

Agreement for Partial Delegation of the
Federal Prevention of Significant Deterioration (PSD) Program
Set Forth in 40 CFR 52.21
by the United States Environmental Protection Agency, Region 9
to the North Coast Unified Air Quality Management District

The undersigned, on behalf of the North Coast Unified Air Quality Management District (District) and the United States Environmental Protection Agency (EPA), hereby agree to partial delegation of authority to implement the Prevention of Significant Deterioration (PSD) requirements of 40 CFR 52.21 for new major stationary sources of nitrogen oxides (NO_x), and major modifications of NO_x. This partial delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

Background Recitals

1. In accordance with Sections 165 *et seq.* of the Clean Air Act, EPA has adopted regulations that implement the Prevention of Significant Deterioration (PSD) program for areas where the State implementation plan has been disapproved for not meeting the PSD program requirements of Sections 160 through 165 of the Clean Air Act. These regulations are set forth in 40 CFR 52.21. These regulations have been incorporated as part of the applicable California State plan for implementation of the New Source Review program under the Clean Air Act pursuant to 40 CFR 52.270(a)(3), and they govern a portion the implementation of the PSD program requirements within the District.
2. EPA's PSD regulations require that certain stationary sources of air pollutant emissions must undergo a PSD source review and obtain a PSD permit before they may be constructed and operated, as set forth in 40 CFR 52.21.
3. Under Subsection (u) of EPA's PSD Regulations, 40 CFR 52.21(u), EPA may delegate its authority to conduct its PSD source review under 40 CFR 52.21 to the District for sources within the District's geographical jurisdiction. Pursuant to such delegation, the District "stands in the shoes" of EPA for purposes of conducting the PSD source review and issuing the PSD permit, and in doing so must follow and implement the same substantive and procedural requirements as EPA would if it were conducting the PSD source review and issuing the PSD permit itself.
4. The District has the authority to issue PSD permits in accordance with regulations that have been approved into the California State Implementation Plan (SIP), except as provided in 40 CFR 52.270(b)(2). Specifically, the District's SIP-approved PSD program does not include NO_x emissions as an ozone precursor, a required element of the PSD program. As a result, EPA promulgated a limited federal implementation plan (FIP) within the District under 40 CFR 52.21 (see 76 FR 152 on Aug. 8, 2011 and 40 CFR 52.270(b)(2)(iv)). As described in this limited FIP, EPA retains authority to implement the applicable requirements of the PSD permitting program in the District for those projects that are new major stationary sources of NO_x or major modifications of NO_x under 40 CFR 52.21.
5. The District and EPA previously agreed to a partial delegation of authority to implement PSD requirements on January 8, 1993 (1993 agreement). The 1993 agreement (see 58 FR 43798 on August 18, 1993) delegated to the District the authority to implement PSD program requirements for sources

with stack heights greater than 65 meters. This partial delegation of authority supplements, and does not subsume, the 1993 agreement.

Scope of Partial Delegation

6. This partial delegation of authority to the District applies to the implementation of the PSD requirements of 40 CFR 52.21 for new major stationary sources of NOx and major modifications of NOx. It does not delegate authority to the District to issue PSD permits based on plantwide applicability limitations (PALs).
7. District-issued permits with federal PSD provisions related to new major stationary sources of NOx and major modifications of NOx shall be deemed to meet federal PSD permit requirements pursuant to the provisions of this delegation agreement provided that:
 - a. Such permits satisfy all of the substantive requirements of the PSD program in 40 CFR 52.21, including (without limitation) the federal BACT requirement pursuant to 40 CFR 52.21(j) and 40 CFR 52.21(b)(12), and the impact analysis requirements pursuant to 40 CFR 52.21(k)-(o); and
 - b. Such permits have been issued in compliance with all of the procedural requirements of the PSD program in 40 CFR 52.21 and 40 CFR Part 124;

Applicability

8. EPA and the District have agreed to this partial delegation of PSD authority to allow the District to implement the PSD requirements of 40 CFR 52.21 for new major stationary sources of NOx and major modifications of NOx.
9. EPA is responsible for the issuance of PSD permits on Indian Lands under Sections 110 and 301 of the Clean Air Act. This agreement does not grant or delegate any authority under the Clean Air Act on Indian Lands to the District.
10. This partial delegation of PSD authority becomes effective upon the date of signature by both parties to this agreement.

General Delegation Conditions

11. The District shall issue PSD permits under this partial delegation agreement in accordance with the requirements of 40 CFR 52.21 in effect as of the date the District issues the final permit, except as provided in Conditions 7 through 9; and, to the extent that the PSD requirements of the District's Rules are consistent with the requirements of 40 CFR 52.21, in accordance with those requirements as well.
12. The District may (but shall not be required to) issue Federal PSD permits in an integrated permit proceeding along with permits required under California law and District regulations, and may include both Federal PSD requirements and California and/or District requirements in a single, integrated permit document. All Federal PSD permit conditions shall be clearly identified in any integrated

permit document issued. However, nothing in this partial delegation agreement shall be construed to direct or to authorize the District to issue PSD permits in an integrated permit proceeding that are inconsistent with Federal PSD requirements. Any provisions that are included in an integrated permit document under California law or District regulations that are not consistent with or authorized by the Federal PSD requirements shall not be considered part of the Federal PSD permit.

13. This partial delegation agreement may be amended at any time by the formal written agreement of both the District and the EPA, including amendments to add, change, or remove terms and conditions of this agreement.
14. EPA may review the PSD permit(s) issued by the District to ensure that the District's implementation of this delegation agreement is consistent with federal PSD regulations as set forth in 40 CFR Section 52.21 and 40 CFR Part 124.
15. If EPA determines that the District is not implementing or enforcing the PSD program in accordance with the terms and conditions of this partial delegation agreement, 40 CFR 52.21, 40 CFR Part 124, or the Clean Air Act, EPA may after consultation with the District revoke this partial delegation agreement in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the District.
16. Revocation of this partial delegation agreement as specified in Condition 14 above shall be the sole remedy available for any failure by the District to implement or enforce the PSD program in accordance with the terms and conditions of this partial delegation agreement, 40 CFR 52.21, 40 CFR Part 124, or the Clean Air Act. The District's agreement to implement the Federal PSD program on EPA's behalf, and EPA's agreement to delegate its authority for the Federal PSD program to the District under 40 CFR 52.21(u), is not intended and shall not be construed to alter or expand the statutory limits on the imposition of sanctions against the District under the Clean Air Act for failure to administer and enforce federal regulatory requirements as described in *Brown v. EPA*, 521 F.2d 827 (9th Cir. 1975), *vacated as moot*, 431 U.S. 99 (1977), and *Brown v. EPA*, 566 F.2d 665 (9th Cir. 1977).
17. If the District determines that issuing a PSD permit in accordance with the terms and conditions of this partial delegation agreement, 40 CFR 52.21, 40 CFR Part 124, and the Clean Air Act conflicts with State or local law, or exceeds the District's authority or resources to fully and satisfactorily carry out such responsibilities, the District after consultation with EPA may remand administration of such permits, or of Federal PSD delegation in its entirety, to EPA. Any such remand shall be effective as of the date specified in a Notice of Remand to EPA.
18. The permit appeal provisions of 40 CFR Part 124, including subpart C thereof, pertaining to the Environmental Appeals Board (EAB), shall apply to all federal PSD permitting action appeals to the EAB for PSD permits issued by the District under this partial delegation agreement. For purposes of implementing the federal permit appeal provisions under this partial delegation, the District shall notify the applicant and each person who submitted written comments or requested notice of the final permit decision in accordance with 40 CFR 124.15. The notice of final permit decision shall include (i) reference to the procedures for appealing the final permit decision under 40 CFR 124.19; and (ii) a statement of the effective date of the final permit decision established pursuant to 40 CFR 124.15(b)

and that the effective date shall be suspended if the final permit decision is appealed pursuant to 40 CFR 124.19 until such appeal is resolved by the EAB.

Communication between EPA and the District

The District and EPA will use the following communication procedures:

19. The District will forward to EPA copies of (1) all draft PSD permits prepared by the District pursuant to 40 CFR 124.6; (2) all “Statements of Basis” prepared by the District pursuant to 40 CFR 124.7 and/or “Fact Sheets” prepared by the District pursuant to 40 CFR 124.8; and (3) all public notices the District issues pursuant to the requirements of 40 CFR 124.10. Such copies shall be provided to EPA at or prior to the beginning of the public comment period for each PSD preliminary determination.
20. Upon any final PSD permit issuance, the District will forward to EPA copies of the notice of final permit issuance required by 40 CFR 124.15(a) and the responses to public comments required by 124.17(a) (if any); and, if requested by EPA, copies of all substantive comments (if any).

EPA Policies Applicable to PSD Review

21. All PSD BACT determinations are required to perform a “top-down” BACT analysis. EPA will consider as deficient any BACT determination that does not begin with the most stringent control options available for the source under review.
22. The District shall notify and/or consult with the appropriate Federal, State and local agencies as required by 40 CFR 52.21 and 40 CFR Part 124. The District shall (among other requirements as applicable):
 - a. Notify the appropriate Class I area Federal Land Manager(s) within 30 days of receipt of a PSD permit application and at least 60 days prior to any public hearing if the emissions from a proposed facility may affect any Class I area(s), as required by 40 CFR 52.21(p);
 - b. Notify the Fish and Wildlife Service (FWS) and EPA when a submitted PSD permit application has been deemed complete, in order to assist EPA in carrying out its non-delegable responsibilities to consult with FWS under Section 7 of the Endangered Species Act;
 - c. Notify the applicant of the potential need for consultation between EPA and FWS if an endangered species may be affected by the project; and
 - d. Refrain from issuing a final PSD permit unless FWS has determined that the proposed project will not adversely affect any endangered species.

Permits

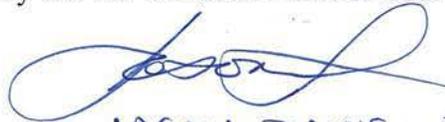
23. The District shall follow EPA guidance on any matter involving the interpretation of sections 160-169 of the Clean Air Act or 40 CFR 52.21 relating to applicability determinations, PSD permit issuance

and enforcement. EPA shall provide guidance to the District as appropriate in response to any request by the District for guidance on such federal PSD issues.

24. The District shall at no time grant any waiver of the PSD permit requirements.
25. Federal PSD permits issued by the District must include appropriate provisions to ensure permit enforceability. PSD permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, initial commencement of operation, and source testing (where applicable).
26. When any conditions of a PSD permit are incorporated into a Title V permit, the District shall clearly identify PSD as the basis for those conditions.

Permit Enforcement

27. The primary responsibility for enforcement of the PSD regulations related to the subject matter of this agreement rests with the District. The District will enforce the provisions of the PSD program, consistent with the enforcement provisions of the Clean Air Act and Condition 28 of this agreement, except in those cases where District rules, policies, or permit conditions are as stringent or more stringent than the PSD requirements. In that case, the District may elect to enforce the as stringent or more stringent District requirements.
28. Nothing in this partial 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 the District pursuant to this agreement.
29. In the event that the District is unwilling or unable to enforce a provision of this partial delegation agreement with respect to a source subject to the PSD regulations, the District will immediately notify the Air Division Director. Failure to notify the Air Division Director does not preclude EPA from exercising its enforcement authority.



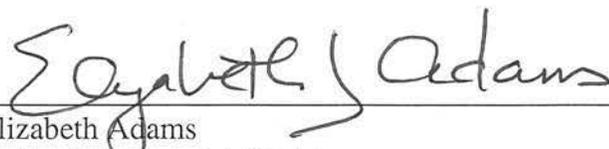
JASON DAVIS, DEPUTY APCO / ACTING AR

for

OCTOBER 6, 2015
Date

Brian Wilson
Air Pollution Control Officer
North Coast Unified Air Quality Management District

Oct. 2, 2015
Date



Elizabeth Adams
Acting Director, Air Division
U.S. EPA, Region IX