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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3801

January 24, 2006

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

RE: PSD Re-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 responsible for the PSD permitting of two new facilities—Ameresco Half Moon Bay LLC and ConocoPhillips - San Francisco Refinery, in addition to the nine power plant projects listed in the previous delegation agreement. 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.

Thanks, Jack!

Sincerely,

Deborah Jordan
Deborah Jordan
Director, Air Division

Enclosure

cc: Brian C. Bunker, Bay Area Air Quality Management District, w/enclosure
Catherine Witherspoon, Executive Officer, California Air Resources Board w/enclosure

U.S. EPA - Bay Area Air Quality Management District
Agreement for Limited 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 limited delegation of authority for the initial issuance or "administrative" or "minor" modification¹ of the Prevention of Significant Deterioration (PSD) permits identified below, subject to the terms and conditions of this agreement. This limited delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

I. BACKGROUND RECITALS

1. EPA had delegated authority to implement the federal PSD regulations at 40 CFR 52.21 for all sources and modifications to the District on April 23, 1986. On December 31, 2002, EPA finalized revisions to the regulations at 40 CFR 52.21, which became effective on March 3, 2003. 67 FR 80186. The revisions to 40 CFR 52.21 did not significantly alter those portions of 40 CFR 52.21 that concern the issuance of permits for newly constructed "greenfield" sources. See id. at 80187.
2. The District may need to revise its local regulations to fully implement the federal regulations at 40 CFR 52.21, effective March 3, 2003. Accordingly, on March 3, 2003,

¹ The terms "administrative" and "minor" modifications are defined the same as in the EPA memorandum entitled "Revised Draft Policy on Permit Modifications and Extensions" July 5, 1985, by Darryl Tyler, Director, Control Programs Development Division of US EPA Office of Air quality Planning and Standards.

EPA withdrew the delegation of PSD authority from the District. See 68 FR 19371 (April, 21, 2003).

3. Because the federal regulations concerning permit issuance for new sources were not significantly altered effective March 3, 2003, existing District regulations continue to allow the District to implement 40 CFR 52.21 pursuant to a delegation agreement to issue the initial PSD permit(s), or an administrative or minor modification of a PSD permit(s). EPA has determined that District Regulation 2, Rule 2 generally meets the requirements of 40 CFR 52.21; therefore, District permits issued in accordance with the provisions of Regulation 2, Rule 2 will be deemed to meet federal PSD permit requirements pursuant to the provisions of this delegation agreement.

II. APPLICABILITY

1. Pursuant to this delegation, the District shall have primary responsibility for initial issuance or administrative or minor modification of the PSD permit(s) identified below:

Facility:

- a. Delta Energy Center
 - b. Los Medanos Energy Center
 - c. Metcalf Energy Center
 - d. East Altamont Energy Center
 - e. Tesla Power Plant
 - f. Russell City Energy Center
 - g. Delta Power Plant
 - h. Potrero Power Plant
 - i. Ameresco Half Moon Bay LLC
 - j. ConocoPhillips - San Francisco Refinery
2. Permitting History for Delta Energy Center (Delta #12095). The District issued a Preliminary Determination of Compliance (PDOC) on August 12, 1999. Subsequently,

the District issued the Final Determination of Compliance (FDOC) on October 22, 1999. The Prevention of Significant (PSD)/Authority to Construct (ATC) was issued on March 28, 2000. The Title IV/V permit was issued on March 19, 2003 and reissued on November 12, 2003. The Permit to Operate was issued on January 8, 2003, and modified on November 14, 2003.

3. Permitting History for Los Medanos Energy Center (Los Medanos #11866). The District issued a PDOC on March 18, 1999. Subsequently, the District issued the FDOC on June 10, 1999. The PSD/Authority to Construct was issued on September 10, 1999 and the Authority to Construct was superceded on July 2, 2001. The Title IV/V permit was issued on September 1, 2001 and modified on January 13, 2004. The District Permit to Operate was issued on May 19, 2002.
4. Permitting History for Metcalf Energy Center (Metcalf # 12183). The District issued the FDOC on August 24, 2000. The final PSD permit was issued on May 4, 2001. The Authority to Construct was issued on February 13, 2002 and a modification was granted on September 10, 2002.
5. Permitting History for East Altamont Energy Center (East Altamont # 13050). The District issued a PDOC on April 12, 2002. Subsequently, the District issued the FDOC on July 10, 2002. The Western Area Power Administration (WAPA) formally requested that US Fish and Wildlife (US FWS) initiate formal Section 7 consultation on February 11, 2002. The Authority to Construct has not been issued as of May 7, 2004.
6. Permitting History for Tesla Power Plant (Tesla # 13424). The District issued a PDOC on August 6, 2002. Subsequently, the District issued the FDOC on January 22, 2003.

The EPA formally requested that US FWS initiate formal Section 7 consultation on February 21, 2002. The final PSD permit is not issued because of a delay in the issuance of the Biological Opinion associated with Section 7 process. The California Energy Commission conducted an Evidentiary Hearing from September 8 to September 12, 2003. The Commissioners have not made a final determination as of May 7, 2004.

7. Permitting History for Russell City Energy Center (Russell City # 13161). The District issued a PDOC on October 25, 2001. Subsequently, the District issued the FDOC in March 2002 and an Authority to Construct on May 14, 2003. The EPA formally requested that US FWS initiate formal Section 7 consultation on March 11, 2002. The final PSD permit has not been issued because of a delay in the issuance of the Biological Assessment associated with the Endangered Species Act Section 7 process.
8. Permitting History for Delta Power Plant (Delta #18, Unit 8). The District issued a FDOC on February 2, 2001. The final PSD permit and Authority to Construct were issued on July 24, 2001. The Permit to Operate has not yet been issued as of May 7, 2004.
9. Permitting History for Potrero Power Plant (Potrero #26, Unit 7). The FDOC was issued on December 12, 2001. On July 25, 2003, Mirant of California (owner of the Potrero Power Plant) revised their application (#7951) to include a cooling tower system and reduce the annual hours of operation. A draft Biological Opinion and Incidental Take Statement were provide to EPA and the Army Corps of Engineers on April 2, 2003. NOAA Fisheries received comments on the draft Biological Opinion from EPA on May 6, 2003. The comments pertained to a revised description of EPA's federal action regarding the issuance of the air quality permit. EPA comments also stated that the Corps

has agreed to place all terms and conditions contained in the Incidental Take Statement of the April 2, 2003, draft Biological Opinion, in the Corps Section 404 Clean Water Act and in any Rivers and Harbor Act permits. The amended PDOC has not been issued as of May 7, 2004.

10. Proposed permit for Ameresco Half Moon Bay LLC (Plant # 17040). Ameresco is proposing a landfill gas-to-energy facility at the Ox Mountain Landfill located in Half Moon Bay. The applicant proposes to burn landfill gas in spark ignited lean burn reciprocating internal combustion engines. The engine-driven generators will recover energy from landfill gas in the form of electricity.
11. Proposed permit for ConocoPhillips - San Francisco Refinery (Plant # 16).
ConocoPhillips is proposing the "Rodeo Clean Fuels Expansion Project," which will increase capacity of hydrocracking, deisobutanizing, reforming, and sulfur recovery units. The project will include construction of a new hydrogen plant, a new flare, a new furnace for hydrocracking and two new tanks.
12. To allow the District to continue to issue initial PSD permits and/or process administrative and minor modifications to the PSD permit(s) for Delta Energy, Los Medanos, Metcalf, East Altamont, Tesla, Russell City, Delta Power, Potrero, Ameresco and ConocoPhillips, EPA and the District have agreed to this delegation of PSD authority to issue initial permits or make administrative or minor modifications. If any of the facilities subject to this agreement requests a permit modification to incorporate conditions for a plantwide applicability limit, as provided in 40 CFR 52.21(aa), EPA shall process and issue any applications for a permit modification. EPA may review the PSD

permit to ensure that the District's implementation of this agreement is consistent with federal regulations (40 CFR 52.21).

13. The District shall send to EPA a copy of all public notices required by 40 CFR 124.

III. GENERAL CONDITIONS:

1. The District shall request and 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 the PSD permits for Delta Energy, Los Medanos, Metcalf, East Altamont, Tesla, Russell City, Delta Power, Potrero, Amereco and ConocoPhillips.
2. The District shall issue PSD permits under this Agreement in accordance with the PSD elements of the District's Regulation 2, Rule 2 and 40 CFR 52.21 as amended on December 31, 2002. Elements of Regulation 2, Rule 2 relating to state law requirements inconsistent with the Clean Air Act and 40 CFR 52.21 and 124, including, but not limited to, elements of Regulation 2, Rule 2 relating to the California Environmental Quality Act, shall not apply to PSD permits under this Agreement.
3. This delegation agreement may be amended at any time by the formal written agreement of both the District and the EPA, including amendment to add, change, or remove conditions or terms of this agreement.
4. If the U.S. EPA determines that the District is not administering the PSD permit identified in this agreement in accordance with the terms and conditions of this limited delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after consultation with the District, 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 administering the permits identified in this agreement in accordance with the terms and conditions of this agreement, the requirements of 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 appeals to the Administrator on permits and modifications to permits issued by the District under this delegation. For purposes of implementing the federal permit appeal provisions under this 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 through the Administrator, the effective date of the permit shall be suspended until such time as the appeal is resolved. The District shall inform EPA Region IX in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by the

District to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

7. Pursuant to the provisions of 40 CFR 52.21(u)(2), the District shall consult with the appropriate State or local agency primarily responsible for managing land use prior to making any determinations under this Agreement.
8. Nothing in this agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the District pursuant to this agreement. In the event that the District is unwilling or unable to enforce a provision of this delegation 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.
9. This limited delegation of PSD authority becomes effective upon the date of the signatures of both parties to this Agreement.

Date

1/5/06

Jack P. Broadbent

Executive Officer/APCO

Bay Area Air Quality Management District

Date

1/20/06

Deborah Jordan

Director, Air Division

U.S. EPA, Region IX