



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 04 2008

Mr. Jack Broadbent  
Air Pollution Control Officer  
Bay Area AQMD  
939 Ellis Street  
San Francisco, CA 94109-7799

RE: Amended PSD Delegation Agreement

Dear Mr. Broadbent:

EPA appreciates the efforts of your staff to work with us in amending your Prevention of Significant Deterioration (PSD) Delegation agreement between the District and EPA. Under the amended delegation agreement, the District is now primarily responsible for issuing and modifying PSD permits. EPA remains available to assist the District in any applicability or implementation issues. I am pleased to enclose a signed copy of the revised PSD delegation agreement. The agreement is effective immediately.

Please contact Laura Yannayon at (415) 972-3534 if you have any other questions related to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Jordan".

Deborah Jordan  
Director, Air Division

Enclosure

cc: Brian C. Bungler, Bay Area Air Quality Management District, w/enclosure  
James Goldstene, Executive Officer, California Air Resources Board w/enclosure

**U.S. EPA - Bay Area Air Quality Management District**

**Agreement for Delegation of Authority to Issue and Modify Prevention of**

**Significant Deterioration Permits Subject to 40 CFR 52.21**

The undersigned, on behalf of the Bay Area Air Quality Management District (District) and the United States Environmental Protection Agency (EPA), hereby agree to the partial delegation of authority to issue Prevention of Significant Deterioration (PSD) initial permits and to modify existing PSD permits, subject to the terms and conditions of this Agreement. This partial delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

**I. Background Recitals**

1. On April 23, 1986, EPA delegated authority to implement the federal PSD regulations at 40 CFR 52.21 to the District. This delegation was based on EPA's determination that the PSD portion of District Regulation 2 – Rule 2 (Readopted and Renumbered July 17, 1991, amended June 15, 1994) generally met the requirements of 40 CFR 52.21; therefore District permits issued in accordance with the provisions of Regulation 2 – Rule 2 were deemed to meet the federal PSD permit requirements pursuant to the provisions of the delegation agreement.
2. On December 31, 2002, EPA finalized revisions to the regulations at 40 CFR 52.21, which became effective on March 3, 2003. See 67 FR 80186. After discussions with the California Air Resources Board and the District, EPA informed the District that it would need to adopt revisions to Regulation 2 – Rule 2 to address the recent PSD revisions and continue to implement the federal PSD program pursuant to 40 CFR 52.21. Accordingly, on March 3, 2003, EPA withdrew the delegation of federal PSD authority from the District. See 68 FR 19371 (April 21, 2003).
3. On June 24, 2005, the District of Columbia Court of Appeals vacated two provisions of the revised federal PSD regulations related to Clean Units and Pollution Control Projects. The provisions upheld by the Court provide 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). On June 13, 2007, EPA issued a direct final rule revising the federal PSD regulations to remove the vacated portions.

## **II. Scope of Partial Delegation**

1. The provisions upheld by the court (additional calculation methodologies and PALs) are not specifically addressed by Regulation 2 – Rule 2. Therefore, this partial delegation of authority to issue and modify PSD permits does not delegate authority to the District to modify PSD permits when the applicant seeks to use the additional calculation methodologies promulgated in 40 CFR 52.21 but not set forth in Regulation 2 – Rule 2 and does not delegate authority to issue new or modified PSD permits based on PALs.
2. For all applications for new or modified PSD permits other than those set forth in paragraph 1 above, the existing District regulations continue to generally meet the requirements of 40 CFR 52.21 for issuing PSD permits; therefore District permits issued in accordance with the provisions of Regulation 2 – Rule 2 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, except for modifications seeking to determine PSD applicability based on the additional calculation methodologies set forth in 40 CFR 52.21 and new or modified PSD permits seeking PALs. (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 permit(s).
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 permit modification to incorporate conditions for a PAL, as provided in 40 CFR 52.21(aa), EPA shall process the application and issue the final PAL permit for the modification.

4. If any source seeks a PSD permit modification based on determining applicability with the additional calculation methodologies set forth in 40 CFR 52.21 (as revised in 2002), EPA shall issue the PSD permit.
5. This partial delegation of PSD authority becomes effective upon the date of the signatures of 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 PSD requirements of the District's Regulation 2 – Rule 2 and 40 CFR 52.21, as amended on December 31, 2002; except as provided in subsection III.
2. This partial delegation 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 or conditions of this Agreement.
3. 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 and major modifications (40 CFR 52.21).
4. If the 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, the requirements of Regulation 2 – Rule 2, 40 CFR 52.21, 40 CFR 124 or the Clean Air Act, this partial delegation agreement may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the District.
5. If the District determines that issuing a PSD permit in accordance with the terms and conditions of this agreement, the requirements of Regulation 2 – Rule 2, 40 CFR 52.21, 40 CFR 124 or 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 these permits to EPA. Any such remand shall be effective as of the date specified in a Notice of Remand to EPA.

6. The permit appeal provisions of 40 CFR 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 permits issued by the District under this partial delegation agreement. For purposes of implementing the federal permit appeal provisions under this partial delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by the District shall contain a statement that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit shall be 30 days after the date of the final decision by the District to issue, modify, or revoke and reissue the permit; and (2) if an appeal is made to the EAB, the effective date of the permit shall be suspended until such time as the appeal is resolved. Failure by the District to comply with the terms of this paragraph shall render the subject permit invalid for PSD purposes.

**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) the findings related to the PSD application, (2) the justification for the District's preliminary determination, (3) the draft permit and (4) all public notices required by 40 CFR 124. Such copies shall be provided at or prior to the beginning of the public comment period for each PSD preliminary determination. EPA will provide comments to the District as soon as possible prior to the close of the public comment period.
2. The District will forward to EPA copies of the final action for each PSD permit application at the time of issuance, as well as a summary of public comments and, upon request by EPA, copies of substantive public comments.
3. The District will send to EPA a copy 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. EPA is responsible for the issuance of PSD permits on Indian Lands, under Sections 110 and 301 of the Clean Air Act and for those situations set forth in Section III above. This

agreement in no way grants or delegates any authority under the Clean Air Act on Indian Lands to the District.

2. All PSD BACT determinations are required to perform a “top-down” BACT analyses. EPA will consider as deficient any BACT determination that does not begin with the most stringent control options available for that source category.
3. The District must consult with the appropriate Federal, State and local land use agencies prior to issuance of a PSD permit preliminary determination. For the purposes of the Endangered Species Act (ESA), the District shall:
  - a. Notify the appropriate Federal Land Manager (FLM) within 30 days of receipt of a PSD permit application. If the proposed project will impact a Class I area, notify the appropriate Federal Land Manager (FLM) no later than 60 days prior to issuing a public notice for the project.
  - 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 under Section 7 of the ESA (PL 97-304).
  - c. Notify applicants of the potential need for consultation between EPA and FWS if an endangered species may be affected by the project.
  - 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 CFR 52.21, relating to applicability determinations, PSD permit issuance and enforcement.
2. The District will at no time grant any waiver to the PSD permit requirements.
3. Authorities to Construct must include appropriate provisions to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, start-up, 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
Crockett Cogen	SFB 82-05	February 9, 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 CFR 52.21 will be considered valid by EPA. The District shall issue any permit modifications to the above listed sources pursuant to this agreement and using District Regulation 2 – Rule 2, which incorporates the requirements of 40 CFR 52.21.

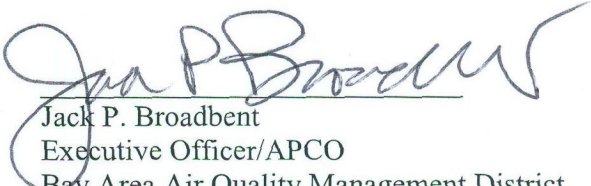
### **VIII. Permit Enforcement**

1. The primary responsibility for enforcement of the PSD regulations rests with the District. The District will enforce the provisions of the PSD program except in those cases where District rules or policy are more stringent. In that case, the District may elect to implement the more stringent requirements.
2. Nothing in this partial delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, 40 CFR 52.21 or any PSD permit issued by the District pursuant to this agreement.
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.

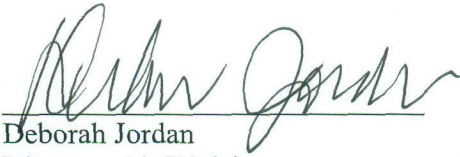
Jan. 29, 2008

Date

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

Feb. 6, 2008

Date

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