

Agreement for Delegation of Source Review under the  
Federal Prevention of Significant Deterioration (PSD) Program  
Set Forth in 40 CFR 52.21  
by the United States Environmental Protection Agency, Region 9  
to the Pima County Air Quality Control District

The undersigned, on behalf of the Pima County Air Quality Control District (Pima County AQCD or District) and the United States Environmental Protection Agency, Region 9 (EPA), hereby agree to delegate authority from EPA to the Pima County AQCD to implement source review under the federal Clean Air Act (CAA) PSD regulations at 40 CFR 52.21 for sources under the jurisdiction of the Pima County AQCD, subject to the terms and conditions of this Agreement. This delegation is executed pursuant to 40 CFR 52.21(u).

**I. Legal Authority**

- A. In accordance with CAA section 110 and Part C, EPA has adopted regulations, set forth in 40 CFR 52.21, that implement the CAA's PSD program in areas where states do not have a PSD program approved into their CAA state implementation plans. These regulations have been incorporated as part of the applicable Arizona state plan for implementation of the New Source Review program under the CAA and they govern the implementation of the CAA PSD program in Pima County and certain other areas in Arizona. See 40 CFR 52.144(a)-(b).
- B. The Pima County AQCD is generally designated as the air pollution control agency in Pima County, Arizona, and, acting through its Control Officer, Pima County AQCD is authorized to issue preconstruction air quality permits to stationary sources under its jurisdiction that are, or would be, located in Pima County. See Arizona Revised Statutes §§ 49-402, 49-426, 49-480; Pima County, Arizona -- Code of Ordinances, Title 17.
- C. Under 40 CFR 52.21(u), EPA may delegate its responsibility to conduct PSD source review under 40 CFR 52.21 to state and local air pollution control agencies for sources within their jurisdiction.
- D. Pima County AQCD and EPA agree that requirements in PSD permits issued by the Pima County AQCD under 40 CFR 52.21, pursuant to this delegation of authority, are federally enforceable.

**II. Scope of Delegation**

- A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to the Pima County AQCD responsibility for source review under the federal PSD regulations at 40 CFR 52.21 for all sources located in Pima County, Arizona that are under the Pima County AQCD's jurisdiction in accordance with Arizona Revised Statutes 49-402, subject to the terms and conditions of this Delegation Agreement.

- B. EPA's delegation of authority to the Pima County AQCD to implement 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.
- C. The EPA Administrator has delegated to the EPA Region 9 Regional Administrator, and the Regional Administrator has redelegated to EPA Region 9's Air Division Director, the authority under 40 CFR 52.21(u) to delegate to an appropriate state or local agency the responsibility to conduct source review under the federal PSD regulations at 40 CFR 52.21. As the state or local agency that receives delegation from EPA Region 9, the Pima County AQCD does not have authority under the CAA to further delegate the responsibility to conduct source review under the federal PSD regulations at 40 CFR 52.21.

### **III. General Delegation Conditions**

- A. The Pima County AQCD shall issue PSD permit decisions under this Delegation Agreement in accordance with the requirements of 40 CFR 52.21 and 40 CFR Part 124, Subparts A and C.
- B. The Pima County AQCD may (but shall not be required by this agreement to) issue federal PSD permits in an integrated permit proceeding along with permits required under Arizona law and District regulations, and may include both federal PSD requirements and Arizona and/or District requirements in a single, integrated permit document. Where state or district air quality rules or policies are more stringent than the federal PSD program requirements at 40 CFR 52.21, the Pima County AQCD may elect to include such state or district requirements in a proposed or final integrated permit document along with the federal PSD program requirements. All permit requirements contained in a proposed or final integrated permit issued by the Pima County AQCD that are derived from the federal PSD requirements in 40 CFR 52.21, or included in whole or in part for purposes of satisfying such federal PSD permit requirements, shall be clearly identified as such in the permit itself and in the supporting documentation for the permit.
- C. The Pima County AQCD shall consider and follow all PSD policy, guidance and determinations issued by EPA for implementation of the federal PSD program, except as provided in Paragraph III.D. EPA generally will provide Pima County AQCD with copies of EPA policies, guidance, and determinations through EPA databases and/or hard copies where appropriate. EPA shall provide guidance to the Pima County AQCD in a timely manner as appropriate in response to any request by the Pima County AQCD for guidance on federal PSD issues.
- D. In the event that the Pima County AQCD considers it necessary to implement a PSD permitting decision that differs from that recommended by EPA policy, guidance, or determinations, the Pima County AQCD shall obtain concurrence from the Chief of the EPA Region 9 Air Division Permits Office or his or her designee concerning such course of action prior to proposing or finalizing such permit decision. Where no current EPA policy or guidance clearly addresses a specific situation requiring the Pima County

AQCD's interpretation of the federal PSD regulations, the Pima County AQCD shall consult with the Chief of the EPA Region 9 Air Division Permits Office or his or her designee on the Pima County AQCD's interpretation of the EPA regulations.

- E. The Pima County AQCD shall consult with the appropriate state and local agencies primarily responsible for managing land use as provided in 40 CFR 52.21(u)(2)(i) prior to making any preliminary or final determination on a PSD permit application pursuant to this Delegation Agreement.
- F. The Pima County AQCD shall notify the appropriate Class I area Federal Land Manager(s) of receipt of a PSD permit application that may affect any Class I area(s). Notification shall be made within 30 days of receipt and at least 60 days prior to any public hearing, in accordance with 40 CFR 52.21(p).
- G. To assist EPA in ensuring EPA's compliance with requirements that may be applicable to EPA under other federal statutes in conjunction with the issuance of a federal PSD permit decision under 40 CFR 52.21, the Pima County AQCD shall:
  - 1. Notify PSD permit applicants of the potential need for consultation between EPA and the appropriate State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officer(s) (THPO), and/or other parties if the project has the potential to affect one or more historic properties.
  - 2. As requested by EPA, assist EPA in consultation under Section 106 of the National Historic Preservation Act with the appropriate SHPO(s), THPO(s), and/or other parties regarding historic properties potentially affected by a project.
  - 3. Within two weeks of receipt (and no later than 30 days of receipt) of a PSD permit application, notify the U.S. Fish and Wildlife Service (FWS) of the permit application, and provide the FWS with a copy of the permit application if requested.
  - 4. Notify PSD permit applicants of the potential need for consultation between EPA and the FWS if the project may affect a species listed as threatened or endangered under the federal Endangered Species Act (ESA), 16 USC 1531 et seq., or designated critical habitat for such species.
  - 5. Refrain from issuing a final PSD permit decision until EPA has notified the Pima County AQCD that EPA has satisfied its obligations with respect to that permit decision, if any, under the ESA and the National Historic Preservation Act, 54 USC 300101 et seq.
- H. The Pima County AQCD shall at no time grant a waiver of the requirements of 40 CFR 52.21 or the requirements of a finally issued and currently applicable PSD permit.

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

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

## V. Enforcement

In all cases, EPA retains enforcement authority pursuant to sections 113 and 167 of the Clean Air Act with respect to sources in Pima County that are subject to the federal PSD requirements and other CAA requirements, including but not limited to sources issued federal PSD permits by the Pima County AQCD. The Pima County AQCD retains enforcement authority for air quality regulations under Arizona State and local law.

## VI. EPA and PDEQ Communications

- A. The Pima County AQCD shall provide an opportunity for the EPA to discuss federal PSD permit decision actions with the District at not less than five points in the permit decision process:
1. Pre-application meeting(s) with prospective applicants.
  2. Prior to the District making the completeness determination on a permit application or deciding to act on a request for a permit revision.
  3. Prior to the District making its preliminary determination and proposed permit or permit revision available for public comment.
  4. After close of the public comment period but prior to issuance of the final determination and final permit or permit revision.
  5. In the event that a petition for review of a final PSD permit decision is filed per 40 CFR 124.19, the District shall provide an opportunity for EPA to discuss the content of the response to the petition for review prior to the filing of the response.

The purpose of these meetings is to identify and resolve any issues identified by the agencies as necessary to ensure compliance with CAA requirements prior to the District making its proposed and final permit decisions, and prior to submitting its response to any petition for review, as applicable. EPA and the Pima County AQCD will remain cognizant of the District's permit processing timelines and the timelines in 40 CFR Part 124 related to the processing of PSD permit decisions. EPA and the Pima County AQCD will work rapidly to resolve any issues to prevent any delays in meeting those permit processing timelines.

- B. The Pima County AQCD shall submit copies of the following documents 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 or permit revision request or application	Copy of application/request 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

Draft proposed permit decision	Copy of draft technical support document, proposed PSD permit decision (including major or minor revisions to a PSD permit), and public notice of public comment period and/or public hearing	At least 15 working days prior to start of public comment period for preliminary determination
Public Notice	Copy of technical support document, proposed PSD permit decision, and public notice of public comment period and/or public hearing	Upon issuance of public notice
Draft final permit decision	Copy of technical support document, final PSD permit decision, public comments (if any), and responses to public comments (if any)	At least 15 working days prior to issuance of final permit decision
Final permit issuance	Copy of technical support document, final PSD permit decision, public comments (if any), and responses to public comments (if any)	Upon issuance of final permit decision
BACT determination submittal to RACT/BACT/ LAER Clearinghouse	Electronic submittal of required information	Within 30 working days after final signature on PSD permit

C. Any records or reports relating to PSD permitting or compliance with PSD requirements by sources under the Pima County AQCD's jurisdiction that are provided to or otherwise obtained by the Pima County AQCD and are not identified in the Table in Section VI.B above shall be made available to EPA upon request.

D. The Pima County AQCD shall ensure that all relevant PSD 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 Minimum Data Requirements (MDRs) (attached), the Pima County AQCD shall enter into this system all of the following information:

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.
5. The date that the new source or modification begins operation.

E. Correspondence from EPA to the Pima County AQCD shall be sent by email where possible and by U.S. Mail or express delivery to:

Air Permit Engineering Manager  
Pima County Department of Environmental Quality  
33 N. Stone Ave., Suite 700  
Tucson, AZ 85701-1429

Correspondence from the Pima County AQCD to EPA shall be sent by email where possible and by U.S. Mail or express delivery to:

Section Chief  
Permits Office, Air Division  
USEPA, Region 9  
75 Hawthorne Street (AIR-3)  
San Francisco, CA 94105  
R9AirPermits\_AZ@epa.gov

## **VII. Future Changes to EPA or Pima County AQCD Regulations**

- A. This delegation to the Pima County AQCD to implement the federal PSD regulations at 40 CFR 52.21 does not extend to any revisions made by EPA to 40 CFR 52.21 after July 1, 2015. If such revisions occur, the Pima County AQCD may continue to implement new source review under the PSD program at 40 CFR 52.21, except for new projects that trigger the provisions of the revisions.
- B. If EPA revises 40 CFR 52.21 after July 1, 2015, EPA will consider any request from the Pima County AQCD to amend this Delegation Agreement.

## **VIII. Administrative Provisions**

- A. This delegation of PSD source review authority becomes effective upon the date of signature by both parties to this agreement. Once this Delegation Agreement becomes effective, it supersedes the previous PSD delegation agreement from EPA to the Pima County AQCD, which went into effect on April 14, 1994.
- B. EPA retains the discretion to revoke this Delegation Agreement in whole or in part. The Pima County AQCD retains the discretion to request from EPA the revocation of this Delegation Agreement, which EPA shall grant within ten days of receipt of such request. Any revocation of this Delegation Agreement shall be effective as of the date specified in a Notice of Revocation to be issued by EPA. This agreement is effective until revoked. Bases for revocation may include, but are not limited to, EPA's determination, after consultation with the Pima County AQCD, of any of the following:
  - 1. The Pima County AQCD'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. The Pima County AQCD is not adequately implementing the federal PSD program.
  - 3. The Pima County AQCD has not implemented the federal PSD program with respect to a specific PSD permit decision in accordance with the terms and conditions of this Delegation Agreement or the requirements of 40 CFR 52.21, 40 CFR Part 124, or the CAA.

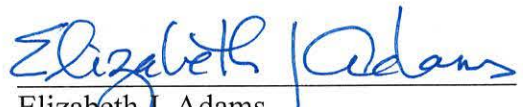


- C. In the event that the Pima County AQCD is unwilling or unable to implement the federal PSD regulations at 40 CFR 52.21 or the related procedural requirements at 40 CFR Part 124 with respect to a source or activity subject to the federal PSD regulations, the Pima County AQCD shall immediately notify the EPA Region 9 Air Division Director and the Chief of the EPA Region 9 Air Division's Permit Office.
  
- D. The Pima County AQCD shall notify EPA within ten days if applicable state or district law, regulations, or policies change in a manner relevant to the Pima County AQCD's implementation of the federal PSD program pursuant to this Delegation Agreement. If necessary to ensure compliance with federal PSD program requirements following such a change, this Delegation Agreement shall be amended with agreement of both parties or revoked in whole or in part.
  
- E. The Pima County AQCD may charge and retain its adopted permit fee for any permit processed under the terms of this agreement.

**IX. Signatures**


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

Date: June 5, 2018

  
 Elizabeth J. Adams  
 Acting Director, Air Division  
 Environmental Protection Agency  
 Region 9

On behalf of the Pima County Air Quality Control District, I accept delegation for implementation of source review under the federal PSD program at 40 CFR 52.21 pursuant to the terms and conditions of this Delegation Agreement and the requirements of the Clean Air Act.

Date: MAY 15 2018

  
 Richard Elías  
 Chairman  
 Pima County  
 Board of Supervisors

**ATTEST:**  
  
 Clerk, Board of Supervisors  
 Pima County, Arizona



Pima County Air Quality Control District  
Addendum

Intergovernmental Agreement Determination

This Agreement between the Pima County Air Quality Control District and the United States Environmental Protection Agency, Region 9 has been reviewed and determined to be in proper form and within the powers and authority granted under the laws of the State of Arizona to the Pima County Air Quality Control District.

  
Deputy County Attorney  
Lesley M. Lukach