

**Agreement for Delegation of Source Review Under the Federal Prevention of Significant Deterioration (PSD) Program Set Forth in 40 CFR 52.21 for Greenhouse Gases by the United States Environmental Protection Agency, Region 9 to the Maricopa County Air Quality Department**

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 delegate authority from the EPA to the Department to implement source review under the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21 for greenhouse gases (GHGs) for sources under the jurisdiction of the Department, subject to the terms and conditions of this Agreement. This delegation is executed pursuant to 40 CFR 52.21(u).

I. Legal Authority

- A. In accordance with CAA Section 110 and Part C, the EPA has adopted regulations, set forth in 40 CFR 52.21, that implement the CAA's PSD program in areas where states do not have a PSD program approved into their CAA state implementation plans. The PSD program and the EPA's regulations at 40 CFR 52.21 require that certain stationary sources of air pollutant emissions undergo a PSD source review and obtain a PSD permit before they may be constructed and operated.
- B. The regulations at 40 CFR 52.21 have been incorporated as part of the applicable Arizona State plan for implementation of the New Source Review program under the CAA, and they govern the implementation of the CAA PSD program for GHGs for sources within the jurisdiction of the Department within Maricopa County, Arizona. See 40 CFR 52.144(c). PSD requirements for sources of regulated NSR pollutants other than GHGs within the jurisdiction of the Department are implemented under the Department's PSD program that the EPA has approved into the Arizona state implementation plan. See 87 FR 8418, February 15, 2022.
- C. The Department is generally designated as the air pollution control agency in Maricopa County, Arizona, and, acting through its Control Officer, the Department is authorized to issue preconstruction air quality permits to stationary sources under its jurisdiction that are, or would be, located in Maricopa County. See Arizona Revised Statutes §§ 49-112, 49-474, 49-479, 49-480; Maricopa County Air Pollution Control Regulations, Regulations I and II.
- D. Under 40 CFR 52.21(u), the EPA may delegate its authority to conduct PSD source review under 40 CFR 52.21 to state and local air pollution control agencies for sources within their jurisdiction.
- E. The Department and the EPA agree that requirements in PSD permits for GHGs issued by the Department under 40 CFR 52.21 through this delegation of authority are federally enforceable requirements.

II. Scope of Delegation

- A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to the Department responsibility for source review under the federal PSD regulations at 40 CFR 52.21 for GHGs for all sources located in Maricopa County, Arizona that are under the Department's jurisdiction in accordance with Arizona Revised Statutes § 49-402, subject to the terms and conditions of this delegation agreement.
- B. EPA's delegation of authority to the Department to implement the federal PSD regulations for GHGs under this delegation agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. 1151.
- C. The EPA Administrator has delegated to the EPA Region 9 Regional Administrator, and the Regional Administrator has redelegated to EPA Region 9's Air Division Director, the authority under 40 CFR 52.21(u) to delegate to an appropriate state or local agency the responsibility to conduct source review under the federal PSD regulations at 40 CFR 52.21. As the state or local agency that receives delegation from EPA Region 9, the Department does not have authority under the CAA to further delegate the responsibility to conduct source review under the federal PSD regulations at 40 CFR 52.21 for GHGs.

III. General Delegation Conditions

- A. The Department shall issue PSD permit decisions for GHGs under this Delegation Agreement in accordance with the requirements of 40 CFR 52.21 and 40 CFR part 124, subparts A and C, as amended on or after July 1, 2021.
- B. The Department may (but shall not be required to) issue federal PSD permits for GHGs in an integrated permit proceeding along with permits required under Arizona law and Department regulations, and may include both federal PSD requirements for GHGs and Arizona and/or Department requirements in a single, integrated permit document. Where Arizona or Department air quality rules or policies are more stringent than the federal PSD program requirements at 40 CFR 52.21, the Department may elect to include such State or Department requirements in a proposed or final integrated permit document along with the federal PSD program requirements for GHGs. All permit requirements contained in a draft, proposed or final integrated permit issued by the Department that are derived from the federal PSD requirements in 40 CFR 52.21 for GHGs, or included in whole or in part for purposes of satisfying such federal PSD permit requirements, shall be clearly identified as such in the permit itself and in the supporting documentation for the permit.
- C. The Department shall consider and follow all PSD policy, guidance and determinations issued by the EPA for implementation of the federal PSD program for GHGs, except as provided in Paragraph III.D. of this Delegation Agreement. The EPA generally will provide the Department with copies of EPA policies, guidance, and determinations through EPA databases and/or hard copies where appropriate. The EPA shall provide guidance to the Department in a timely manner as appropriate in response to any request by the Department for guidance on federal PSD issues that relate to GHGs.

- D. In the event that the Department considers it necessary to implement a PSD permitting decision for GHGs that differs from that recommended by EPA policy, guidance, or determinations, the Department shall obtain concurrence from the Manager of the EPA Region 9 Air Division Permits Office or his or her designee concerning such course of action prior to proposing or finalizing such permit decision. Where no current EPA policy or guidance clearly addresses a specific situation requiring the Department's interpretation of the federal PSD regulations for a PSD permit for GHGs, the Department shall consult with the Manager of the EPA Region 9 Air Division Permits Office or his or her designee on the Department's interpretation of the EPA regulations.
- E. The Department shall 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 on a PSD permit application for GHGs pursuant to this Delegation Agreement.
- F. The Department shall at no time grant a waiver of the requirements of 40 CFR 52.21 or of the requirements of a final PSD permit and currently applicable PSD permit for GHGs.
- G. To assist the EPA in ensuring the EPA's compliance with requirements that may be applicable to the EPA under other federal statutes in conjunction with the issuance of a federal PSD permit decision for GHGs under 40 CFR 52.21, the Department shall:
  - 1. Notify PSD permit applicant(s) of the potential need for consultation under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 300101 et seq., between the EPA and the appropriate State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officer(s) (THPO), and/or other parties if the project has the potential to affect one or more historic properties.
  - 2. As requested by the EPA, assist the EPA in consultation under Section 106 of the NHPA with the appropriate SHPO(s), THPO(s), and/or other parties regarding historic properties potentially affected by a project.
  - 3. Within two weeks of receipt of a PSD permit application for GHGs, notify the U.S. Fish and Wildlife Service (FWS) of the permit application, and provide a copy of the permit application to the FWS if requested.
  - 4. Notify PSD permit applicant(s) of the potential need for consultation between the EPA and the FWS if the project may affect a species listed as threatened or endangered under the federal Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., or designated critical habitat for such species.
  - 5. Refrain from issuing a final PSD permit decision for GHGs until the EPA has notified the Department that the EPA has satisfied its obligations with respect to that permit decision, if any, under the ESA and the NHPA.

#### IV. Permit Issuance, Revision, and Appeals

- A. All draft, proposed and final PSD permit decisions for GHGs issued by the Department on applications for the construction or major modification of PSD sources for GHGs, as applicable, under this Delegation Agreement are subject to and shall adhere to all procedural requirements in 40 CFR part 124, and the Department shall comply with all such requirements that would be applicable to EPA Region 9 if EPA Region 9 were issuing the permit decision under 40 CFR 52.21. Among other requirements, the Department shall provide notice of the PSD final permit decision for GHGs as specified in 40 CFR 124.15; such notice shall indicate that an appeal to the EPA Environmental Appeals Board (EAB) is available pursuant to 40 CFR Part 124 and shall include references to the procedures for appealing such a decision under 40 CFR 124.19.
- B. The provisions in 40 CFR 124.19 shall apply to all appeals to the EAB of PSD permit decisions for GHGs issued by the Department under this Delegation Agreement. For the purpose of implementing 40 CFR Part 124, if there is a public comment requesting a change in a preliminary PSD permit determination or proposed PSD permit condition issued by the Department, the final permit decision issued by the District is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:
1. The effective date of the permit decision is 30 days after service of notice to the applicant and commenters of the final permit decision, unless review is requested of the permit under 40 CFR 124.19 within the 30-day period.
  2. If a petition for review of a GHG PSD permit is filed with the EAB, the effective date of the permit is suspended until such time as the Department issues a final permit, in accordance with 40 CFR 124.19(1), following the conclusion of the EAB proceeding.
- C. Prior to taking proposed action to revise an existing final PSD permit for GHGs, the Department shall consult with EPA Region 9 concerning any such proposed action. The EPA will determine on a case-by-case basis the requirements of 40 CFR 52.21 and/or 40 CFR Part 124 that are necessary and appropriate to apply to a particular PSD permit revision for GHGs, depending on the nature of the revision. The Department's draft, proposed and final decisions to revise an existing final PSD permit shall adhere to any such requirements determined necessary and appropriate by the EPA. Material changes to substantive terms and conditions of an existing PSD permit for GHGs that govern the construction and operation of the source should be processed in accordance with the procedural requirements in 40 CFR Part 124 that are applicable to federal PSD permit decisions.
- D. If the Department receives a request to rescind a GHG PSD permit, in part or in whole, pursuant to 40 CFR 52.21(w), the Department shall consult with EPA Region 9 prior to taking any action in response to such request. The Department's actions in response to such a request shall adhere to any requirements determined necessary and appropriate by the EPA to ensure compliance with the CAA.

- E. The EPA shall notify the Department in the event that the EPA determines that failure by the Department to comply with the requirements of 40 CFR Part 124 related to PSD permit decisions for GHGs and Paragraph IV of this Delegation Agreement renders the subject permit decision invalid for federal PSD purposes.

V. Enforcement

In all cases, the EPA retains enforcement authority pursuant to Sections 113 and 167 of the CAA with respect to sources in Maricopa County that are subject to federal PSD requirements and other CAA requirements, including but not limited to sources issued federal PSD permits for GHGs by the Department. The Department retains enforcement authority for air quality regulations under Arizona State and local laws, rules, and regulations.

VI. EPA and Department Communications

The Department and the EPA will use the following communication procedures:

- A. The Department shall provide an opportunity for the EPA to discuss federal PSD permit decision actions for GHGs with the Department at a minimum of five (5) points in the permit decision process:
  1. Pre-application meeting(s) with prospective applicants.
  2. Within 30 days of receipt of an application for a PSD permit or a PSD permit revision for GHGs.
  3. Prior to the Department making its preliminary determination and proposed permit or permit revision available for public comment.
  4. After close of the public comment period but prior to issuance of the final determination and final permit or permit revision.
  5. In the event that a petition for review of a final PSD permit decision for GHGs is filed per 40 CFR 124.19, the Department shall provide an opportunity for the EPA to discuss the content of the response to the petition for review prior to the filing of the response.

The purpose of these meetings is to identify and resolve any issues identified by the agencies as necessary to ensure compliance with CAA requirements prior to the Department making its proposed and final permit decisions, and prior to submitting its response to any petition for review, as applicable. The EPA and the Department 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 for GHGs. The EPA and the Department will work rapidly to resolve any issues to prevent any delays in meeting those permit processing timelines.

- B. The Department shall submit to the EPA copies of the following documents, within the time frames indicated in the table below, for sources and activities subject to this Delegation Agreement:

Action	Submittal to EPA	Time Frame
Receipt of application for a GHG PSD permit or GHG PSD permit revision	Copy of application and cover letter	Within ten (10) working days after receipt
Any correspondence to the applicant regarding application deficiencies and/or completeness determination	Copy of correspondence to applicant	Within ten (10) working days after signature
Draft preliminary determination/proposed GHG PSD permit decision, public notice	Copy of drafts of technical support document, proposed PSD permit decision (including major or minor revisions to a GHG PSD permit), and public notice of public comment period and/or public hearing	At least fifteen (15) working days prior to start of public comment period for GHG PSD preliminary determination
Public notice of public comment period and/or public hearing on proposed GHG PSD permit decision (see 40 CFR 52.21(u)(2)(ii))	Copy of technical support document, proposed PSD permit decision, and public notice of public comment period and/or public hearing	Upon issuance of public notice
Receipt of comments from public	Copy of written public comment letter(s) and transcript of public hearing, if applicable	Within ten (10) working days after the close of the public comment period; if not received by the District in this time frame, provide within five (5) working days after receipt
Draft final GHG PSD permit decision	Copy of draft of final GHG PSD permit decision, responses to public comments (if any), and revisions or supplements to technical support document (if applicable)	At least fifteen (15) working days prior to issuance of final GHG PSD permit decision
Final GHG PSD permit issuance	Copy of final GHG PSD permit decision, responses to public comments, and revised or supplemental technical support document (if applicable)	Within five working days after final signature on GHG PSD permit decision
GHG BACT determination submittal to RACT/BACT/LAER Clearinghouse	Electronic submittal of required information	Within 30 working days of final GHG PSD permit becoming effective.

- C. Any records or reports relating to PSD permitting or compliance with PSD requirements for GHGs that are provided to or otherwise obtained by the Department and are not identified in the table in Paragraph VI.B. above shall be made available to the EPA upon request.
- D. The Department will ensure that all relevant source information, notifications and reports are entered into the EPA ICIS-AIR national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs), the Department shall enter the information required by the Compliance Monitor Strategy plan, signed by the Department and the EPA.
- E. The EPA and the Department shall generally correspond by email between the Manager of the EPA Region 9 Air and Radiation Division's Permits Office or their designee(s) and the Department's Control Officer or their designee(s). Except for the BACT determination submittal for GHGs, the documents submitted to the EPA under Paragraph VI.B. shall be submitted through the EPA's Electronic Permit System (EPS) at [www.cdx.epa.gov](http://www.cdx.epa.gov). Correspondence or other information that cannot be transmitted electronically between the parties to this agreement shall be sent by U.S. mail or express delivery, as agreed upon via email.

## VII. Administrative Provisions

- A. This delegation of PSD source review authority becomes effective upon the date of signature by both parties to this agreement. Once this Delegation Agreement becomes effective, it supersedes the previous PSD Delegation Agreement from the EPA to the Department, which went into effect on February 8, 2016.
- B. The EPA retains its discretion to revoke this Delegation Agreement in whole or in part. The Department retains its discretion to request from the EPA the revocation of this Delegation Agreement, which the EPA shall grant within ten days of receipt of such request. Any revocation of this Delegation Agreement shall be effective as of the date specified in a Notice of Revocation to be issued by the EPA. This agreement is effective until revoked. Bases for revocation may include, but are not limited to, the EPA's determination, after consultation with the Department, of any of the following:
  - 1. The Department's legal authority, rules and regulations, and/or procedures for implementing the federal PSD requirements pursuant to this Delegation Agreement are inadequate;
  - 2. The Department is not adequately implementing or enforcing the federal PSD program for GHGs in accordance with the terms and conditions of this Delegation Agreement, 40 CFR 52.21, 40 CFR part 124, or the CAA; or
  - 3. The Department has not implemented the requirements or guidance with respect to a specific PSD permit decision in accordance with the terms and conditions of this Delegation Agreement or the requirements of 40 CFR 52.21, 40 CFR Part 124, or the CAA.



- C. In the event that the Department is unwilling or unable to implement the federal PSD regulations at 40 CFR 52.21 or the related procedural requirements at 40 CFR Part 124 with respect to a source or activity subject to the federal PSD regulations, the Department shall immediately notify the EPA Region 9 Air and Radiation Division Director and the Manager of the Air and Radiation Division's Permit Office.
- D. The Department shall notify the EPA within ten days if applicable State or local law, regulations, or policies change in a manner relevant to the Department's implementation of the federal PSD program pursuant to this Delegation Agreement. If necessary, to ensure compliance with federal PSD program requirements following such a change, this Delegation Agreement shall be amended with agreement of both parties or revoked in whole or in part.

VIII. Signatures

On behalf of the Environmental Protection Agency, I grant delegation for implementation of source review under the federal PSD program, 40 CFR 52.21, to the Department pursuant to the terms and conditions of this Delegation Agreement and the requirements of the Clean Air Act.

10/2/22

Date

ELIZABETH  
ADAMS

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ADAMS  
Date: 2022.10.02 23:36:50  
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Elizabeth J. Adams  
Director, Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 9

On behalf of the Maricopa County Air Quality Department, I accept delegation of source review under the federal Prevention of Significant Deterioration program at 40 CFR 52.21 pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

9/20/2022

Date

DocuSigned by:  
*Bill Gates*

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Bill Gates  
Chairman  
Maricopa County Board of Supervisors

9/20/2022

Date

DocuSigned by:  
*Juanita Garza*

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Maricopa County Board of Supervisors



*Approved as to Form:*

Undersigned counsel has reviewed the foregoing Agreement pursuant to A.R.S. § 11-952(D) and has determined it is in proper form and within the powers and authority granted under the laws of the State of Arizona to Maricopa County.

August 9, 2022

Date



Karen J. Hattunaru-Tenez,  
Deputy County Attorney