

Agreement for 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 Maricopa County Air Quality Department

C-85-16-005-3-00

The undersigned, on behalf of the Maricopa County Air Quality Department (Department) and the United States Environmental Protection Agency, Region 9 (EPA), hereby agree to delegation of authority to issue Prevention of Significant Deterioration (PSD) initial permits, to modify existing PSD permits, and to extend existing 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

1. In accordance with Sections 165 *et seq.* of the Clean Air Act, EPA has adopted regulations that implement the Clean Air Act's Prevention of Significant Deterioration (PSD) program. These regulations are set forth in 40 CFR 52.21. These regulations have been incorporated as part of the applicable Arizona State plan for implementation of the New Source Review program under the Clean Air Act pursuant to 40 CFR 52.144(b), and they govern the implementation of the Clean Air Act's PSD requirements for the Department within Maricopa County, Arizona.
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 40 CFR 52.21(u), EPA may delegate its authority to conduct its PSD source review under 40 CFR 52.21 to the Department for sources within the Department's jurisdiction. Pursuant to such delegation, the Department "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 EPA and the Department have entered into a PSD delegation agreement in the past under 40 CFR 52.21(u), the most recent of which became effective November 22, 1993. It has recently become clear that the previous delegation agreement contained certain provisions that the EPA and Maricopa County agree needed revisions to better align with the current requirements of the PSD program. EPA and the Department are therefore revising their delegation agreement under 40 CFR 52.21(u) to update and clarify the terms and conditions for issuing PSD permits pursuant to the federal PSD requirements of 40 CFR 52.21.

II. Scope of Delegation

1. This delegation agreement applies to those sources for which the Department has jurisdiction in accordance with A.R.S § 49-402.
2. For all applications for new, modified, or extended PSD permits, Department-issued permits with federal PSD provisions shall:
 - a. 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. 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.

III. Applicability

1. EPA and the Department have agreed to this delegation of PSD authority to allow the Department to issue initial and modified PSD permits and extensions of PSD permits. Pursuant to this delegation agreement, the Department shall have primary responsibility for issuing all new and modified PSD permits and extensions of PSD permits.

2. 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 Department.
3. This delegation of PSD authority becomes effective upon the date of signature by both parties to this agreement.

IV. General Delegation Conditions

1. The Department shall issue PSD permits under this delegation agreement in accordance with the requirements of 40 CFR 52.21 in effect as of the date the Department issues the final permit, except as provided in Section III.
2. The Department may (but shall not be required to) issue federal PSD permits in an integrated permit proceeding along with permits required under Arizona law and Department regulations, and may include both federal PSD requirements and Arizona and/or Department 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 delegation agreement shall be construed to direct or to authorize the Department 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 Arizona law or Department regulations that are not consistent with or authorized by the federal PSD requirements shall not be considered part of the federal PSD permit.
3. This delegation agreement may be amended at any time by the formal written agreement of both the Department and the EPA, including amendments to add, change, or remove terms and conditions of this agreement.
4. EPA may review the PSD permit(s) issued by the Department to ensure that the Department's implementation of this delegation agreement is consistent with federal PSD regulations for major sources, major modifications, and permit extensions as set forth in 40 CFR 52.21 and 40 CFR part 124.

5. If EPA determines that the Department is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation agreement, 40 CFR 52.21, 40 CFR part 124, or the Clean Air Act, EPA may after consultation with the Department revoke this delegation agreement in whole, in part, or on a source-specific basis. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.
6. Revocation of this delegation agreement as specified in Paragraph IV.5. above shall be the sole remedy available for any failure by the Department to implement or enforce the PSD program in accordance with the terms and conditions of this delegation agreement, 40 CFR 52.21, 40 CFR part 124, or the Clean Air Act. The Department'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 Department 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 Department 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).
7. If the Department determines that issuing a PSD permit or permits in accordance with the terms and conditions of this delegation agreement, 40 CFR 52.21, 40 CFR part 124, and the Clean Air Act conflicts with state or local law, or exceeds the Department's authority or resources to fully and satisfactorily carry out such responsibilities, the Department 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.
8. 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 Department under this partial

delegation agreement. For purposes of implementing the federal permit appeal provisions under this partial delegation, the Department shall notify the applicant and each person who submitted written comments or requested notice of final permit decision 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 Section 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.

9. In the event that a petition for review of a final PSD permit decision is filed per 40 CFR 124.19, the Department shall provide an opportunity for EPA to discuss the content of the response to the petition for review prior to the filing of the response.

V. Communication Between EPA and the Department

The Department and EPA will use the following communication procedures:

1. The EPA and the Department agree to work collaboratively during the PSD application review process to resolve issues related to EPA policy and guidance as soon as practicable.
2. The Department shall provide an opportunity for the EPA to discuss federal PSD permitting actions with the Department at not less than four points in the permitting process:
 - a. Pre-application meetings with prospective applicants.
 - b. Prior to the Department making the completeness determination on a permit application or deciding to act on a request for a permit revision.
 - c. Prior to the Department making its preliminary determination and proposed permit or permit revision available for public comment.
 - d. After close of the public comment period but prior to issuance of the final determination and final permit or permit revision.

The purpose of these meetings is to identify and resolve any issues between the agencies prior to the Department making these determinations. EPA will remain cognizant of the Department's permit processing timelines and the timelines in 40 CFR part 124 related to the processing of PSD permit decisions. EPA will work rapidly to resolve any issues to prevent any delays in meeting those permit processing timelines.

3. In addition, the Department shall provide to EPA for review and comment: (1) the draft PSD permit prepared by the Department pursuant to 40 CFR 124.6; (2) the "Statement of Basis" (also known as the "Technical Support Document") prepared by the Department pursuant to 40 CFR 124.7 and/or "Fact Sheets" prepared by the Department pursuant to 40 CFR 124.8; and (3) all public notices the Department plans to issue pursuant to the requirements of 40 CFR 124.10. Such documents shall be provided to EPA at least 15 federal business days prior to the beginning of the public comment period for each PSD preliminary determination. The Department and EPA shall work to resolve issues identified by EPA to ensure the preliminary determination is consistent with EPA policy and guidance as identified in Section IV. If the EPA does not provide comments during this review period, the Department may proceed with issuing the preliminary decision. However, EPA's review during this period is discretionary and does not mean the Department's preliminary decision is necessarily consistent with EPA policy and guidance. Upon notification to the Department, the EPA may end its review period early.
4. At the end of each public comment period, the Department shall provide to the EPA a copy of all substantive comments received during the public comment period.
5. The Department shall provide to EPA for review and comment the Department's responses to public comments at least 15 federal business days prior to issuing a final PSD permit. The Department and EPA shall work in a timely manner to resolve issues identified by EPA to ensure the decision is consistent with EPA policy and guidance.

6. Upon any final PSD permit issuance, the Department 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).
7. The Department shall forward to EPA copies of all PSD non-applicability determinations that utilize netting. All such determinations must be accompanied by a written justification.

VI. EPA Policies Applicable to PSD Review

1. 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.
2. The Department 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 Department 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 applicant of the potential need for consultation between EPA and the appropriate State Historic Preservation Officer(s) (SHPO) and Tribal Historic Preservation Officer(s), if the project may affect one or more historic propert(ies);
 - c. Assist EPA in consultation with the appropriate SHPOs and THPOs regarding historic properties affected by a PSD project and engage in consultation in accordance with the requirements under Section 106 of the National Historic Preservation Act for federal undertakings;
 - d. 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;
- e. Notify the applicant of the potential need for consultation between EPA and FWS if an endangered species may be affected by the project; and
 - f. Refrain from issuing a final PSD permit until EPA has notified the Department in writing that EPA has satisfied its obligations, if any, under Section 7 of the Endangered Species Act.

VII. Permits

1. The Department 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 Department in a timely manner as appropriate in response to any request by the Department for guidance on such federal PSD issues.
2. The Department shall at no time grant any waiver of the PSD permit requirements.
3. Federal PSD permits issued by the Department 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).
4. When any conditions of a PSD permit are incorporated into a title V permit, the Department 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 the Department. The Department will enforce the provisions of the PSD program, consistent with the enforcement provisions of the Clean Air Act and Paragraph VIII.3. of this agreement, except in those cases where:

- a. Department rules, policies, or permit conditions are as stringent as or more stringent than the PSD requirements. In that case, the Department may elect to enforce the as stringent as or more stringent Department 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 the Department pursuant to this agreement.
3. In the event that the Department is unwilling or unable to enforce a provision of this delegation agreement with respect to a source subject to the PSD regulations, the Department will immediately notify the Air Division Director. Failure to notify the Air Division Director does not preclude EPA from exercising its enforcement authority.

FEB 08 2016

Date



Clint Hickman
Chairman
Maricopa County
Board of Supervisors

January 19, 2016

Date



Elizabeth Adams
Acting Director, Air Division
U.S. EPA, Region 9

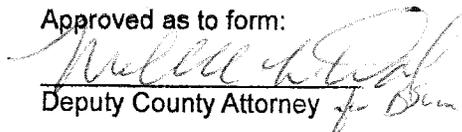
ATTEST:



FEB 08 2016

DEPUTY Clerk of the Board 020314

Approved as to form:



Deputy County Attorney