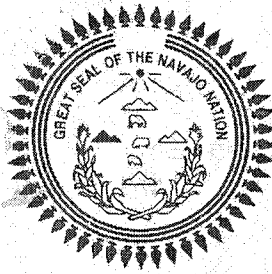


ATTACHMENT A

Legal Opinion of the Navajo Nation Attorney General Prepared for the Navajo Nation's
Application for Delegated Part 71 Operating Permit Program, dated July 15, 2004



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE
ATTORNEY GENERAL

HARRISON TSOSIE
ACTING DEPUTY ATTORNEY GENERAL

LEGAL OPINION OF THE NAVAJO NATION ATTORNEY GENERAL
PREPARED FOR THE NAVAJO NATION'S APPLICATION FOR A
DELEGATED PART 71 OPERATING PERMIT PROGRAM

Pursuant to 40 C.F.R. § 71.10(a), the Navajo Nation Attorney General ("Attorney General") is submitting this legal opinion confirming that the Navajo Nation laws provide adequate authority to carry out all aspects of a delegated Part 71 operating permit program under the federal Clean Air Act, 42 U.S.C. §§ 7401-7700 ("CAA"). There are two elements required for a showing of "adequate authority to carry out all aspects of the delegated program." 40 C.F.R. § 71.10(a). The first element is a demonstration of the Navajo Nation's jurisdiction over Part 71 sources. The second element is a demonstration of the Navajo Nation's authority to administer the specific components of a delegated Part 71 program, as set forth in 40 C.F.R. Part 71. Each of these elements is discussed separately below.

A. The Navajo Nation's Jurisdiction over Part 71 Sources

The Attorney General has already submitted a statement ("Jurisdictional Statement") to the U.S. Environmental Protection Agency ("EPA") demonstrating the Navajo Nation's jurisdiction over all Part 71 sources located within the formal Navajo Indian Reservation, the three satellite reservations of Alamo, Canoncito and Ramah, and all tribal trust lands outside the formal reservation boundaries.¹ The Jurisdictional Statement was submitted as an exhibit to the Navajo Nation's application for

¹ For convenience a copy of the Jurisdictional Statement, without its exhibits, is attached as Exhibit 1. As explained in the Jurisdictional Statement, there are currently no Part 71 sources located outside the formal reservation boundaries. Jurisdictional Statement at 2. Moreover, if other Part 71 sources are constructed in areas of Navajo Indian country other than reservation land or tribal trust lands while the Navajo Nation is administering a delegated Part 71 program, the Navajo Nation will supplement its Jurisdictional Statement and its application for delegation at that time. *Id.* at n.4.

"treatment as a state" to administer a delegated Part 71 program, pursuant to CAA § 301(d)(2)(B), 42 U.S.C. § 7601(d)(2)(B), and 40 C.F.R. §§ 49.6, 49.7 and 71.10, and is hereby incorporated into this legal opinion to the extent necessary to meet the first element of the "adequate authority" showing.²

As explained in the Jurisdictional Statement, the Navajo Nation is not asserting jurisdiction at this time over the former "Bennett freeze" area of the formal Navajo Indian Reservation nor over the Four Corners Power Plant or the Navajo Generating Station, two coal-fired power plants located within the formal Reservation boundaries.³ There are currently no Part 71 sources within the former Bennett Freeze area and, as noted in the Jurisdictional Statement, once the litigation concerning this area comes to a close the Navajo Nation will supplement its Jurisdictional Statement accordingly.⁴ The Navajo Nation also will supplement its Jurisdictional Statement and its application for delegation to include the two power plants once an agreement that is currently being negotiated with them is finalized.⁵ Because the Navajo Nation will be administering all aspects of the delegated Part 71 program, even though it is temporarily excluding the two power plants from its application, the Navajo Nation's application is for a full delegation under 40 C.F.R. § 71.10.

B. The Navajo Nation's Authority to Administer All Required Components of a Delegated Part 71 Program

Pursuant to Subchapter 2, Part H of the Navajo Nation Air Pollution Prevention and Control Act ("NNCAA"), 4 N.N.C. §§ 1101-1162 (as amended on April 22, 2004 and signed into law on May 7, 2004) (attached as Exhibit 2), the Navajo Nation Environmental Protection Agency ("Navajo Nation EPA") is fully authorized to implement "a permit program or portion thereof meeting the requirements of title V of the Clean Air Act and the regulations thereunder." NNCAA § 1134(A)(1). A delegated Part 71 permit

² Although 40 C.F.R. § 71.10 does not specifically require a tribe to submit a "treatment as a state" application to administer a delegated Part 71 program, § 71.10(a) provides that EPA may delegate such authority to an "eligible tribe," which is defined in § 71.2 as a tribe that meets the criteria for treatment as a state.

³ Jurisdictional Statement at 6-7.

⁴ *Id.* at 7.

⁵ *Id.*

program comes within this scope of authority. Moreover, Part H contains all the authorities required by the CAA for implementation of an operating permit program, including authorities for developing permit applications, permitting procedures, public notice procedures, inspection, monitoring and reporting requirements, and a permit fee schedule, all in accordance with CAA Title V and its implementing regulations. In addition, Subchapter 3 of the NNCAA contains comprehensive enforcement authority to ensure compliance with the NNCAA, its implementing regulations, and any "permits, orders, . . . or fees issued or approved pursuant to" the NNCAA. See NNCAA § 1152(A). Finally, NNCAA § 1134(A)(4) specifically authorizes the Navajo Nation EPA, through its Executive Director, to "enter into a delegation agreement with USEPA providing for the Director to implement a CAA Title V operating permit program pursuant to 40 C.F.R. part 71."

Further authority for the Navajo Nation EPA to administer a delegated Part 71 program is provided by the Navajo Nation Operating Permit Regulations (as amended on July 8, 2004) ("NNOPR") (attached as Exhibit 3). First, Subpart VII of the NNOPR specifically provides for a Part 71 program delegation. NNOPR § 701 states that:

Upon delegation of a Part 71 program by USEPA Region IX to the Navajo Nation EPA, the Navajo Nation EPA shall have the authority to issue, amend, revoke, reissue, modify, enforce and renew Part 71 permits to Part H sources pursuant to the procedures set forth both in these regulations and 40 C.F.R. part 71 [where a "Part H source" is a source subject to a CAA Title V operating permit program].

Moreover, with respect to administering all the aspects of a delegated part 71 program, NNOPR § 704 specifically provides that "40 C.F.R. Part 71 is incorporated by reference into this regulation for purposes of administering the delegated Part 71 program." There is therefore no question that the Navajo Nation EPA has adequate authority as required by 40 C.F.R. § 71.10(a).

In addition, NNOPR § 704 provides that certain provisions of the NNOPR, as well as the provisions of Part 71, apply to delegated Part 71 permits. These provisions are enumerated in NNOPR § 705, and include permit processing, enforcement and fee provisions (subparts IV - VI of the NNOPR). All of these provisions correspond to and are consistent with the federal regulations in Part 71, and further demonstrate the Navajo Nation's authority to "carry out all aspects of the delegated program."

Furthermore, where appropriate, the NNOPR also refers to the Navajo Nation Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings and Rulemakings ("NNUR") (attached as Exhibit 4). The administrative procedures contained in the NNUR demonstrate that the Navajo Nation EPA has adequate permit processing, hearing and enforcement authorities to administer a delegated Part 71 program (including to administer the requirements of § 71.11), even apart from the incorporation by reference of Part 71 into the NNOPR.⁶

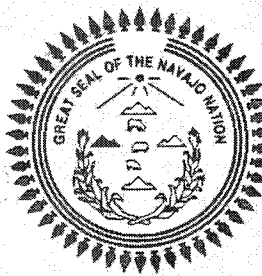
As of the date of this legal opinion, the three Navajo laws discussed above - the NNCAA, the NNOPR, and the NNUR - are all in full force and effect.

Finally, this legal opinion certifies that no applicable provision of Navajo Nation law requires that a part 71 permit or renewal be issued after a certain time if the Navajo Nation EPA has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected states. In fact, NNOPR § 401(G) specifically provides that "No permit, revision, or renewal shall be issued by failure of the Director to act on an application." The Navajo Nation EPA is therefore entitled to receive delegation of signature authority pursuant to 40 C.F.R. § 71.10(f)(2).

Date: 7/15/04


Louis Denetsosie, Attorney General
Office of the Attorney General
Navajo Nation Department of Justice

⁶ The NNUR specifically provides that in the case of any conflict between a provision of the NNUR and the NNOPR, the provision of the NNOPR shall govern, see NNUR § 101(a), and the NNOPR also specifically notes when its provisions override provisions of the NNUR, see, e.g., NNOPR § 401(A)(1) ("notwithstanding the provisions of § 202(d) of the Uniform Rules"). Since the NNOPR contains all the requirements of CAA Title V and its implementing regulations, these provisions ensure that the administrative procedures the Navajo Nation EPA follows for CAA Title V permits will be consistent with and include all the requirements of Title V and its implementing regulations.



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

LOUIS DENETSOSIE
ATTORNEY GENERAL

M E M O R A N D U M

TO: ALL CONCERNED

FROM:

Louis Denetsosie

Louis Denetsosie, Attorney General
Office of the Attorney General

DATE: July 6, 2004

SUBJECT: DELEGATION OF AUTHORITY

Mr. Donovan D. Brown, Sr. is hereby delegated the authority to direct and be responsible for all routine duties pertaining to the Office of the Attorney General, Navajo Nation Department of Justice.

The authority will begin July 6, 2004 at 8:00am and end on July 16, 2004 at 5:00pm.

Your cooperation with Mr. Brown will be appreciated.

ACKNOWLEDGED:

Donovan D. Brown, Sr.

Donovan D. Brown, Sr.
Assistant Attorney General
Human Services and Government Unit

ATTACHMENT B

Agreement for the Delegation of Federal Prevention of Significant Deterioration (PSD)
Regulations by the United States Environmental Protection Agency, Region 10 to the State of
Washington Department of Ecology, dated February 23, 2005

**Agreement for the Delegation of the Federal
Prevention of Significant Deterioration (PSD) Regulations
by the United State Environmental Protection Agency, Region 10
to the State of Washington Department of Ecology**

I. Introduction

The Washington State Department of Ecology (Ecology) and U.S. Environmental Protection Agency (EPA) desire to continue to have Ecology implement and enforce the federal PSD regulations. Accordingly, EPA and Ecology are entering into this Delegation Agreement. Through this Agreement, the EPA and Ecology establish the legal and procedural bases for Ecology to conduct new source review and to implement and enforce the federal PSD regulations.

II. Legal Authority

- A. Pursuant to 40 CFR 52.21(u), the EPA Administrator may delegate to a State full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21. The EPA Administrator has delegated to the Director of the Region 10 Office of Air, Waste, and Toxics, the authority to delegate the federal PSD regulations to a State or local agency. The State or local agency that receives delegation from EPA Region 10 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.
- B. EPA's PSD regulations are found in 40 CFR 52.21, as in effect on July 1, 2004. These regulations include amendments to 40 CFR 52.21 that were promulgated on October 27, 2003 (68 FR 61248) that were stayed by court order on December 24, 2003. For the purposes of this delegation, the "federal PSD regulations" mean those regulations in 40 CFR 52.21(a)(2), (b) – (d), (h) – (r), and (v) – (bb) that were in effect as of July 1, 2004. See the July 1, 2004 Federal Register (69 FR 40274) for the specific provisions that were stayed by the court and will not become effective until the court terminates the stay.
- C. Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 2, 2004. See WAC 173-400-117, -118, -171, and -700 through 750 (effective February 10, 2005), hereinafter referred to as the "State PSD regulations." By adopting by reference 40 CFR 52.21 (as in effect on July 2, 2004), Ecology has adopted amendments to 40 CFR 52.21 that were promulgated on October 27, 2003 and stayed by court order on December 24, 2003 (see 69 FR 40274). By adopting by reference 40 CFR 52.21 as in effect on July 2, 2004, Ecology has also adopted the notations to 40 CFR 52.21 which identify the provisions of 40 CFR 52.21 that have been stayed by the court and provide that the stayed provisions will become effective immediately if the court terminates the stay.
-
- D. WAC 173-400-720(4)(b)(iii)(C) modifies 40 CFR 52.21(r)(6) to require sources to submit information and reports related to determinations of PSD non-applicability to the Washington Title V permitting authorities rather than Ecology.
- E. EPA has determined that Chapter 43.05 of the Revised Code of Washington (RCW), often referred to as "House Bill 1010," conflicts with the delegation requirements of 40 CFR 52.21(u). Based on this determination, Ecology has determined that Chapter 43.05 RCW does not apply to permit to construct requirements of Chapter 173-400 WAC, including the State PSD regulations.

- F. The Ecology Division of the Washington Attorney General's Office has issued an opinion¹ stating that the provisions of RCW 70.94.035, "Air Technical Assistance Visits by Ecology," do not prevent enforcement actions, but only require Ecology to wait until the end of the correction period to determine whether enforcement action is appropriate. Based on that opinion letter, EPA has determined that RCW 70.94.035 does not impermissibly interfere with Washington's enforcement authority. See 59 FR 42552 (August 18, 1994) (proposed interim approval of Washington's title V program).
- G. Ecology and EPA agree that requirements in PSD permits issued under the authority of the State PSD regulations are federally enforceable requirements.

III. Scope of Delegation

- A. Pursuant to 40 CFR 52.21(u), the EPA Director of the Office of Air, Waste, and Toxics hereby delegates to the Ecology Air Program Manager responsibility for implementing and enforcing the federal PSD regulations, except for the Class I variance provisions in 40 CFR 52.21(p)(5) – (8), for sources located in the State of Washington, subject to the terms and conditions of this Delegation Agreement
- B. Pursuant to 40 CFR 52.21(u), the EPA Director of the Office of Air, Waste, and Toxics also hereby delegates to the Directors of the Washington Title V permitting authorities the responsibility for receiving, on behalf of the Administrator, the information and reports required pursuant to 40 CFR 52.21(r)(6) from sources located in the State of Washington.
- C. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C.1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD regulations in Indian Country in Washington because Ecology did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. § 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust land within the 1873 Survey Area. Therefore, Ecology will implement and enforce the federal PSD requirements on these non-trust lands of the 1873 Survey Area as provided in this Delegation Agreement.
- D. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities under the jurisdiction of the State of Washington Energy Facilities Site Evaluation Council (EFSEC).
- E. ~~Ecology's authority to conduct new source review and to implement and enforce 40 CFR 52.21 does not include the amendments to 40 CFR 52.21 promulgated on October 27, 2003 (68 FR 61248) that are currently stayed by court order.~~

¹Letter from Mary Sue Wilson, Assistant Attorney General, to Chuck Clarke, Regional Administrator, dated June 7, 1994, regarding Supplement to October 27, 1993 and December 30, 1993 Attorney General Opinion Letters for Washington State Department of Ecology.

IV. Requirements

- A. Ecology shall issue PSD permits under this Delegation Agreement utilizing the State PSD regulations and 40 CFR Part 124.19 as it relates to appeals of PSD permits.
- B. The responsibility for conducting new source review for all regulated sources as provided by this Delegation Agreement, including those under the jurisdiction of the Industrial Section, the Nuclear and Mixed Waste Program, and local air authorities in the State of Washington, rests with Ecology's Air Quality Program. EPA is relying on the technical and programmatic expertise of program staff located in the Ecology Air Quality Program Headquarters Office (AQP-Headquarters) for the implementation of this Delegation Agreement.
1. The processing and issuance of PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and Plant-wide Applicability Limits shall be conducted by program staff located in Ecology's AQP-Headquarters.
 2. Enforcement of PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and Plant-wide Applicability Limits shall be conducted as described in Section VI of this agreement.
 3. AQP-Headquarters will make all determinations related to the applicability and interpretation of the federal PSD regulations as they would apply to individual stationary sources and applications. AQP-Headquarters determinations will be made by an AQP-Headquarters section manager or higher level Ecology manager. A copy of any written determination will be sent to EPA Region 10.
- C. Ecology will ensure that there are adequate resources and trained personnel in the AQP-Headquarters to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, best available control technology (BACT) determinations, air quality monitoring network design, and modeling procedures. EPA will provide PSD training for Ecology staff to meet needs identified by EPA or Ecology.
- D. Where the rules or policies of Ecology are more stringent than the federal PSD regulations, Ecology may elect to include such requirements in the PSD permit along with the EPA requirements.
- E. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.
- F. Ecology will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD regulations as provided in this Delegation Agreement. EPA will provide Ecology with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation or where the guidance in the Region 7 NSR database is in conflict with current PSD program requirements, Ecology shall consult with the EPA Office of Air, Waste, and Toxics on its proposed interpretation of the EPA regulations.
- G. Ecology will at no time grant a waiver to the requirements of the federal PSD regulations or to the requirements of an issued PSD permit.

H. Ecology shall consult with the appropriate State and local agency primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any determination under this Delegation Agreement.

V. Permit Issuance, Modification, and Appeals

A. Ecology shall not issue a PSD permit until EPA has notified Ecology in writing that EPA has satisfied its obligations, if any, under Section 7 of the Endangered Species Act (ESA), 16 USC § 1531 et seq., and 50 CFR Part 402, Subpart B ("Consultation Procedures"), and with Section 305(b)(2) of the Magnuson-Stevens Fishery and Conservation Act ("Magnuson-Stevens Act"), 16 USC § 1801 et seq., and 50 CFR Part 600, Subpart K ("EFH Coordination, Consultation, and Recommendations"), for federal PSD permits, regarding essential fish habitat. The Attachment to this Delegation Agreement contains a description of EPA's steps and timelines for ESA consultation.

B. All final determinations issued by Ecology under this Delegation Agreement shall indicate that an appeal to the EPA Administrator (Environmental Appeals Board) is available pursuant to 40 CFR Part 124.

C. The permit provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Administrator on PSD permits issued by Ecology 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 preliminary determination or proposed permit condition, the final permit issued by Ecology is required to state that 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 commenter of the final decision to issue, modify, or revoke and reissue the permit, unless review is requested on the permit under 40 CFR 124.19 within the 30 day period.
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.

D. Revisions to existing PSD permits, including administrative amendments, shall be processed in accordance with requirements of WAC 173-400-750 and WAC 173-400-730(5).

E. Failure by Ecology to comply with the requirements of WAC 173-400-730 through 750 and Sections IV. and V. of this Delegation Agreement shall render the subject permit invalid for federal PSD purposes.

VI. Enforcement

A. Ecology or the local air authority with jurisdiction over the source will have the primary responsibility for enforcing the federal PSD regulations for sources subject to this Delegation Agreement, provided, however, that:

1. In the case of any requirement of the federal PSD regulations that is not also a requirement of the State PSD regulations, EPA retains primary enforcement authority.
2. Ecology shall have the responsibility under this Delegation Agreement to enforce the federal PSD regulations in the event that a local air authority does not.

3. In all cases, EPA retains authority pursuant to sections 113 and 167 of the Clean Air Act with respect to sources that are subject to the federal PSD regulations.
- B. In delegated programs, the role of the State and local agencies is that of primary enforcer or "front line" agency in program implementation. This includes helping to define EPA's role in the regulated community for a given program. EPA's principal role is "back up" for the State/local program. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:
1. At the State or local air agency's request;
 2. If a State or local air agency action is determined to be inadequate, or the State/local agency fails to carry out action in a timely or appropriate manner (in this situation, the parties will adhere to the "no surprises" principle and will follow the conflict resolution process described in Section IX of the *Washington State Compliance Assurance Agreement for Air Programs (May 30, 2003)*); and/or
 3. As part of EPA's role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.
- C. PSD enforcement actions under this Delegation Agreement will be undertaken by qualified inspectors or trained enforcement staff in Ecology's AQP Regional Offices, Ecology's Industrial Section, Ecology's AQP Headquarters, Ecology's Nuclear and Mixed Waste Program, or local air authorities.
- D. Enforcement of the federal PSD regulations is subject to the *Washington State Compliance Assurance Agreement for Air Programs (May 30, 2003)*, signed by both the State and local agencies. This clearly defines roles and responsibilities, including timely and appropriate enforcement response and the maintenance of the Aerometric Information Retrieval System/Aerometric Facility Subsystem (AIRS/AFS).

VII. EPA and Ecology Communications

- A. Ecology shall submit to EPA a copy of each PSD permit application and a copy of every action related to the consideration of the PSD permit.
- B. Ecology shall provide an opportunity for the EPA permit engineer to meet with the Ecology permit writer at not less than two points in the permitting process: (1) prior to Ecology making the completeness determination on a permit application, and (2) prior to Ecology making its preliminary determination and proposed permit available for public comment. The purpose of these meetings is to identify and resolve any issues between the agencies prior to Ecology making these determinations. EPA will remain cognizant of Ecology's permit processing timelines and will work rapidly to resolve any issues to prevent or minimize any delays.
- C. Ecology and EPA should communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by Ecology and are not provided to EPA in accordance with VII.A. above shall be made available to EPA upon request.

- D. Ecology will enter information on each final BACT determination for a PSD permit into EPA's RACT/BACT/LAER Clearinghouse within 30 days after final permit issuance.
- E. Ecology will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs) (attached), Ecology shall enter the following information or activities:
 - 1. The Air Program Code for PSD
 - 2. The date the PSD permit is issued or modified
 - 3. The final effective date of the PSD permit (or modified permit)
 - 4. The date that the new source or modification begins construction; and
 - 5. The date that the new source or modification begins operation.

- F. Correspondence from EPA to Ecology will be sent to:

Manager, Technical Services Section
Department of Ecology, Air Quality Program
P. O. Box 47600
Olympia, WA 98504-7600

- Correspondence from Ecology to EPA will be sent to:

Manager, Federal and Delegated Air Programs Unit
Office of Air, Waste, and Toxics, AWT-107
Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

VIII. Future Changes to EPA or Ecology Regulations

- A. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations does not extend to changes to 40 CFR 52.21 that occur after July 1, 2004.
- B. A new request for delegation will be required for any changes to 40 CFR Part 52.21 occurring after July 1, 2004. This includes the amendments to 40 CFR 52.21 that were promulgated on October 27, 2003 (68 FR 61248) that are currently stayed by court order as described in 69 FR 40274. Implementation and enforcement of new or revised federal PSD regulations will remain the sole responsibility of EPA until a new Delegation Agreement is signed.
- C. In the event that Ecology's rules change, this delegation shall be either amended to ensure the continued implementation of EPA's PSD regulations or the delegation shall be revoked. Ecology shall keep EPA apprised of any proposed modifications to its basic statutory or regulatory authorities, or procedures.

IX. Administrative

- A. This delegation supersedes the previously delegated authority contained in the March 28, 2003 Agreement for Delegation.

- B. If, after consultation with Ecology, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. As part of the consultation, the parties will adhere to the "no surprises" principle and will follow the conflict resolution process described in Section X. Any such revocation shall be effective as of the date specified in a *Notice of Revocation*.
1. Ecology's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
 2. Ecology is not adequately implementing or enforcing the federal PSD regulations; or
 3. Ecology 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.
- C. In the event that Ecology is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, Ecology will immediately notify the Director of the Office of Air, Waste, and Toxics. Failure to notify the Director of the Office of Air, Waste, and Toxics does not preclude EPA from exercising its enforcement authority.
- D. EPA may review the state PSD permitting program as part of the review of the Performance Partnership Agreement (PPA) or any other appropriate agreement. EPA may review State procedures and recommend changes as necessary. All recommendations will be in writing.
- F. The Delegation Agreement shall expire on the effective date of an EPA action to approve or disapprove an Ecology PSD state implementation plan.
- G. Upon issuance by EPA Region 10 of a delegation agreement assigning full or partial implementation for the federal PSD regulations to a local air pollution control authority in Washington, this agreement is automatically modified to conform with that delegation to the local authority.

X. Dispute Resolution

EPA and Ecology will use an agreed upon dispute resolution process to handle the conflicts that may arise as the agencies implement the PSD permitting program and will treat the resolution process as an opportunity to improve the agencies' joint efforts and not as an indication of failure.

A. Informal Dispute Resolution Guiding Principles

EPA and Ecology will ensure that all staff and managers:

1. Recognize conflict as a normal part of the State/Federal relationship.
2. Approach disagreement as a mutual problem requiring efforts from both agencies to resolve disputes.
3. Approach the discussion as an opportunity to improve the product through joint efforts.
4. Aim for resolution at the staff level, while keeping management briefed.
5. Seriously consider all issues raised but address them in a prioritized format to assure that sufficient time is allocated to the most significant issues.

February 23, 2005

6. Promptly disclose underlying assumptions, frames of reference and other driving forces.
7. Clearly differentiate positions and check understanding of content and process with all appropriate or affected parties to assure acceptance by all stakeholders.
8. Document discussions to minimize future misunderstandings.
9. Pay attention to time frames and/or deadlines and escalate quickly when necessary.

B. Formal Conflict Resolution

The following conflict resolution procedures will be used if the informal route has failed to resolve all issues:

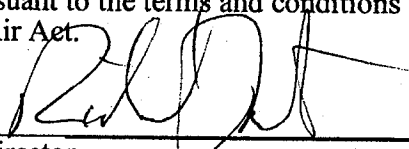
1. Define dispute - any disagreement over an issue that prevents a matter from going forward.
2. Resolution process - a process whereby the parties move from disagreement to agreement over an issue.
3. Principle - all disputes should be resolved at the front line or staff level.
4. Time frame - generally, disputes should be resolved as quickly as possible but within two weeks of their arising at the staff level. If unresolved at the end of two weeks, the issue should be raised to the next level of each organization.
5. Escalation - when there is no resolution and the two weeks have passed, there should be comparable escalation in each organization, accompanied by a statement of the issue and a one-page issue paper. A conference call between the parties should be held as soon as possible. Disputes that need to be raised to a higher level should again be raised in comparable fashion within each organization.

XI. Signatures

On behalf of the Environmental Protection Agency, I grant delegation of the federal PSD regulations to the Washington Department of Ecology pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date:

2/23/05

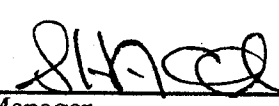


Director
Office of Air, Waste, and Toxics
Environmental Protection Agency
Region 10

On behalf of the State of Washington and the Department of Ecology, I accept delegation of the federal PSD regulations pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date:

2/24/05



Manager
Air Quality Program
State of Washington
Department of Ecology

Attachment 1

Region 10 Process for Fulfilling Obligations under the Endangered Species Act (ESA) and the Magnuson-Stevens Act (MSA) (specifically Essential Fish Habitat) for PSD Permits

Determine if a biological assessment (BA) is needed

- After receipt of a permit application Region 10 will determine what, if any, threatened/endangered species (T/ES) are located in the proximity of the proposed action. A species list will be requested from the Services if the lists are not available on the Services websites.
- If there are no endangered or threatened species in the proximity of the proposed action, Region 10 will make a note to the file/administrative record of a finding of no effect and provide a copy to Ecology. ESA/MSA obligations are satisfied.
- If T/ES are present, either Region 10 or the permit applicant must prepare an initial review using screening criteria. If the conclusion from the initial review is "no effect," then Region 10 will draft a memo to the file/administrative record of the review its finding of no effect, and provide a copy to Ecology. ESA/MSA obligations are satisfied.
- Region 10's goal will be to complete these steps prior to Ecology's completeness determination on the permit application, contingent on available resources.

Preparing the BA

- If the initial review is inconclusive, or suggests that the proposed action "may affect, but not likely to adversely affect" T/ES, then a biological assessment (BA) will need to be prepared.
- The BA should be prepared as soon as possible and can be done either by the applicant (using a consultant) or by Region 10.
- The Region 10 Office of Environmental Assessment (OEA) would be the office that would prepare the BA. The ability of OEA to prepare BA's is limited and will be prioritized based on workload. OEA would, in most cases, also review the BA prepared by the applicant.
- The BA must address the topics required by the Services, as described in the "*Consultation Handbook (1998)*."
- Region 10 will attempt to ensure that the BA is prepared and shared with the Services in a timely manner. However, this is dependent upon the resources EPA has available.

After the BA has been prepared

- Once the BA has been prepared, and a conclusion of "may affect, but not likely to adversely affect" has been reached, Region 10 will make a finding based on the information presented in the BA.
- Region 10 will determine whether or not it agrees with conclusion in the BA. If it does, then the BA will be transmitted to the appropriate Services offices asking for concurrence with the findings of "may affect, not likely to adversely affect." (See "Contact List for FWS and NOAA Fisheries Offices.")
- Once concurrence is obtained from the Services, Region 10 will prepare memo to file/administrative record summarizing the date concurrence was obtained and the species evaluated, noting that informal consultation has been completed. Region 10 will provide a copy of this to Ecology. ESA/MSA obligations are satisfied.
- If the BA concludes that the action is likely to adversely affect or jeopardize the species, or if the Services do not concur, and changes cannot be made to the BA or project (including mitigation) to satisfy their concerns, then formal consultation will need to take place.

Other Considerations

The administrative record, and as appropriate, the preliminary determination, final determination, and permit should reflect the actions taken as a result of complying with the ESA/MSA.

ATTACHMENT C

Agreement for the Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program Set Forth In 40 C.F.R. Section 52.21 by the United States Environmental Protection Agency, Region 9 to the Bay Area Quality Management District, dated February 7, 2011

Agreement for Partial Delegation of the
Federal Prevention of Significant Deterioration (PSD) Program
Set Forth In 40 C.F.R. Section 52.21
by the United States Environmental Protection Agency, Region 9
to the Bay Area Air Quality Management District

The undersigned, on behalf of the Bay Area Air Quality Management District (District) and the United States Environmental Protection Agency (EPA), hereby agree to partial 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 partial delegation is executed pursuant to 40 C.F.R. Section 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 C.F.R. Section 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 C.F.R. Section 52.270(a)(3), and they govern the implementation of the Clean Air Act's PSD requirements in the San Francisco Bay Area.
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 C.F.R. Section 52.21.

3. Under Subsection (u) of EPA's PSD Regulations, 40 C.F.R. § 52.21(u), EPA may delegate its authority to conduct its PSD source review under 40 C.F.R. Section 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. EPA and the District have entered into several PSD delegation agreements in the past under 40 C.F.R. Section 52.21(u), the most recent of which became effective February 6, 2008. These prior delegation agreements were based on a finding that the PSD portion of District Regulation 2, Rule 2, generally meets the requirements of 40 C.F.R. Section 52.21 for issuing PSD permits, and that District permits issued in accordance with the provisions of District Regulation 2, Rule 2 would therefore be deemed to meet the federal PSD permit requirements in 40 C.F.R. Section 52.21. (These prior delegation agreements did not, however, delegate authority to issue PSD permits using new additional calculation methodologies for determining if a proposed project will result in a major modification and the application of a Plantwide Applicability Limit (PAL), which were promulgated by EPA effective March 3, 2003, (*see* 67 Fed. Reg. 80,186), and were upheld by the United States Court of Appeals for the District of Columbia Circuit on June 24, 2005.)
5. It has now become clear that although the PSD portion of District Regulation 2, Rule 2 may be generally consistent with the Federal PSD requirements in 40 C.F.R. Section 52.21, the District's regulations are not completely consistent with the Federal PSD requirements in every respect. Accordingly, if the District issues PSD permits under its Regulation 2, Rule 2, such permits may not in certain circumstances satisfy all federal PSD requirements in 40 C.F.R. Section 52.21, or all federal procedural requirements for PSD permit issuance in 40 C.F.R. Part 124. EPA and the District are therefore revising their delegation agreement under 40 C.F.R. Section 52.21(u) to clarify that the District must issue PSD permits pursuant to the federal PSD requirements of 40 C.F.R. Section 52.21, and under the provisions of District Regulation 2, Rule 2 only to the extent that that such provisions are consistent with the requirements of 40 C.F.R. Section 52.21.

II. Scope of Partial Delegation

1. This partial delegation of authority to issue, modify and extend PSD permits does not delegate authority to the District to issue new or modified PSD permits based on PALs.
2. For all applications for new, modified, or extended PSD permits other than those described in Paragraph II.1. above, District-issued permits with federal PSD provisions that:
 - a. satisfy all of the substantive requirements of the PSD program in 40 C.F.R. Section 52.21, including (without limitation) the federal BACT requirement pursuant to 40 C.F.R. Section 52.21(j) and 40 C.F.R. Section 52.21(b)(12), and the impact analysis requirements pursuant to 40 C.F.R. Section 52.21(k)-(o); and
 - b. have been issued in compliance with all of the procedural requirements of the PSD program in 40 C.F.R. Section 52.21 and 40 C.F.R. Part 124;

shall be deemed to meet federal PSD permit requirements pursuant to the provisions of this delegation agreement.

III. Applicability

1. EPA and the District have agreed to this partial delegation of PSD authority to allow the District to issue initial and modified PSD permits and extensions of PSD permits, except for modified permits based on an applicability determination using the methods adopted on December 31, 2002 (*see* 67 Fed. Reg. 80,186). EPA shall make the PSD applicability determination and issue any necessary PSD permits if a source seeks a PSD applicability determination using the methods adopted on December 31, 2002; or seeks a new or modified PSD permits with a PAL. (Modifications include Administrative Amendments, Major Modifications, and non-Major Modifications.)
2. Pursuant to this partial delegation agreement, the District shall have primary responsibility for issuing all new and modified PSD permits and extensions of PSD permits.

3. The authority to issue a PSD permit containing a PAL is not delegated to the District as part of this delegation agreement. If any facility subject to this agreement requests a new permit or permit modification to incorporate conditions for a PAL, as provided in 40 C.F.R. Section 52.21(aa), EPA shall process the application and issue the final PAL permit for the modification.
4. 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.
5. This partial delegation of PSD authority becomes effective upon the date of signature by both parties to this agreement.

IV. General Delegation Conditions

1. The District shall issue PSD permits under this partial delegation agreement in accordance with the requirements of 40 C.F.R. Section 52.21 in effect as of the date the District issues the final permit, except as provided in Subsection III; and, to the extent that the PSD requirements of the District's Regulation 2, Rule 2 are consistent with the requirements of 40 C.F.R. Section 52.21, in accordance with those requirements as well.
2. 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. 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, however. 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.

3. 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.
4. 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 for major sources, major modifications, and permit extensions as set forth in 40 C.F.R. Section 52.21 and 40 C.F.R. Part 124.
5. 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 C.F.R. Section 52.21, 40 C.F.R. 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.
6. Revocation of this partial delegation agreement as specified in Paragraph IV.5. 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 C.F.R. Section 52.21, 40 C.F.R. 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 C.F.R. Section 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).
7. If the District determines that issuing a PSD permit or permits in accordance with the terms and conditions of this partial delegation agreement, 40 C.F.R. Section 52.21, 40 C.F.R. 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.

8. The permit appeal provisions of 40 C.F.R. 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 final permit decision of the final permit decision in accordance with 40 C.F.R. Section 124.15. The notice of final permit decision shall include (i) reference to the procedures for appealing the final permit decision under 40 C.F.R. Section 124.19; and (ii) a statement of the effective date of the final permit decision established pursuant to 40 C.F.R. Section 124.15(b) and that the effective date shall be suspended if the final permit decision is appealed pursuant to 40 C.F.R. Section 124.19 until such appeal is resolved by the EAB.

V. Communication Between EPA and the District

The District and EPA will use the following communication procedures:

1. The District will forward to EPA copies of (1) all draft PSD permits prepared by the District pursuant to 40 C.F.R. Section 124.6; (2) all "Statements of Basis" prepared by the District pursuant to 40 C.F.R. Section 124.7 and/or "Fact Sheets" prepared by the District pursuant to 40 C.F.R. Section 124.8; and (3) all public notices the District issues pursuant to the requirements of 40 C.F.R. Section 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.
2. Upon any final PSD permit issuance, the District will forward to EPA copies of the notice of final permit issuance required by 40 C.F.R. Section 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).

3. The District 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 District shall notify and/or consult with the appropriate Federal, State and local agencies as required by 40 C.F.R. Section 52.21 and 40 C.F.R. 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 C.F.R. Section 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.

VII. Permits

1. The District shall follow EPA guidance on any matter involving the interpretation of sections 160-169 of the Clean Air Act or 40 C.F.R. Section 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.

2. The District shall at no time grant any waiver of the PSD permit requirements.
3. 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).
4. 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.
5. The primary responsibility for the administration and enforcement of the following EPA-issued permits is delegated to the District:

<u>Facility</u>	<u>EPA File Number</u>	<u>Permit Issuance Date</u>
Calpine Gilroy Cogen	SFB 84-04	August 1, 1985
Cardinal Cogen	SFB 82-04	June 27, 1983
IBM Corporation	SFB 82-01	June 9, 1982
Martinez Cogen Limited Partnership	SFB 83-01	December 13, 1983
Tosco Corporation	SFB 78-07	December 18, 1978
Tosco SF Area Refinery at Rodeo	SFB 85-03	March 3, 1986

District-issued modifications to these permits which meet the requirements of 40 C.F.R. Section 52.21 will be considered valid by EPA. The District shall issue any permit modifications to the above listed facilities pursuant to this agreement.


VIII. Permit Enforcement

1. The primary responsibility for enforcement of the PSD regulations 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 Paragraph VIII.3. 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.

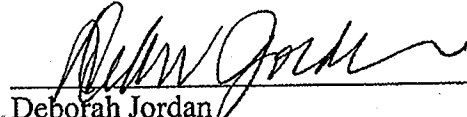
2. Nothing in this partial delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, 40 C.F.R. Section 52.21, or any PSD permit issued by the District pursuant to this agreement.
3. In the event that the District is unwilling or unable to enforce a provision of this 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.

3-8-11
Date



Jack P. Broadbent
Executive Officer/APCO
Bay Area Air Quality Management District

2-7-2011
Date



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

ATTACHMENT D

Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program
by the United States Environmental Protection Agency, Region 9 to the Nevada Division of
Environmental Protection, dated October 19, 2004

**Agreement for Delegation of the Federal
Prevention of Significant Deterioration (PSD) Program
by the United States Environmental Protection Agency, Region 9
to the Nevada Division of Environmental Protection**

This agreement sets forth the terms and conditions according to which Nevada Division of Environmental Protection (NDEP) agrees to implement and enforce the federal PSD regulations found in 40 CFR. 52.21 (effective July 1, 2003). See 67 FR 80186, (December 31, 2002).

I. Introduction

NDEP has adopted by reference the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2003. See NAC 445B.221(1). These provisions shall hereafter be referred to as the "State PSD regulations."

II. Legal Authority

- A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.
- B. As discussed above, NDEP has adopted by reference the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2003. See NAC 445B.221(1).
- C. NDEP and EPA agree that requirements in PSD permits issued under the authority of NAC 445B.221(1) are federally enforceable requirements.

III. Scope of Delegation

- A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to NDEP full responsibility for implementing and enforcing the federal PSD regulations for all sources located in the State of Nevada under NDEP jurisdiction, subject to the terms and conditions of this Delegation Agreement.
- B. NDEP's delegation to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C.1151. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD program in Indian Country in Nevada because NDEP did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country.
- C. The EPA Administrator has delegated to the Director of the Region 9's Air Division, the authority to delegate the federal PSD regulations to any State or local agency. The State or local agency that receives delegation from EPA Region 9 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

IV. Requirements

- A. The responsibility for implementing the federal PSD program for all regulated sources as provided by this Delegation Agreement, rests with NDEP's Bureau Chief of the Bureau of Air Pollution Control. EPA is relying on the technical and programmatic expertise of the of NDEP's Bureau of Air Pollution Control in the implementation of this Delegation Agreement on NDEP's behalf. All applicability determinations under this Delegation Agreement will be made by the Bureau Chief of the Bureau of Air Pollution Control or a higher level manager within NDEP. In no event will an applicability determination be made at a level lower than the Bureau Chief.
- B. NDEP will ensure that there are adequate resources and trained personnel within the Bureau of Air Pollution Control to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, Best Available Control Technology (BACT) determinations, air quality monitoring network design, and modeling procedures.
- C. Where the rules or policies of NDEP are more stringent than the federal PSD program, NDEP may elect to include such requirements in the PSD permit along with the EPA requirements.
- D. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.
- E. NDEP will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD program as provided in this Delegation Agreement. EPA will provide NDEP with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation, NDEP shall consult with the EPA, Region 9, Air Division, Permits Office, on its proposed interpretation of the EPA regulations.
- F. NDEP will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.
- G. NDEP shall consult with the appropriate State and local agency 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.
- H. For federal PSD permits NDEP shall:
 - 1. Within 5 working days of receipt of a PSD permit application, notify the U.S. Fish and Wildlife Service (FWS) of the permit application, and to provide a copy of the permit application if requested.
 - 2. Notify applicants of the potential need for consultation between EPA and FWS if the project may affect an endangered species.
 - 3. Refrain from issuing a final PSD permit until EPA has notified NDEP that EPA has satisfied its obligations, if any, under the ESA and/or the Magnuson-Stevens Act.

V. Permit Issuance, Modification, and Appeals

- A. All permits issued by NDEP under this Delegation Agreement shall indicate that an appeal to the EPA Environmental Appeals Board (EAB) is available pursuant to 40 CFR part 124.
- B. The provisions in 40 CFR 124.19 shall apply to all appeals to the EAB on PSD permits issued by NDEP 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 preliminary determination or proposed permit condition, the final permit issued by NDEP 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 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 review is requested on the permit under 40 CFR 124.19 within the 30 day period.
 2. If an appeal is made to the EAB, the effective date of the permit is suspended until such time as the appeal is resolved.
- C. A PSD permit (or a portion of a PSD permit) for a change to a facility that is a major modification under the State PSD regulations but not the federal PSD regulations shall not be appealable to the EPA Environmental Appeals Board.
- D. Major modifications to existing PSD permits, except for administrative amendments, shall be processed in accordance with all of the substantive and procedural requirements applicable to new PSD permits.
- E. Failure by NDEP to comply with the requirements of 40 CFR part 124 related to PSD permits and this Section V. of the Delegation Agreement shall render the subject permit invalid for federal PSD purposes.

VI. Enforcement

- A. In all cases, EPA retains authority pursuant to sections 113 and 167 of the Clean Air Act with respect to sources that are subject to the federal PSD requirements, including federal PSD permits issued by NDEP.
- B. In delegated programs, the role of the State is that of primary enforcer or "front line" agency in program implementation. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:
1. At the State's request;
 2. If a State agency action is determined to be inadequate, or the State agency fails to carry out action in a timely or appropriate manner; and/or
 3. As part of EPA's role established in the collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.
- C. PSD enforcement actions under this Delegation Agreement will be undertaken by qualified inspectors or trained enforcement staff in NDEP's Offices

VII. EPA And NDEP Communications

- A. NDEP shall submit to EPA copies of the following documents, within the time frames indicated, for sources or activities subject to this Delegation Agreement:

Action	Submittal to EPA	Time frame
Receipt of PSD permit application	Copy of application and cover letter	Within ten working days after receipt
Completeness determination or letter of deficiencies	Copy of letter to applicant	Within ten working days after signature
Transmittal to Federal Land Manager (FLM) of PSD application	Copy of letter	Within ten working days after signature
Receipt of comments from FLM	Forward comment letter	Within ten working days of receipt
Preliminary determination, proposed PSD permit, public notice	Copy of technical review, proposed PSD permit, and public notice	Within five working days after completion of preliminary determination
Public notice of hearing (see 52.21(u)(2)(ii))	Copy of technical review, proposed PSD permit, and public notice	Within five working days after completion of preliminary determination
Receipt of comments from public	Copy of public comment letter(s)	Within ten working days of the close of the public comment period
Final determination, PSD permit and transmittal letter	Copy of final determination PSD permit and transmittal letter	Within five working days after final signature on PSD permit
BACT determination submittal to RACT/BACT/LAER Clearinghouse	Electronic submittal of required information	Within 30 working days of final signature on PSD permit

- B. NDEP and EPA should communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by NDEP and are not identified in the Table in Section VII.A. above should be made available to EPA upon request.

- C. NDEP will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs) (attached), NDEP shall enter the following information or activities:

1. The Air Program Code for PSD
2. The date the PSD permit is issued or modified
3. The final effective date of the PSD permit (or modified permit)
4. The date that the new source or modification begins construction; and
5. The date that the new source or modification begins operation.

D. Correspondence from EPA to NDEP will be sent to:

Chief, Bureau of Air Pollution Control
Nevada Division of Environmental Protection
333 West Nye Lane
Carson City, Nevada 89706

Correspondence from NDEP to EPA will be sent to:

Chief, Permits Office, Air Division (AIR-3)
USEPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

VIII. Future EPA Regulation Revisions

- A. NDEP's delegation to implement and enforce the federal PSD regulations does not extend to revisions to 40 CFR 52.21 that occur, or have occurred, after July 1, 2003.
- B. A new request for delegation will be required for any changes to 40 CFR Part 52.21 promulgated after July 1, 2003. Implementation and enforcement of new or revised requirements after July 1, 2003 will remain the sole responsibility of EPA until this Delegation Agreement is revised.

IX. Administrative

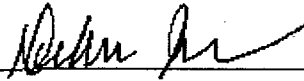
- A. This delegation agreement supersedes the previously delegated authority contained in the May 30, 2003 Partial Re-Delegation agreement and the February 2, 2004 Addendum, with NDEP from the Director of the Region 9's Air Division, and EPA's rescission of delegation dated March 3, 2003:
- B. If, after consultation with NDEP, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a *Notice of Revocation*.
 - 1. NDEP's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
 - 2. NDEP is not adequately implementing or enforcing the federal PSD program; or
 - 3. NDEP 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.
- C. In the event that NDEP is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, NDEP will immediately notify the Director of the Air Division and the Chief of the Air Division's Permit Office. Failure to notify the Director of the Air Division and the Chief of the Air Division's Permits Office does not preclude EPA from exercising its enforcement authority.

D. In the event that EPA or NDEP regulations or policies change, this delegation shall be either amended to ensure the continued implementation of EPA's PSD regulations or the delegation shall be revoked.

X. Signatures

On behalf of the Environmental Protection Agency, I grant full delegation of the federal PSD program, 40 CFR 52.21, to NDEP pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

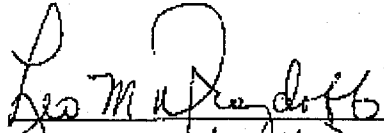
Date: 10/19/04



Deborah Jordan
Director, Air Division
Environmental Protection Agency
Region 9

On behalf of the State of Nevada Division of Environmental Protection I accept full delegation of the federal Prevention of Significant Deterioration program, 40 CFR 52.21, program pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 10/7/04



Print Name: Leo M. Drozdoff
Administrator
Nevada Division of Environmental Protection

ATTACHMENT E

Agreement for the Delegation of the Federal Prevention of Significant Deterioration (PSD)
Program by the United States Environmental Protection Agency, Region 1 to the Massachusetts
Department of Environmental Protection, dated April 11, 2011

**Agreement for Delegation of the Federal
Prevention of Significant Deterioration (PSD) Program
by the United States Environmental Protection Agency, Region 1
to the Massachusetts Department of Environmental Protection**

This agreement sets forth the terms and conditions according to which the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP) agrees to implement and enforce the federal PSD regulations as found in 40 CFR 52.21, the Code of Federal Regulations (CFR), 7-1-10 Edition. The regulations also include the following amendments:

1. June 3, 2010 effective August 2, 2010 [amended language provided for reference in 7-1-10 CFR]; and
2. October 20, 2010 with respect to PM_{2.5} Increments, Significant Impact Levels, and Significant Monitoring Concentration, 75 FR 64864, effective December 20, 2010.

As noted in the 7-1-10 CFR,

1. the provisions related to inclusion of fugitive emissions, 40 CFR 52.21(a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), (aa)(4)(i)(d), were stayed effective April 1, 2010, until October 3, 2011 by federal court order;
2. the provisions related to routine maintenance, repair and replacement, 40 CFR 52.21 (b)(2)(iii)(a), (b)(55)-(58), and (cc), were stayed indefinitely December 24, 2003 by federal court order; and
3. the provision related to inclusion of fugitive emissions at 40 CFR 52.21(i)(1)(vii) is effective until October 3, 2011.

I. Introduction

Authority and/or Commitments for implementation of 40 CFR 52.21, as in effect on August 2, 2010. Massachusetts has demonstrated it has adequate legal authority to implement and enforce all requirements as they relate to PSD. This legal authority is contained in Massachusetts's enabling legislation and in regulatory provisions. EPA has determined that this legal authority is sufficient to allow Massachusetts to issue permits that assure compliance with all PSD requirements.

II. Legal Authority

A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State or local agency full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.

B. MassDEP and EPA agree that requirements in PSD permits issued under the Commonwealth's authority are federally enforceable requirements.

III. Scope of Delegation

A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to MassDEP full responsibility for implementing and enforcing the federal PSD regulations for all sources located in the Commonwealth of Massachusetts, subject to the terms and conditions of this Delegation Agreement.

B. MassDEP's delegation to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located in Indian Country, as defined in 18 U.S.C. § 1151. MassDEP also recognizes that for certain sources and PSD permitting affecting Indian tribes EPA may need to consult the affected Indian tribes.

C. MassDEP's delegation to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located on the Outer Continental Shelf, or to deepwater ports as defined by 33 U.S.C. chapter 29.

D. The EPA Administrator has delegated to Region 1's Regional Administrator the authority to delegate authority to State or local agencies to implement preconstruction review for prevention of significant deterioration or new or modified major stationary sources under the regulation in 40 CFR 52.21. The State or local agency that receives delegation from EPA Region 1 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

IV. Requirements

A. The responsibility for implementing the federal PSD program for all regulated sources as provided by this Delegation Agreement rests with MassDEP's Bureau of Waste Prevention. EPA is relying on the technical and programmatic expertise of MassDEP's Bureau of Waste Prevention in the implementation of this Delegation Agreement on MassDEP's behalf. The Director of the Bureau of Waste Prevention's Business Compliance Division will serve as the point of contact for this Delegation Agreement and the Air Permit Section Chief in the MassDEP regional office with jurisdiction will be the point of contact for PSD applicability determinations and permit decisions for particular facilities in the respective regions. If MassDEP reorganizes such that the Bureau of Waste Prevention is unable to implement the federal PSD program, then MassDEP must immediately notify EPA of this reorganization and in such a case, this Delegation Agreement must be amended.

B. MassDEP will ensure there are adequate resources and trained personnel within the Bureau of Waste Prevention to implement an effective PSD permit program. As requested, EPA will provide technical assistance related to the federal PSD requirements, including without limitation, PSD applicability determinations, Best Available Control Technology (BACT) determinations, air quality monitoring network design, modeling procedures and other issues such as federal Environmental Justice policies.

C. Where the rules or policies of MassDEP are more stringent than the federal PSD program, MassDEP may elect to include such requirements in the PSD permit along with the EPA requirements, but will clearly indicate within the PSD permit itself which permit conditions do not derive from federal PSD requirements.

D. If a State (or local) regulation and a federal regulation apply to the same source, then MassDEP will apply the federal regulation if it is more stringent than the State (or local) regulation. Nothing in this Delegation Agreement shall be construed as precluding or limiting application or enforcement of either the State (or local) regulation or the federal regulation, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.

E. MassDEP will follow EPA policy, guidance, and determinations as applicable for implementing the federal PSD program, whether issued before or after the execution of this Delegation Agreement, including:

1. PSD policy, guidance, and determinations issued by EPA. EPA will provide MassDEP with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate and will collaborate with MassDEP as necessary regarding interpretations of EPA policies, guidance and determinations. Where no current EPA policy or guidance clearly covers a specific situation, MassDEP shall consult with the EPA, Region 1, Office of Ecosystem Protection, Air Planning Branch, Air Permits, Toxics and Indoor Air Unit if it has questions on the interpretation of the EPA regulations.
2. The requirement to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of federal programs, policies, and activities on minority and low-income populations, as set forth in *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Exec. Order 12,898, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

F. MassDEP will at no time grant a waiver to the requirements of 40 CFR 52.21 or to the requirements of an issued PSD permit.

G. MassDEP 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 under this Delegation Agreement.

H. With respect to the Endangered Species Act (ESA), the obligations of EPA, MassDEP, and permit applicants will be set forth in a separate designation letter issued under 50 C.F.R. § 402.08 ("ESA Letter"). With respect to Section 106 of the National Historic Preservation Act (NHPA), the respective obligations of EPA, MassDEP, and permit applicants will be set forth in a separate designation letter issued under 36 C.F.R. § 800.2(c)(4) ("NHPA Letter"). With respect to the federal trust responsibility to federally-recognized Indian tribes and implementation of EPA's Indian tribal policies,

EPA alone will have responsibility for tribal consultation. Until such time as the designations described above are completed, EPA shall be responsible for making the respective determinations. In furtherance of EPA's determinations, MassDEP shall:

1. Require PSD permit applicants to submit, as part of their PSD permit applications, any information necessary to determine whether issuance of such permits: (1) may affect federally-listed threatened or endangered species or the designated critical habitat of such species; and, if so, whether permit issuance is likely to adversely affect such species/designated critical habitat and/or jeopardize the continued existence of such species or result in the destruction or adverse modification of designated critical habitat, (2) has the potential to cause effects on historic properties; and, if so, whether such effects may be adverse, and/or (3) has the potential to affect Indian tribes.
2. Require the applicant to (1) notify, within 5 working days after submitting a PSD permit application, the following agencies, and (2) provide a copy of the permit application if requested by one of the agencies:
 - A. U.S. Fish and Wildlife Service (FWS);
 - B. National Marine Fisheries Service (NMFS);
 - C. The Massachusetts State Historic Preservation Officer (SHPO);
 - D. The Tribal Historic Preservation Officer (THPO) and, via separate copy, the tribal environmental director, for the Mashpee Wampanoag Tribe and for the Wampanoag Tribe of Gay Head (Aquinnah);
 - E. When required by the NHPA Letter: the SHPO for a bordering state, and/or the THPO for a federally-recognized Indian tribe in a bordering state.
3. If EPA informs MassDEP that EPA requires more time to consult with an Indian tribe before issuance of a draft PSD permit, refrain from issuing the draft PSD permit until EPA informs MassDEP that it may do so.
4. In all cases, MassDEP will refrain from issuing any final PSD permit until EPA has notified MassDEP that EPA has satisfied its NHPA, ESA, and tribal consultation responsibilities with respect to that permit.
5. On request by EPA, MassDEP will provide copies of any documents prepared or received by MassDEP related to ESA and/or NHPA compliance.

I. EPA will review draft PSD permits that MassDEP submits for public comment. If EPA informs MassDEP that EPA does not concur with MassDEP's BACT determinations and/or modeling analyses performed to determine increment consumption and compliance with National Ambient Air Quality Standards, then MassDEP will not issue a final PSD permit until EPA and MassDEP have reached agreement on the BACT determinations and/or modeling analyses. EPA and MassDEP shall collaborate and make every effort to resolve all disagreements in a mutually satisfactory way. If EPA

determines that EPA and MassDEP have reached an impasse and further discussions are not likely to yield such an agreement, EPA will notify MassDEP of its determination in writing and then EPA may, at its discretion, issue a partial *Notice of Revocation* under Section IX of this Delegation Agreement with respect to that particular PSD permit, take exclusive permitting authority for that PSD permit, and, as appropriate, issue a final PSD permit, deny the PSD permit application, or take other appropriate action under 40 CFR part 124.

J. The primary responsibility for the administration and enforcement of the PSD permits issued by EPA to Dominion Energy Brayton Point, LLC, Somerset, MA, April 2, 2009 and October 7, 2009, Northeast Energy Associates, Bellingham, MA, December 23, 2008, University of Massachusetts (UMass), Amherst, MA, July 25, 2005 and October 29, 2008, Braintree Electric Light Department (BELD), Braintree, MA, April 4, 2008, General Electric Aviation (GE), Lynn, MA, March 13, 2008, and Fore River Station, N. Weymouth, MA, December 14, 2006, is delegated to MassDEP. MassDEP-issued modifications to these permits which meet the requirements of 40 CFR 52.21 and 40 CFR part 124 will be considered valid by EPA. Any permit modifications that MassDEP issues to these facilities shall be issued pursuant to this agreement.

K. EPA will retain responsibility for issuance and, if necessary, defense on appeal of the PSD permit to be issued to Pioneer Valley Energy Center (PVEC) in response to PVEC's November 2008 permit application. After that permit has taken final effect, any permit modifications to this facility that MassDEP issues shall be issued pursuant to this agreement, and any future MassDEP-issued modifications to the permit which meets the requirements of 40 CFR 52.21 and 40 CFR part 124 will be considered valid by EPA.

V. Permit Issuance, Modification, and Appeals

A. All permits issued by MassDEP under this Delegation Agreement shall follow the applicable procedures in 40 CFR 52.21 and 40 CFR part 124, as they may be amended from time to time. These provisions include, but are not limited to:

1. The requirements applicable to completeness determinations, as provided by § 124.3;
2. The requirements applicable to a draft permit, fact sheet, and draft permit administrative record, as provided by §§ 124.6, 124.8, and 124.9;
3. The requirements applicable to public notice, public comment, and public hearings, provided by §§ 124.10, 124.11, and 124.12;
4. The requirements applicable to a final permit, response to comments, and administrative record, provided by §§ 124.15, 124.17, and 124.18; and
5. The additional requirements applicable to sources potentially affecting Federal Class I areas, provided by § 124.42 and § 52.21(p), including the timeframes specified in § 52.21(p).

B. The provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Environmental Appeals Board (EAB) on PSD permits issued by MassDEP under this Delegation Agreement, except with respect to permit conditions that do not derive from federal PSD requirements, for which applicable Massachusetts administrative procedures apply. If a PSD permit issued by MassDEP is appealed to the EAB, MassDEP has the primary responsibility for defending the permit before the EAB and the discretion to withdraw the permit under 40 CFR 124.19(d).

C. For purposes of implementing the Federal permit appeal provisions under this delegation, MassDEP will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision of their right to appeal, and this notice is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:

1. Within 30 days after the final PSD permit decision has been issued under 40 CFR 124.15, any person who filed comments on the draft permit or participated in any public hearing may petition EPA's Environmental Appeals Board to review any condition of the permit decision.
2. The effective date of the permit is 30 days after service of notice to the applicant and commenters of the final decision to issue, modify, or revoke and reissue the permit, unless review is requested on the permit under 40 CFR 124.19 within the 30 day period.
3. If an appeal is made to the EAB, the effective date of the permit is suspended until the appeal is resolved.

D. Major modifications to existing PSD permits shall be processed in accordance with all of the substantive and procedural requirements applicable to new PSD permits. Non-major modifications to existing PSD permits shall be processed in accordance with all applicable PSD policy, guidance, and determinations issued by EPA. Until EPA develops specific procedural requirements for non-major modifications to existing PSD permits, non-major modifications shall be processed according to the procedural requirements of 40 CFR Part 124 applicable to new PSD permits.

E. In the event that EPA determines that a PSD permit does not comply with the requirements of 40 CFR Part 124 related to PSD permits and this Section V. of this Delegation Agreement, EPA shall notify MassDEP that such permit is invalid for federal PSD purposes.

F. MassDEP shall issue (or deny) a final PSD permit within one year of receipt of a complete PSD application, in accordance with Section 165(c) of the Clean Air Act.

G. If at any time the Energy Facilities Siting Board notifies MassDEP that it has received an application for a certificate pursuant to M.G.L. ch. 164, § 69K or § 69K1/2, which would, if granted, exempt the source from, or modify, the terms of any applicable PSD requirement, then MassDEP will immediately notify EPA so that EPA may exercise its concurrent administrative and enforcement authority.

VI. Enforcement

A. In all cases, EPA retains authority pursuant to sections 113 and 167 of the Clean Air Act with respect to sources that are subject to the federal PSD requirements, including federal PSD permits issued by MassDEP.

B. In delegated programs, the role of the delegated agency is that of primary enforcer or "front line" agency in program implementation. However, EPA will initiate an enforcement action, as appropriate, under the following circumstances:

1. At MassDEP's request;
2. If after consultation with MassDEP, EPA determines that MassDEP's enforcement action is inadequate, or that MassDEP is failing to carry out action in a timely or appropriate manner; and/or
3. As part of EPA's role established in an EPA-MassDEP collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.

VII. EPA and MassDEP Communications

A. MassDEP shall ensure that copies of the following documents are submitted to EPA, within the time frames indicated, for sources or activities subject to this Delegation Agreement:

Action	Submittal to EPA	Time Frame
Receipt of PSD permit application	Copy of application and cover letter	Within ten working days after receipt
Completeness determination or letter of deficiencies	Copy of letter to applicant	Within ten working days after signature
Transmittal to Federal Land Manager (FLM), FWS, NMFS, SHPO, and THPO of PSD permit application	Copy of letter	Within ten working days after signature
Receipt of comments from FLM, FWS, NMFS, SHPO, and THPO	Forward comment letter	Within ten working days of receipt
Draft PSD permit, public notice	Copy of fact sheet and any supporting technical information, draft PSD permit (including major or minor modifications), and public notice	No later than date of public notice under 40 CFR 124.10
Receipt of comments from public	Copy of public comment letter(s)	Within ten working days of the close of the public comment period
Final determination, PSD permit and transmittal letter	Copy of final PSD permit, response to comments, and transmittal letter	Within five working days after final signature on PSD permit
BACT determination submittal to RACT/BACT/LAER Clearinghouse	Electronic submittal of required information	Within 30 working days of final signature on PSD permit
Petition for review before Environmental Appeals Board (if any)	Copy of petition	Within five working days after receipt

B. MassDEP and EPA will communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). MassDEP will make available to EPA, upon request, any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by MassDEP and are not identified in the Table in Section VII.A. above. If MassDEP determines, in accordance with Massachusetts public records requirements, that it cannot or will not provide a record or report to EPA, then EPA and MassDEP will consult on whether such document is essential to EPA's review and whether the information could be provided by alternate means. If EPA concludes that it requires the document and MassDEP concludes that it cannot provide the document, then EPA may proceed according to Sections VI.B.2 and/or IX.B, as appropriate, of this agreement.

C. MassDEP will ensure that all relevant source information, notifications and reports are entered into the EPA AIRS/AFS national database system in order to meet its recordkeeping and reporting requirements. In addition to the National Minimum Data Requirements (MDRs) (attached), MassDEP shall enter the following information or activities:

1. The Air Program Code for PSD
2. The date the PSD permit is issued or modified
3. The final effective date of the PSD permit (or modified permit)
4. The date that the new source or modification begins construction; and
5. The date that the new source or modification begins operation.

D. Correspondence from EPA to MassDEP will be sent to:

Director, Business Compliance Division
Bureau of Waste Prevention
Department of Environmental Protection
One Winter Street
Boston, MA 02108 and,

Air Permit Section Chief, Bureau of Waste Prevention, for the MassDEP
Regional Office where the PSD project is located.

Correspondence from MassDEP to EPA will be sent to:

Director, Office of Ecosystem Protection
EPA New England, Region 1
5 Post Office Square
Mail Code OEP06-5
Boston, MA 02109-3912

VIII. Future EPA Regulation Revisions

A. MassDEP's delegation to implement and enforce the federal PSD regulations applies to 40 CFR 52.21 and 40 CFR part 124 as they may be amended from time to time, unless MassDEP specifically informs EPA otherwise as provided in Section VIII.C below.

B. If any additional pollutants become "regulated NSR pollutant(s)" within the meaning of 40 CFR 52.21(b)(50) after the date of this Delegation Agreement, MassDEP will implement the federal PSD regulations with respect to such pollutant(s).

C. If, as a result of regulatory revisions after the date of this Delegation Agreement, MassDEP becomes unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, then MassDEP will so inform EPA, and propose either that MassDEP continue to implement the PSD program only for projects that do not trigger the revised regulatory provisions, or that this Delegation Agreement be otherwise amended or revoked. Unless MassDEP and EPA agree otherwise, the provisions of Section IX.B-D will apply.

IX. Administrative

A. This Delegation Agreement supersedes EPA's rescission of delegation dated March 3, 2003.

B. If, after consultation with MassDEP, EPA makes any of the following determinations, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a *Notice of Revocation*.

1. MassDEP's legal authority, rules and regulations, and/or procedures for implementing or enforcing the federal PSD requirements as provided in this Delegation Agreement are inadequate;
2. MassDEP is not adequately implementing or enforcing the federal PSD program; or
3. MassDEP 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 part 124, or the Clean Air Act.

C. In the event that MassDEP is unwilling or unable to implement or enforce the federal PSD regulations as provided in this Delegation Agreement with respect to a source or activity subject to the federal PSD regulations, MassDEP will immediately notify the Director of the Office of Ecosystem Protection and the Chief of the Air Planning Branch. Failure to notify the Director of the Office of Ecosystem Protection and the Chief of the Air Planning Branch does not preclude EPA from exercising its enforcement authority.

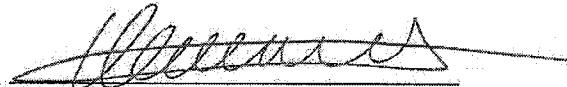
D. In the event that EPA or MassDEP regulations or policies change, EPA and MassDEP will consult to determine whether this delegation should be amended to ensure the continued implementation of EPA's PSD regulations, or, alternatively, revoked.

E. Either EPA or MassDEP may terminate this agreement upon providing the other party 30 days prior notice. Such notice shall include the reasons for such termination.

X. Signatures

On behalf of the MassDEP, I accept full delegation of the Federal Prevention of Significant Deterioration program, 40 CFR 52.21, program pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 4/4/11



Kenneth L. Kimmell
Commissioner
Department of Environmental Protection

On behalf of the Environmental Protection Agency, I grant full delegation of the federal PSD program, 40 CFR 52.21, to MassDEP pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 4/11/11



H. Curtis Spalding
Regional Administrator
Environmental Protection Agency
Region I