AMENDED AGREEMENT FOR DELEGATION OF AUTHORITY OF THE REGULATIONS FOR PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY (40 CFR 52.21) BETWEEN USEPA AND HAWAII DOH

The undersigned, on behalf of the Hawaii Department of Health (Hawaii DOH) and the United States Environmental Protection Agency (USEPA), hereby agree to the delegation of authority for the administrative, technical and enforcement elements of the source review provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), as they may be amended and in accordance with the permit review requirements in 40 CFR 124 Subparts A and C, from the USEPA to the Hawaii DOH, subject to the terms and conditions below. This delegation is enacted pursuant to 40 CFR 52.21 (u), Delegation of Authority, and supersedes the agreement dated August 15, 1983 signed by Hawaii DOH and EPA.

I. General Delegation Conditions

A. Authority is delegated for all sources under the jurisdiction of Hawaii DOH that are subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

B. This delegation may be amended at any time by the formal written agreement of both the Hawaii DOH and the USEPA, including amendments to add, change, or remove conditions or terms of this Agreement.

C. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR Section 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after consultation with the Hawaii DOH, 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 State. Nothing in this paragraph shall preclude USEPA from exercising its enforcement authority, as provided in paragraph V.B. below.

D. The permit appeal provisions of 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by the Hawaii DOH under this delegation. For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a

draft preliminary determination or draft permit conditions, the final permit issued by Hawaii DOH is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The Hawaii DOH shall inform USEPA (Region IX) in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by Hawaii DOH to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

E. By this agreement, the Hawaii DOH assumes authority for enforcement and permit modification/amendment for EPA issued NSR/PSD permits.

F. This delegation of authority becomes effective upon the date that both parties have signed this Agreement.

II. Communications Between USEPA and Hawaii DOH

The Hawaii DOH and USEPA will use the following communication procedures:

A. The Hawaii DOH will report to the USEPA on a quarterly basis the compliance status of the sources that have received a PSD permit from either the Hawaii DOH or USEPA. The Compliance Data System (CDS) will be used for this purpose. Compliance determinations will be made with respect to the conditions established in the PSD permits.

B. The Hawaii DOH will forward to USEPA, at the beginning of the public comment period, a summary of (1) the findings related to each PSD application for new sources, major modifications and amendments, (2) the justification for the Hawaii DOH's preliminary determination, and (3) a copy of the draft PSD permit. Should there be any comments or concerns about the pending PSD permit, USEPA will communicate these comments and concerns to the Hawaii DOH as soon as possible prior to the close of the public comment period.

C. The Hawaii DOH will forward to USEPA copies of the final action on the PSD permit applications at the time of issuance, as well as copies of substantive public comments. Any public comments not incorporated will be addressed, and a summary of the responses will be provided.

D. The Hawaii DOH will send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemptions for new or modified major sources due to netting.

III. Revisions To Title 40 CFR Section 52.21

A. This delegation covers any revisions that are promulgated for 40 CFR 52.21 and 40 CFR 124. The terms "40 CFR 52.21" and "40 CFR 124" as used in the delegation request and throughout this Agreement, include such regulations as are in effect on the date this Agreement is executed and any revisions that are promulgated after that date.

B. The revisions that have been promulgated for 40 CFR 52.21 since the effective date (August 15, 1983) of the previous delegation agreement include the following:

1. Stack Height Regulations as promulgated on July 8, 1985 (50 FR 27892);

2. Revised Modeling Guidelines as promulgated on September 9, 1986 (51 FR 32176); and,

3. PM-10 Regulations as promulgated on July 1, 1987 (52 FR 24634).

The Hawaii DOH is required to incorporate the above revisions into its PSD review, and to ensure that any permits issued by the Hawaii DOH comply with these final regulations.

C. In addition, the following USEPA policies apply to PSD review in Hawaii:

1. According to USEPA guidance published on September 22, 1987 and supplemental guidance published on July 28, 1988, all delegated agencies must now consider pollutants not subject to the Clean Air Act in their Best Available Control Technology (BACT) determinations. The BACT determinations must include a review of the toxic effects of unregulated pollutants and the impact of the proposed BACT on the emissions of these pollutants.

2. The Hawaii DOH must consult with the appropriate Federal, State, and local land use agencies prior to issuance of preliminary determinations on PSD permits.

In particular, USEPA requires that the Hawaii DOH must:

a) Notify the Fish and Wildlife Service (FWS) and USEPA when a PSD permit application has been received, in order to assist USEPA in carrying out its non-delegable responsibilities under Section 7 of the endangered species Act (PL 97-304). Hawaii DOH must:

b) Notify potential applicants of the potential need for consultation between USEPA and the FWS if an endangered species may be affected by the project.

   USEPA's data sheet may be used for this process (copy enclosed).

c) Refrain from issuing a final PSD permit unless the FWS has determined that the proposed project will not adversely affect any endangered species.

3. According to USEPA guidance published on June 26, 1987, all delegated agencies are required to look at certain control options when making BACT determinations for municipal waste combustors. Specifically, these agencies should consider a dry scrubber for sulfur dioxide control, a baghouse or electrostatic precipitator for particulate control, and efficient combustion techniques for carbon monoxide control in their BACT determinations for this type of source.

4. Additional BACT guidance issued on December 1, 1987, by USEPA, states that the Regional Office is to encourage the application of "top-down" BACT determinations in the Region. This means that USEPA will consider as deficient any BACT determinations that do not begin with the most stringent control options available for that source category.

5. Upon notification from EPA, Hawaii DOH will implement such new regulations or directives pending revision of this agreement.

IV. Permits

A. For all PSD permit applications filed with Hawaii DOH, USEPA will assist the Hawaii DOH in the BACT determination. Subsequent to August 1, 1988, concurrence by USEPA will be required for each BACT determination. USEPA will ensure Hawaii DOH access to the BACT Clearinghouse.

B. All modeling analyses for determination of increment consumption and compliance with NAAQS will require concurrence by USEPA. The signatures of USEPA and Hawaii DOH on the final PSD permit shall constitute concurrence on the BACT determinations and the modeling analyses.

C. In any matter involving interpretation of Sections 160-169 of the Clean Air Act, or 40 CFR 52.21 and 40 CFR 124 where guidance on the implementation, review, administration, or enforcement of these Sections has not been sent to the Hawaii DOH, USEPA will be contacted and requested to provide the appropriate guidance.

D. The Hawaii DOH will at no time grant any waiver to the PSD permit requirements.

E. Permits issued under this delegation shall contain language stating that the Federal PSD requirements have been satisfied.

F. Authorities to Construct must include appropriate provisions, as specified in Attachment A, to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, start-up, and source testing (where applicable) and continuous emissions monitoring (where applicable). In all cases where tests are required, the test methods shall be specified. All cases where CEMS are required, appropriate testing and reporting requirements shall be included. Upset/breakdown and malfunction conditions shall be included in all permits.

G. U.S. EPA and Hawaii DOH will jointly concur on any future modifications and amendments affecting emissions and emission limitations at Kahe Units 1-6.

V. Permit Enforcement

A The primary responsibility for enforcement of the PSD regulations in the State of Hawaii will rest with the Hawaii DOH. The Hawaii DOH will enforce the provisions that pertain to the PSD program, except in those cases where the rules or

policy of the Hawaii DOH are more stringent. In that case, the Hawaii DOH may elect to implement the more stringent requirements.

B. Taking into consideration the terms of the USEPA-Hawaii DOH Enforcement Agreement, nothing in this delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the Hawaii DOH pursuant to this agreement.

C. In the event that the Hawaii DOH is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the Hawaii DOH will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude USEPA from exercising its enforcement authority.

Date: DEC 12 1988

Hawaii Department of Health

Date: Jan 5, 1989

U.S. Environmental Protection Agency