROM: Howard M. Messner /s/ Howard M. Messner
Assistant Administrator

TO: The Administrator

THRU: AX
The Deputy Administrator

Attached for your approval are proposed revisions to twelve "Noise Control Act" Delegations contained in the Agency Delegations Manual.

These revisions would transfer the delegated authorities from the Assistant Administrator for Air and Radiation to the Assistant Administrator for External Affairs who currently has primary responsibility for monitoring the Agency's Noise program. (Since the "criminal enforcement" delegation only involves the Office of Enforcement and Compliance Monitoring and does not pertain to the Office of Air and Radiation/External Affairs responsibilities, it has not been revised.)

The revised delegations were circulated for review to the Assistant Administrator for External Affairs, the Assistant Administrator for Air and Radiation, the General Counsel, and the Office of the Comptroller. All have concurred.

I recommend you approve these delegations of authority by signing below.

Approved: Lee M. Thomas

Date: AUG 18 1986

Attachments

MOD:PM-213:J.Gallahan:W/329:382-5000:7/2/86:DISK-JIM
 bcc: Jim Gallahan Howard Messner
 John Chamberlin (2) AX (3)
 Seymour Greenstone Deputy Administrator
 The Administrator

*Lead on AX-9
7/17*

CONCURRENCES							
SYMBOL	M+O	M+O	M+O	O A			
SURNAME	J. Gallahan	John Chamberlin	Katz	Dwyer	Seymour Greenstone		
DATE	7-2-86	7/2/86	7/2	7/8	7/10/86		

DELEGATIONS

NOISE CONTROL ACT11-1. Inspections and Information Gathering1. AUTHORITY.

a. To have access to information and results of tests; to copy documents pursuant to the Noise Control Act; and to obtain warrants for the purpose of performing inspections or information gathering.

b. To require manufacturers of products, to which regulations under Section 6 or Section 8 of the Noise Control Act apply, to maintain records, make reports and tests, and provide information.

c. To carry out or require the carrying out of any other inspection and information gathering activities authorized by the Noise Control Act.

d. To designate representatives of the Administrator to perform the functions contained in subparagraphs 1.a, 1.b, and 1.c.

2. TO WHOM DELEGATED. The Assistant Administrator for External Affairs, Regional Administrators, and the Assistant Administrator for Enforcement and Compliance Monitoring.

3. LIMITATIONS.

a. The Assistant Administrator for External Affairs and the Assistant Administrator for Enforcement and Compliance Monitoring must notify the appropriate Regional Administrator before exercising the authority under subparagraph 1.a.

b. The Assistant Administrator for External Affairs and the Regional Administrators must consult with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee prior to obtaining warrants.

4. REDELEGATION AUTHORITY. This authority may be redelegated.

5. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211; Section 13(a) of the Noise Control Act.

NOISE CONTROL ACT

11-2. Testing by Agency

1. AUTHORITY. To require manufacturers of products, to which regulations under Section 6 or Section 8 of the Noise Control Act apply, to make products in the hands of the manufacturer available for testing and to conduct such testing pursuant to Section 13(a) of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

DELEGATIONS

NOISE CONTROL ACT11-3. Product Exemptions

1. AUTHORITY. To exempt any product or class of products for purposes of research, investigations, studies, demonstrations, training, or national security from the prohibitions of Sections 10(a)(1)-(3) and (5) pursuant to Section 10(b)(1) of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

DELEGATIONS

NOISE CONTROL ACT11-4. New Products and Labeling Regulations

1. AUTHORITY. To implement enforcement provisions of new products and labeling regulations pursuant to Section 6 and Section 8 of the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES. 40 CFR 204, 205, 211.

NOISE CONTROL ACT11-5. Administrative Orders

1. AUTHORITY. To initiate proceedings under the Noise Control Act for the issuance of orders specifying the relief determined necessary to protect the public health and welfare whenever any person is in violation of the Act.

2. TO WHOM DELEGATED. Assistant Administrator for External Affairs and Regional Administrators.

3. LIMITATIONS.

a. Regional Administrators must consult with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and the Assistant Administrator for External Affairs or his designee before exercising the above authority.

b. The Assistant Administrator for External Affairs may exercise these authorities in multi-Regional cases or cases of national significance. In addition, the Assistant Administrator for External Affairs must consult in advance with the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and must notify any affected Regional Administrators or their designees when exercising the above authority.

c. The Assistant Administrator for Enforcement and Compliance Monitoring and the Assistant Administrator for External Affairs may waive their respective consultation requirements by memorandum.

4. REDELEGATION AUTHORITY. This authority may be redelegated.

5. ADDITIONAL REFERENCES. Sections 10(a) and 11(d)(1) of the Noise Control Act.

DELEGATIONS

NOISE CONTROL ACT11-6-A. Civil Judicial Enforcement Actions

1. AUTHORITY. To request the Attorney General to appear and represent the Agency in any civil enforcement actions and to intervene in any civil enforcement actions instituted under the Noise Control Act (NCA); to request the Attorney General to decline to prosecute a previously referred civil enforcement action; to determine that the Attorney General has failed or refused to appear and represent the Agency in any NCA civil enforcement action; to appear and represent the Agency in any such action where the Attorney General has refused or failed to appear and represent the Agency; to request the Attorney General to initiate an appeal of such an action and represent the Agency in such an appeal; and to initiate such an appeal and represent the Agency when the Attorney General fails to do so.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring and the General Counsel.
3. LIMITATIONS.
 - a. The Assistant Administrator for Enforcement and Compliance Monitoring must notify the Assistant Administrator for External Affairs and the appropriate Regional Administrator when a case is referred to the Department of Justice and when an appeal is formally initiated.
 - b. The General Counsel may only exercise this authority in regard to appeals.
 - c. Any exercise of the appeal authority will be done jointly by the General Counsel and the Assistant Administrator for Enforcement and Compliance Monitoring.
4. REDELEGATION AUTHORITY. This authority may be redelegated.
5. ADDITIONAL REFERENCES.
 - a. Memorandum of Understanding between the Agency and the Department of Justice, June 1977; Sections 11(c)-(d) of the Noise Control Act.
 - b. See the Chapter 11 delegation entitled "Emergency TRO's" for Regional Administrators' authority to make direct referrals of requests for emergency NCA Temporary Restraining Orders.

DELEGATIONS

NOISE CONTROL ACT11-6-C. Settlement or Concurrence in Settlement of
Civil Judicial Enforcement Actions

1. AUTHORITY. To settle or exercise the Agency's concurrence in the settlement of civil judicial enforcement actions under the Noise Control Act (NCA); to amend a consent decree issued under NCA; and to request the Attorney General to amend a consent decree issued under NCA.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring.
3. LIMITATIONS. The Assistant Administrator for Enforcement and Compliance Monitoring must consult with the Agency official that initiated the case (that is, either the Assistant Administrator for External Affairs or the appropriate Regional Administrator or designees) before exercising this authority.
4. REDELEGATION AUTHORITY. This authority may be redelegated.

DELEGATIONS

NOISE CONTROL ACT11-6-D. Emergency TRO's

1. AUTHORITY. To refer requests for emergency Temporary Restraining Orders under the Noise Control Act to the Department of Justice and to the appropriate United States Attorney.
2. TO WHOM DELEGATED. Regional Administrators and the Assistant Administrator for Enforcement and Compliance Monitoring.
3. LIMITATIONS.
 - a. The Regional Administrators must notify the Assistant Administrator for Enforcement and Compliance Monitoring or his designee and the Assistant Administrator for External Affairs or his designee when exercising this authority.
 - b. The Assistant Administrator for Enforcement and Compliance Monitoring must notify the appropriate Regional Administrator or his designee and the Assistant Administrator for External Affairs or his designee when exercising this authority.
4. REDELEGATION AUTHORITY. This authority may only be redelegated to on scene coordinators.
5. ADDITIONAL REFERENCES.
 - a. Memorandum of Understanding between the Agency and the Department of Justice, June 1977; Section 11(c)-(d) of the Noise Control Act.
 - b. For referral of other civil actions under the Noise Control Act, see the Chapter 11 delegation entitled "Civil Judicial Enforcement Actions."

DELEGATIONS

NOISE CONTROL ACT11-7. Subpoenas and Oaths

1. AUTHORITY. To issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and to administer oaths pursuant to the Noise Control Act.
2. TO WHOM DELEGATED. Assistant Administrator for Enforcement and Compliance Monitoring and Assistant Administrator for External Affairs.
3. LIMITATIONS. The Assistant Administrator for External Affairs must consult with the Assistant Administrator for Enforcement and Compliance Monitoring prior to issuing subpoenas.
4. REDELEGATION AUTHORITY. This authority may be redelegated.
5. ADDITIONAL REFERENCES. Section 16(a) of the Noise Control Act.

DELEGATIONS

NOISE CONTROL ACT11-8. Low-Noise-Emission Product (LNEP)
Certification Process1. AUTHORITY.

a. To determine whether a product is a Low-Noise-Emission Product (LNEP) pursuant to Section 15(b)(5)(F) of the Noise Control Act of 1972.

b. To decide whether a LNEP is a suitable substitute for any class of product presently being purchased by the Federal government pursuant to Section 15(b)(5)(F) of the Noise Control Act.

c. To certify any product which qualifies in accordance with Section 15(b)(2)(A-C) pursuant to Section 15(b)(2) of the Noise Control Act.

d. To revoke LNEP determinations and product certifications pursuant to Section 15(b)(5)(C) of the Noise Control Act.

e. To recertify products pursuant to Sections 15(b)(5)(C) and 15(f) of the Noise Control Act.

2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.

3. REDELEGATION AUTHORITY. This authority may be redelegated.

DELEGATIONS

NOISE CONTROL ACT11-9. Post Certification Testing

1. AUTHORITY. To test, pursuant to Section 15(f) of the Noise Control Act, certified low-noise-emission products purchased by the Federal government to determine if noise emissions from those products exceed the levels on which certification was based.
2. TO WHOM DELEGATED. Assistant Administrator for External Affairs.
3. REDELEGATION AUTHORITY. This authority may be redelegated.

DELEGATIONS

NOISE CONTROL ACT11-10. Noise Control Program Grants and
Cooperative Agreements

1. AUTHORITY. To approve financial assistance, through grants and/or cooperative agreements, to States, local governments, and authorized regional planning agencies for the purposes authorized by Section 14(c) of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978, and to institutions of higher learning for the operation of technical assistance centers and for the other nonresearch activities authorized by Section 14 of the Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978.
2. TO WHOM DELEGATED.
 - a. The Assistant Administrator for External Affairs;
 - b. The Assistant Administrator for Research and Development; and
 - c. Regional Administrators.
3. LIMITATIONS.
 - a. The authority delegated to the Assistant Administrator for Research and Development is limited to multi-disciplinary training assistance under Section 14(c)(5) initiated by ORD or training assistance initiated by an office other than the primary holder of training grant authority.
 - b. The authority delegated to the Regional Administrators is limited to the approval of financial assistance under Sections 14(c)(1)(A), 14(c)(1)(B), 14(e) and 14(f).
 - c. The Assistant Administrator for External Affairs retains authority for additional approvals in all areas for projects having significant national impact.
4. REDELEGATION AUTHORITY. This authority may be redelegated.