

## **U.S. EPA – Arizona Department of Environmental Quality**

### **Agreement for Delegation of Authority to Issue and Modify Greenhouse Gas**

#### **Prevention of Significant Deterioration Permits Subject to 40 CFR 52.21**

The undersigned, on behalf of the Arizona Department of Environmental Quality (ADEQ) and the United States Environmental Protection Agency (EPA), hereby agree to the delegation of authority to issue Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) initial permits and to modify existing GHG PSD permits, subject to the terms and conditions of this Agreement. This delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

#### **I. Background Recitals**

Beginning January 2, 2011, the provisions of 40 CFR 52.21 except paragraph (a)(1) apply to the pollutant GHGs from stationary sources described in section 52.21(b)(49)(iv) under the jurisdiction of ADEQ. Additionally, beginning July 1, 2011, these provisions apply to the pollutant GHGs from stationary sources described in section 52.21(b)(49)(v) under the jurisdiction of ADEQ. *See* 40 CFR 52.37; 75 FR 82254 (December 30, 2010). ADEQ and EPA hereby enter into this delegation agreement to authorize ADEQ to implement the applicable requirements of 40 CFR 52.21 for the pollutant GHGs pursuant to these provisions. PSD permits for other regulated New Source Review pollutants are governed by a PSD program that was approved into the ADEQ State Implementation Plan on May 3, 1983.

#### **II. Scope of Delegation**

1. This agreement for full delegation applies only to sources of GHG emissions within the jurisdiction of ADEQ, but not to those within the jurisdiction of Indian Country. Moreover, this delegation does not extend to other pollutants.
2. EPA is responsible for the issuance of PSD permits in Indian Country, under Sections 110 and 301 of the Clean Air Act. This agreement in no way grants or delegates any authority under the Clean Air Act in Indian Country to ADEQ.

### **III. Applicability**

1. EPA and ADEQ have agreed to this delegation of PSD authority to allow ADEQ to issue initial and modified PSD permits. (Modifications include Administrative Amendments, Major Modifications, and non-Major Modifications.)
2. Pursuant to this delegation agreement, ADEQ shall have primary responsibility for issuing all new and modified PSD permit(s) for sources that emit or potentially emit GHGs.
3. This delegation of PSD authority becomes effective upon the date of the signatures of both parties to this Agreement.

### **IV. General Delegation Conditions**

1. ADEQ shall issue PSD permits under this delegation agreement in accordance with 40 CFR 52.21 and 40 CFR 124, as amended on or after July 1, 2010, except as provided herein.
2. This delegation extends to any revisions promulgated to 40 CFR 52.21 and 40 CFR 124 relating to regulation of GHGs. The terms “40 CFR 52.21” and “40 CFR 124,” as used in the delegation request and throughout this Agreement, include such regulations as in effect on the date this Agreement is executed and any revisions that are promulgated after that date.
3. Upon notification from EPA, ADEQ will adopt new regulations or directives related to the emissions of GHGs that are necessary to implement any additional requirements pertinent to the PSD program promulgated by EPA, except that if ADEQ determines that any such action conflicts with State or local law, or exceeds ADEQ’s authority or ability to fully and satisfactorily carry out such responsibilities, ADEQ will promptly consult with EPA and may, after such consultation, terminate this delegation agreement.

4. This delegation may be amended at any time by the formal written agreement of both ADEQ and the EPA, including amendments to add, change, or remove terms or conditions of this Agreement.
5. EPA may review the PSD permit(s) issued by ADEQ to ensure that ADEQ's implementation of this delegation agreement is consistent with federal PSD regulations for major sources and major modifications (40 CFR 52.21).
6. If the EPA determines that ADEQ is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation agreement, the requirements of 40 CFR 52.21, 40 CFR 124 or the Clean Air Act, EPA will promptly consult with ADEQ, and may, after such consultation, revoke this delegation agreement in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to ADEQ.
7. If ADEQ determines that issuing a PSD permit in accordance with the terms and conditions of this agreement, the requirements of 40 CFR 52.21, 40 CFR 124, any other applicable regulations or guidance memorandum, or the Clean Air Act conflicts with State or local law, or exceeds ADEQ's authority or resources to fully and satisfactorily carry out such responsibilities, ADEQ may, after consultation with EPA, remand administration of these permits to EPA. Any such remand shall be effective as of the date specified in a Notice of Remand to EPA.
8. The permit appeal provisions of 40 CFR 124, including subpart C thereof, pertaining to the Environmental Appeals Board (EAB), shall apply to all appeals to the EAB of PSD permits issued by ADEQ under this delegation agreement. 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 condition, the final permit issued by ADEQ shall contain a statement that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit shall be 30 days after the date of the final decision by ADEQ to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the EAB, the effective date of the permit shall be suspended until such time as the

appeal is resolved. Failure by ADEQ to comply with the terms of this paragraph shall render the subject permit invalid for PSD purposes.

#### **V. Communications Between EPA and ADEQ**

ADEQ and EPA will use the following communication procedures:

1. ADEQ will forward to EPA copies of (1) the findings related to the PSD application, (2) the justification for ADEQ's preliminary determination, (3) the draft permit and (4) all public notices required by 40 CFR 124. Such copies shall be provided at or prior to the beginning of the public comment period for each PSD preliminary determination. Such preliminary determinations will include PSD permit modifications and amendments.
2. EPA will provide comments on preliminary GHG PSD determinations to ADEQ prior to the close of the public comment period.
3. Nothing in this Delegation Agreement shall be construed to limit EPA's authority to comment on or object to a permit based upon deficiencies relating to the implementation of GHG PSD requirements during the 45-day review period under title V of the Act.
4. ADEQ will forward to EPA copies of the final action on each PSD permit application at the time of issuance, as well as copies of substantive public comments.
5. ADEQ will send to EPA a copy of each PSD non-applicability determination that is based on a netting analysis, within 30 days of such determination, before public notice (when applicable), or before the permit is issued; whichever is earliest. All such determinations must be accompanied by a written justification.

#### **VI. EPA Policies Applicable to PSD Review**

1. All PSD BACT determinations for GHGs will be based on a "top-down" BACT analysis. EPA will consider as deficient any BACT analysis that does not begin with the most stringent control options available for that source category. The BACT analysis should include, as appropriate, a review of the collateral economic, energy,

and environmental impacts of the proposed control technologies, such as the toxic effects of unregulated pollutants.

2. ADEQ will consult with the appropriate Federal, State and local land use agencies prior to issuance of a PSD permit preliminary determination. Specifically, ADEQ shall:
  - a. Notify the appropriate Federal Land Manager (FLM) within 30 days of receipt of a PSD permit application. If the proposed project will potentially impact a Class I area, notify the appropriate Federal Land Manager (FLM) no later than 60 days prior to issuing a public notice for the project.
  - b. Consult with the appropriate State and local agencies primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any preliminary or final determination under this Delegation Agreement.
3. a. In order to assist EPA in carrying out its non-delegable responsibilities, if any, under the Endangered Species Act (ESA), ADEQ shall:
  - i. Ensure that, upon receipt of a PSD permit application, a copy is forwarded to EPA.
  - ii. Notify applicants of the potential need for consultation between EPA and FWS if the project may affect a federally-listed threatened or endangered species or the designated critical habitat of such species.
  - iii. Refrain from issuing a final PSD permit until EPA has notified ADEQ that EPA has satisfied its obligations, if any, under the ESA.
- b. Upon receipt of a request for a status update by ADEQ and as otherwise deemed appropriate by EPA, EPA shall provide ADEQ with a status update on the ESA consultation. Appropriate times may include when EPA has (1) not received necessary information from the project applicant, (2) determined that the ESA consultation process will extend beyond the end of the public comment period on the PSD preliminary determination, (3) determined that its ESA obligations are fulfilled, or (4) determined that new facts or circumstances require re-initiation of consultation before the final PSD permit can be issued.
- c. Nothing in this paragraph alters EPA's obligations under the ESA.

## **VII. Permits Implementation**

1. ADEQ shall request and follow EPA guidance on any matter involving the interpretation of Sections 160-169 of the Clean Air Act or 40 CFR 52.21, relating to applicability determinations, PSD permit issuance and enforcement.
2. Nothing in this Delegation Agreement authorizes ADEQ to waive any applicable GHG PSD requirements.
3. PSD permits for new and modified sources of GHGs must include, as specified in Attachment A, appropriate provisions to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, start-up, and source testing and continuous emissions monitoring systems (CEMS) (where applicable). In all cases where tests are required, the test methods shall be specified. In 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.
4. When any conditions of a PSD permit are incorporated into a Title V permit, ADEQ shall clearly identify PSD as the basis for those conditions.

## **VIII. Permit Enforcement**

1. The primary responsibility for enforcement of the PSD regulations rests with ADEQ. ADEQ will enforce the provisions of the PSD program except in those cases where ADEQ rules or policy are more stringent. In that case, ADEQ may elect to implement the more stringent requirements.
2. Nothing in this delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, 40 CFR 52.21 or any PSD permit issued by ADEQ pursuant to this agreement.
3. In the event that ADEQ is unwilling or unable to enforce a provision of this delegation agreement with respect to a source subject to the PSD regulations, ADEQ

will immediately notify the Air Division Director. Failure to notify the Air Division Director does not preclude EPA from exercising its enforcement authority.

March 7, 2011

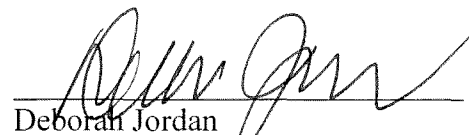
Date



Eric Massey  
Air Quality Division Director  
Arizona Department of Environmental  
Quality

3/30/11

Date



Deborah Jordan  
Director, Air Division  
U.S. EPA, Region IX

## ATTACHMENT A

All PSD permits for new and modified sources, where applicable, shall contain for GHGs:

1. Identification of all points of emission, both stack and fugitive.
2. Specification of a numerical emission limitation for each point of emission in terms of mass rate or concentration limitations or appropriate work practice standards. If emission testing based on a numerical emission limitation is infeasible, the permit may instead prescribe a design, operational, or equipment standard. Any permits issued without numerical emission limitations must contain conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed so as to continuously achieve the assumed degree of control.
3. Any operational limitations or factors which were the basis for the BACT analysis must be specified in the permit (e.g., hours of operation, materials processed which affect emissions, etc.).
4. Methods and frequency of determining continued compliance for each point of emission such as from the SIP or if the source is subject to New Source Performance Standards [NSPS] or National Emission Standards for Hazardous Air Pollutants [NESHAP] or explicitly identified if a reference method is not used.
5. Recordkeeping requirements that enable the agency to ascertain continued compliance, especially where factors such as hours of operation, throughput of materials, sulfur content of fuels, fuel usage, and type or quantity of materials processed are conditions of the permit.
6. A condition that the permit will expire if construction is not commenced within eighteen (18) months or a shorter period.
7. A condition that the source is responsible for providing sampling and testing facilities at its own expense.
8. A condition that continuous emission monitoring systems (CEMS) will be used for enforcement purposes.
9. Reporting requirements which enable the agency to monitor the following:
  - (a) Progress of source construction including the date by which construction is completed; and



- (b) Compliance with (1) emission limitations, (2) operational limitations, (3) and work practice standards; the reporting requirements should include excess emissions reports and source test results.
10. For projects that are exempt from PSD requirements due to enforceable limitations on potential to emit (e.g., operational or process restrictions), ADEQ is advised that any relaxation of those permit conditions may subject the entire project to full PSD review as if construction had not yet begun. See 40 CFR 52.21(r)(4). To facilitate implementation and enforcement of this requirement, EPA recommends that ADEQ include in the PSD permit or technical support document for any such project, the following or similar language:

This project is exempt from PSD review because of... (state reason, for example, the requirement that limits operation to eight hours per day). Any relaxation of this requirement that increases your potential to emit above an applicable PSD threshold will require a full PSD review of the project as if construction had not yet commenced.