

Agreement for Partial Delegation of the
Federal PSD Program by the United States
Environmental Protection Agency (EPA) to the
Energy Facility Site Evaluation Council
(EFSEC).

I. Introduction

Through this agreement, the EFSEC and the EPA establish the legal and procedural bases for the EFSEC to conduct new source review pursuant to the federal prevention of significant deterioration (PSD) regulations found in 40 CFR 52.21.

II. Legal Authority

- A. Pursuant to 40 CFR 52.21(u), the EPA may delegate to a state or regulatory body the full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.
- B. The EFSEC has adopted by reference and with certain modifications, the federal PSD regulations found in 40 CFR 52.21 as in effect on July 1, 1989 (see WAC 463-39-005). The EFSEC does not have legal authority to implement and enforce revisions to 40 CFR 52.21 which have occurred since July 1, 1989, the effective date of WAC 173-400-141.

III. Scope of Delegation

- A. Pursuant to 40 CFR 52.21(u) EPA hereby delegates to EFSEC the partial responsibility for conducting new source review pursuant to the federal PSD regulations for all sources under EFSEC's jurisdiction, except those noted below, located in the state of Washington. The provisions of 40 CFR 52.21 as in effect on July 1, 1989, will be implemented by EFSEC as stated in WAC 173-400-141, except that the provisions of 40 CFR 124 will be followed in place of 40 CFR 51.166(q).
- B. EPA retains full responsibility for conducting new source review for sources located on Indian reservations.
- C. EPA regulations were amended effective November 19, 1990 to include a nitrogen dioxide (NO₂) increments program. Because WDOE or EFSEC does not have legal authority to enforce the NO₂ increments until it adopts amendments to the WAC, EPA will conduct that portion of the new source review related to NO₂ increments. PSD permit applications must therefore

be submitted to both EPA Region 10 and EFSEC for each new or modified major stationary source which would emit nitrogen oxides (NO_x) in significant amounts. EPA and EFSEC will jointly determine application completeness, process, and issue PSD permits involving NO₂.

IV. Requirements

- A. The responsibility for implementation and enforcement of the PSD regulations shall rest with the EFSEC. However, in accordance with the Memorandum of Agreement (MOA), the EFSEC shall utilize the services of the Washington Department of Ecology (WDOE) to conduct all PSD applicability determinations, make preliminary and final recommendations, and draft PSD permits for all EFSEC sources.
- B. The EFSEC and WDOE (in accordance with the MOA) will ensure that there are adequate resources and trained personnel within the WDOE to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to PSD applicability determinations, BACT determinations, air quality monitoring network design, modeling procedures, etc. EPA will provide PSD training for EFSEC and WDOE staff to meet needs identified by EPA or EFSEC.
- C. The EFSEC will enforce the provisions and regulations that pertain to the federal PSD program. Where the rules or policy of the EFSEC are more stringent than the federal PSD program, the EFSEC may elect to include such requirements in the PSD permit along with the EPA requirements.
- D. EFSEC will follow the new source review guidance which EPA has provided to the WDOE as well as future guidance representing EPA policy.
- E. This delegation may be amended by EPA's Director of the Air and Toxics Division at any time to ensure the implementation of EPA policy or regulation changes. The Chairman of EFSEC may request that this delegation be amended at any time to reflect changes to EFSEC policy or regulations.

V. Permit Issuance and Appeals

- A. The procedures set forth in 40 CFR Part 124 Subparts A and C shall apply to the issuance of PSD permits under this delegation.
- B. EFSEC shall inform EPA Region 10 when there is a public comment requesting a change in a preliminary determination or in a proposed permit condition.
- C. Permits issued under this delegation are required to contain language stating that the PSD permit has been issued after having determined that the federal PSD requirements (40 CFR 52.21) are satisfied.
- D. The preliminary and final determinations shall indicate that an appeal to the EPA Administrator is available pursuant to 40 CFR 124.
- E. The permit appeal provisions in 40 CFR 124.19 shall apply to all appeals to the Administrator on PSD permits issued by the EFSEC under this delegation. For purposes of implementing the Federal permit appeal provisions under this delegation, if there was a public comment requesting a change in a preliminary determination or a proposed permit condition, the final permit issued by EFSEC is required to 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 service of notice to the applicant and commentors of the final decision to issue, modify, or revoke and reissue the permit, unless the EPA Administrator is requested to review the permit decision within the 30 day period pursuant to 40 CFR 124.19; and
 - (2) if an appeal is made to the EPA Administrator, the effective date of the permit is suspended until such time as the appeal is resolved.
- F. Failure by EFSEC to comply with the requirements of 40 CFR 124 and the terms of this paragraph shall render the subject permit invalid for federal PSD purposes.

VI. EPA Oversight

The EFSEC and EPA will adhere to George Abel's March 21, 1989, letter to Stu Clark regarding the exchange of "real-time" information. The EFSEC shall submit the following for new major sources and major modifications subject to WAC 463-39-005.

- A. Notification of receipt of a PSD permit application for a major source or major modification pursuant to WAC 173-400-141 and 40 CFR 52.21 within five working days of receipt. A copy of the application cover letter will suffice.
- B. Copy of any letter notifying the applicant as to the completeness or deficiencies in the application pursuant to 40 CFR 51.166(q)(1), within five working days after signature.
- C. For a proposed major source or major modification which would impact a Class I area, a copy of any letter to a federal land manager, including a copy of the notice of construction and all relevant information (including any technical support documents) pursuant to 40 CFR 52.21(p), within 5 working days after signature.
- D. Copy of any preliminary determination pursuant to 40 CFR 51.166(q)(2)(i) within five working days after completion.
- E. Copy of any newspaper advertisement in accordance with 40 CFR 51.166(q)(2)(iv) prior to publication.
- F. Copy of any notice of public hearing pursuant to 40 CFR 51.166(q)(2)(v) prior to publication.
- G. Copy of final determination pursuant to 40 CFR 51.166(q)(2)(vii) within five working days after completion.
- H. Copy of the letter notifying the applicant of the final determination pursuant to 40 CFR 51.166(q)(2)(viii) within five working days after signature.
- I. Copy of any PSD permit issued pursuant to WAC 463-39-005 and 40 CFR 52.21 within five working days after signature.

VII. Future EPA Regulation Revisions

- A. EFSEC will endeavor to update the WAC to incorporate new or revised EPA regulations by the effective date of the EPA regulations.
- B. This delegation agreement will be amended subsequent to the effective date of each new or revised EPA regulation to reflect the current status of the WAC and EFSEC's legal authority.

VIII. Administrative

- A. The EFSEC will at no time grant any waiver to the permit requirements, approve any compliance schedule, or issue any administrative order which violates any presently effective PSD provisions.
- B. If EPA determines that the EFSEC is not adequately implementing or enforcing the federal PSD program or has not implemented the requirements or guidance with respect to a specific permit in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation may be revoked in whole or in part, after consultation with the EFSEC. Any such revocation shall be effective as of the date specified in a Notice of Revocation. Nothing in this paragraph shall preclude EPA from exercising its enforcement authority pursuant to the Clean Air Act.
- C. In the event that the EFSEC is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the EFSEC will immediately notify the Director of the Air and Toxics Division. Failure to notify the Director of the Air and Toxics Division does not preclude EPA from exercising its enforcement authority.

IX. Miscellaneous

- A. The EFSEC (through the WDOE) will submit all BACT and LAER determinations to the BACT/LAER Clearinghouse within three weeks after the issuance of a final PSD or NSR permit.

- B. The EFSEC will provide EPA with a copy of a source's notifications of the commencement of construction and start up, and provide EPA the opportunity to observe any source tests.

Date: 1/21/93


Jim McCormick, Director
Air and Toxics Division
Environmental Protection
Agency

On behalf of the state of Washington and the Energy Facility Site Evaluation Council, I accept the partial delegation of the federal prevention of significant deterioration program pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 1/25/93


Warren A. Bishop
Chairman
Energy Facility Site
Evaluation Council