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 recission 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