

**U.S. EPA – Pinal County Air Quality Control District**

**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 Pinal County, operating by and through the Pinal County Air Quality Control District (PCAQCD), 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 PCAQCD. 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 PCAQCD. *See* 40 CFR 52.37; 75 FR 82254 (December 30, 2010). PCAQCD and EPA hereby enter into this delegation agreement to authorize PCAQCD to implement the applicable PSD requirements of 40 CFR 52.21 for the pollutant GHGs pursuant to these provisions pertaining to GHG authority or GHG PSD permits. PSD permits for other regulated New Source Review pollutants are governed by a PSD program that was approved into the PCAQCD State Implementation Plan on 61 FR 15717 (April 9, 1996).

**II. Scope of Delegation**

1. This agreement for full delegation applies only to sources of GHG emissions within the jurisdiction of PCAQCD, 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 PCAQCD.

### **III. Applicability**

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

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

1. PCAQCD shall issue GHG 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, PCAQCD will adopt new regulations or directives related to the emissions of GHGs that are necessary to implement any additional requirements pertinent to the GHG PSD program promulgated by EPA, except that if PCAQCD determines that any such action conflicts with State or local law, or exceeds PCAQCD’s authority or ability to fully and satisfactorily carry out such

responsibilities, PCAQCD 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 PCAQCD and the EPA, including amendments to add, change, or remove terms or conditions of this Agreement.
5. EPA may review the GHG PSD permit(s) issued by PCAQCD to ensure that PCAQCD's implementation of this delegation agreement is consistent with federal GHG PSD regulations for major sources and major modifications (40 CFR 52.21).
6. If the EPA determines that PCAQCD is not implementing or enforcing the GHG 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 PCAQCD, 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 PCAQCD.
7. If PCAQCD determines that issuing a GHG 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 PCAQCD's authority or resources to fully and satisfactorily carry out such responsibilities, PCAQCD 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 GHG PSD permits issued by PCAQCD 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 PCAQCD shall contain a statement that for federal GHG 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 PCAQCD 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 PCAQCD to comply with the terms of this paragraph shall render the subject permit invalid for PSD purposes.

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

PCAQCD and EPA will use the following communication procedures:

1. PCAQCD will forward to EPA copies of (1) the findings related to the GHG PSD application, (2) the justification for PCAQCD'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 GHG PSD preliminary determination. Such preliminary determinations will include GHG PSD permit modifications and amendments.
2. EPA will provide comments on preliminary GHG PSD determinations to PCAQCD 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. PCAQCD will forward to EPA copies of the final action on each GHG PSD permit application at the time of issuance, as well as copies of substantive public comments.
5. PCAQCD will send to EPA a copy of each GHG 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 GHG 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. PCAQCD will consult with the appropriate Federal, State and local land use agencies prior to issuance of a GHG PSD permit preliminary determination. Specifically, PCAQCD shall:
  - a. Notify the appropriate Federal Land Manager (FLM) within 30 days of receipt of a GHG 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), PCAQCD shall:
  - i. Ensure that, upon receipt of a GHG 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 GHG PSD permit until EPA has notified PCAQCD that EPA has satisfied its obligations, if any, under the ESA.
- b. Upon receipt of a request for a status update by PCAQCD and as otherwise deemed appropriate by EPA, EPA shall provide PCAQCD 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 GHG 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. PCAQCD 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, GHG PSD permit issuance and enforcement.
2. Nothing in this Delegation Agreement authorizes PCAQCD 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 GHG PSD permit are incorporated into a Title V permit, PCAQCD shall clearly identify GHG PSD as the basis for those conditions.

## **VIII. Permit Enforcement**

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

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

Date

August 10, 2011



Pete Rios  
Pete Rios  
Chairman  
Pinal County Board of Supervisors

Sheri Cluff  
Sheri Cluff  
Clerk of the Board  
Pinal County Board of Supervisors

Approved as to form:

Date

August 10, 2011

James P. Walsh, Deputy County Attorney  
James P. Walsh  
Pinal County Attorney

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

## ATTACHMENT A

All GHG 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. Limitations or factors which were the basis for the air quality impact analysis must be specified (e.g. hours of operation, stack height, materials processed which affect emissions).
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 GHG PSD requirements due to enforceable limitations on potential to emit (e.g., operational or process restrictions), the source must be advised that any relaxation of those permit conditions may subject the entire project to full GHG 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 PCAQCD include in the PSD permit or technical support document for any such project, the following or similar language:

This project is exempt from GHG 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 GHG PSD threshold will require a full GHG PSD review of the project as if construction had not yet commenced.