

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

The undersigned, on behalf of the Nevada Division of Environmental Protection (NDEP) and the United States Environmental Protection Agency, Region 9 (EPA), hereby agree to delegate authority from the EPA to the NDEP to implement source review under the federal Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21 for sources under the jurisdiction of the NDEP, 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, the 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 Nevada state plan for implementation of the New Source Review program under the CAA and they govern the implementation of the CAA PSD program in the State of Nevada, except for that portion applicable to Clark County, Nevada. See 40 CFR 52.1485(a)-(b).
- B. The NDEP is generally designated as the air pollution control agency for the State of Nevada and, acting through its Administrator, the NDEP is authorized to issue preconstruction air quality permits to stationary sources under its jurisdiction that are, or would be, located in Nevada, except for sources over which the Clark County Department of Air Quality or Washoe County Air Quality Management Division has jurisdiction. See NRS 445B.205, 445B.210, 445B.230, 445B.300 for NDEP authority; NRS 445B.500 for authorities of local air pollution control boards; and NAC 445B.221, 445B.3361-445B.3395.
- C. Under 40 CFR 52.21(u), the 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. The NDEP and the EPA agree that requirements in PSD permits issued by the NDEP under 40 CFR 52.21, pursuant to this delegation of authority, are federally enforceable. See 40 CFR 52.21(a)(17).

**II. Scope of Delegation**

- A. Pursuant to 40 CFR 52.21(u), the EPA hereby delegates to the NDEP responsibility for source review under the federal PSD regulations at 40 CFR 52.21 for all sources located in the State of Nevada under NDEP jurisdiction, subject to the terms and conditions of this Delegation Agreement.
- B. The EPA's delegation of authority to the NDEP 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 re-delegated to EPA Region 9's Air Division Director, the authority under 40 CFR 52.21(u) to delegate 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 NDEP does not have the authority under the CAA to further delegate the federal PSD regulations at 40 CFR 52.21.

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

- A. The NDEP 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 NDEP may (but shall not be required by this agreement to) issue federal PSD permits in an integrated permit proceeding along with permits required under Nevada law and NDEP regulations, and may include both federal PSD requirements and Nevada requirements in a single, integrated permit document. Where state air quality rules or policies are more stringent than the federal PSD program requirements at 40 CFR 52.21, the NDEP may elect to include such state 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 NDEP 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 NDEP shall consider and follow all PSD policy, guidance, and determinations issued by the EPA for implementing the federal PSD program, except as provided in Section III.D. of this Delegation Agreement. The EPA will provide the NDEP with copies of EPA policies, guidance, and determinations through EPA databases and/or electronic copies where appropriate. The EPA shall provide guidance to the NDEP in a timely manner as appropriate in response to any request by the NDEP for guidance on federal PSD issues.
- D. In the event that the NDEP considers it necessary to implement a PSD permitting decision that differs from that recommended by EPA policy, guidance, or determinations, the NDEP 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 NDEP's interpretation of the federal PSD regulations, the NDEP shall consult with the Chief of the EPA Region 9 Air Division Permits Office or his or her designee on the NDEP's interpretation of EPA regulations.
- E. The NDEP 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 NDEP 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. The responsibility for the NDEP's implementation of the federal PSD program as provided by this Delegation Agreement rests with the Chiefs of the NDEP's Bureaus of Air Pollution Control and Air Quality Planning. The Bureaus of Air Pollution Control and Air Quality Planning shall utilize their technical and programmatic expertise in the implementation of this Delegation Agreement on the NDEP's behalf.
- H. The NDEP shall at no time grant a waiver of the requirements of 40 CFR 52.21 or of the requirements of a finally issued and currently applicable PSD permit.

- I. To assist the EPA in ensuring the EPA's compliance with requirements that may be applicable to the EPA under other federal statutes in conjunction with the issuance of a federal PSD permit decision under 40 CFR 52.21, the NDEP shall:
  1. Notify PSD permit applicants of the potential need for consultation between the 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 the EPA, assist the 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 a copy of the permit application if requested.
  4. Notify PSD permit applicants of the potential need for consultation between the EPA and the FWS if the project may affect a species listed as threatened or endangered under the federal Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, or designated critical habitat for such species.
  5. Refrain from issuing a final PSD permit decision until the EPA has notified the NDEP that the EPA has satisfied its obligations with respect to that permit decision, if any, under the ESA and the National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*

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

- A. All proposed and final PSD permit decisions issued by the NDEP 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 NDEP 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 NDEP 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 NDEP under this Delegation Agreement. For the purpose 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 NDEP, the final permit decision issued by the 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 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 a petition for review of a PSD permit is filed with the EAB, the effective date of the permit is suspended until such time as the NDEP issues a final permit, in accordance with 40 CFR 124.19(l), following the conclusion of the EAB proceeding.
- C. Prior to taking proposed action to revise an existing final PSD permit, the NDEP shall consult with EPA Region 9 concerning any such proposed action. The 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 NDEP's proposed and final decision to revise an existing final PSD permit shall adhere to any such requirements determined necessary and appropriate by the 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. The EPA shall notify the NDEP in the event that the EPA determines that failure by the NDEP 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.

## **V. Enforcement**

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

## **VI. EPA and NDEP Communications**

- A. The NDEP shall provide an opportunity for the EPA to discuss federal PSD permit decision actions with the NDEP at a minimum of five (5) points in the permit decision process:
  1. Pre-application meeting(s) with prospective applicants.
  2. Within 30 days of receipt of an application for a PSD permit or a PSD permit revision.
  3. Prior to the NDEP 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 NDEP shall provide an opportunity for the 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 NDEP making its proposed and final permit decisions, and prior to submitting its response to any petition for review, as applicable. The EPA and the NDEP will remain cognizant of the NDEP's permit processing timelines and the timelines in 40 CFR part 124 related to the processing of PSD permit decisions. The EPA and the NDEP will work rapidly to resolve

any issues to prevent any delays in meeting those permit processing timelines.

B. The NDEP shall submit to the 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 application for a PSD permit or PSD permit revision	Copy of application and cover letter	Within ten (10) working days after receipt
Any correspondence to the applicant regarding application deficiencies and/or completeness determination	Copy of correspondence to applicant	Within ten (10) working days after signature
Transmittal to Federal Land Manager (FLM) of PSD application	Copy of notification	Within ten (10) working days after signature
Receipt of comments from FLM	Forward comment letter	Within ten (10) working days of receipt
Draft preliminary determination/proposed permit decision, public notice	Copy of 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 fifteen (15) working days prior to start of public comment period for preliminary determination
Receipt of comments from public	Copy of written public comment letter(s) and transcript of public hearing, if applicable	Within ten (10) working days after the close of the public comment period; if not received by the NDEP in this time frame, provide within five (5) working days after receipt
Draft final permit decision	Copy of draft of final PSD permit decision, responses to public comments (if any), and revisions or supplements to technical support document (if applicable)	At least fifteen (15) working days prior to issuance of final permit decision

Final permit issuance	Copy of final PSD permit decision, responses to public comments, and revised or supplemental technical support document (if applicable)	Within five working days after final signature on PSD permit decision
BACT determination submittal to RACT/BACT/ LAER Clearinghouse	Electronic submittal of required information	Within 30 working days of final PSD permit becoming effective.

- C. Any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by the NDEP and are not identified in the Table in Section VI.B. above shall be made available to the EPA upon request.
- D. The NDEP will ensure that all relevant source information, notifications and reports are entered into the EPA ICIS-AIR national database system in order to meet its record keeping and reporting requirements. In addition to the National Minimal Data Requirements (MDRs), the NDEP shall enter the information required by the Compliance Monitor Strategy plan, signed by the NDEP and the EPA in 2017.
- E. The EPA and the NDEP shall generally correspond by email between the Chief of the EPA Region 9 Air Division's Permits Office or his or her designee and the Chiefs of the NDEP's Bureaus of Air Pollution Control and Air Quality Planning or their designees. Except for the BACT determination submittal, the documents submitted to the EPA under Section VI.B. shall be submitted through the EPA's Electronic Permit System (EPS) at [www.cdx.epa.gov](http://www.cdx.epa.gov). Correspondence or other information that cannot be transmitted electronically between the parties to this agreement shall be sent by U.S. mail or express delivery, as agreed upon via email.

## VII. 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 the EPA to the NDEP, which went into effect on April 23, 2014.
- B. The EPA retains its discretion to revoke this Delegation Agreement in whole or in part. The NDEP retains its discretion to request from the EPA the revocation of this Delegation Agreement, which the 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 the EPA. This agreement is effective until revoked. Bases for revocation may include, but are not limited to, the EPA's determination, after consultation with the NDEP, of any of the following:
1. The NDEP's legal authority, rules and regulations, and/or procedures for implementing the federal PSD requirements pursuant to this Delegation Agreement are inadequate;
  2. The NDEP is not adequately implementing the federal PSD program; or

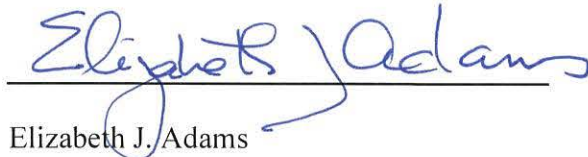
3. The NDEP has not implemented the requirements or guidance with respect to a specific PSD permit decision in accordance with the terms and conditions of this Delegation Agreement or the requirements of 40 CFR 52.21, 40 CFR part 124, or the CAA.
- C. In the event that the NDEP is unwilling or unable 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 NDEP shall immediately notify the EPA Region 9 Air Division Director and the Chief of the Air Division's Permit Office.
- D. The NDEP shall notify the EPA within ten days if applicable state law, regulations, or policies change in a manner relevant to the NDEP'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 NDEP may charge and retain its adopted permit fee for any permit processed under the terms of this agreement.

**X. Signatures**

On behalf of the Environmental Protection Agency, I grant delegation for implementation of source review under the federal PSD program, 40 CFR 52.21, to the Nevada Division of Environmental Protection pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date:

January 21, 2020

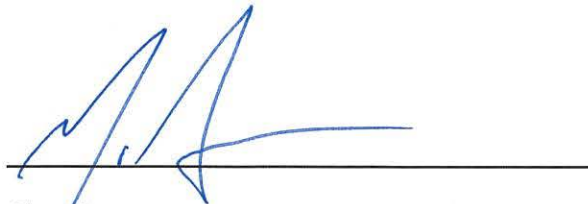


Elizabeth J. Adams  
Director, Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 9

On behalf of the State of Nevada Division of Environmental Protection, I accept delegation of source review under the federal Prevention of Significant Deterioration 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:

December 12, 2019



Greg Lovato  
Administrator  
Nevada Division of Environmental Protection