

US EPA ARCHIVE DOCUMENT

**Agreement for Delegation of the Federal
Prevention of Significant Deterioration (PSD) Program
by the United States Environmental Protection Agency, Region 1
to the Massachusetts Department of Environmental Protection**

This agreement sets forth the terms and conditions according to which the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP) agrees to implement and enforce the federal PSD regulations as found in 40 CFR 52.21, the Code of Federal Regulations (CFR), 7-1-10 Edition. The regulations also include the following amendments:

1. June 3, 2010 effective August 2, 2010 [amended language provided for reference in 7-1-10 CFR]; and
2. October 20, 2010 with respect to PM_{2.5} Increments, Significant Impact Levels, and Significant Monitoring Concentration, 75 FR 64864, effective December 20, 2010.

As noted in the 7-1-10 CFR,

1. the provisions related to inclusion of fugitive emissions, 40 CFR 52.21(a)(2)(iv)(b), (b)(2)(v), (b)(3)(iii)(b), (b)(3)(iii)(c), (b)(20), (b)(41)(ii)(b), (b)(41)(ii)(d), (b)(48)(i)(a), (b)(48)(ii)(a), (b)(48)(iii), (b)(48)(iv), (r)(6)(iii), (r)(6)(iv), (aa)(4)(i)(d), were stayed effective April 1, 2010, until October 3, 2011 by federal court order;
2. the provisions related to routine maintenance, repair and replacement, 40 CFR 52.21 (b)(2)(iii)(a), (b)(55)-(58), and (cc), were stayed indefinitely December 24, 2003 by federal court order; and
3. the provision related to inclusion of fugitive emissions at 40 CFR 52.21(i)(1)(vii) is effective until October 3, 2011.

I. Introduction

Authority and/or Commitments for implementation of 40 CFR 52.21, as in effect on August 2, 2010. Massachusetts has demonstrated it has adequate legal authority to implement and enforce all requirements as they relate to PSD. This legal authority is contained in Massachusetts's enabling legislation and in regulatory provisions. EPA has determined that this legal authority is sufficient to allow Massachusetts to issue permits that assure compliance with all PSD requirements.

II. Legal Authority

A. Pursuant to 40 CFR 52.21(u), EPA may delegate to a State or local agency full or partial responsibility for conducting new source review pursuant to the federal PSD regulations found in 40 CFR 52.21.

B. MassDEP and EPA agree that requirements in PSD permits issued under the Commonwealth's authority are federally enforceable requirements.

III. Scope of Delegation

A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to MassDEP full responsibility for implementing and enforcing the federal PSD regulations for all sources located in the Commonwealth of Massachusetts, subject to the terms and conditions of this Delegation Agreement.

B. MassDEP'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. MassDEP also recognizes that for certain sources and PSD permitting affecting Indian tribes EPA may need to consult the affected Indian tribes.

C. MassDEP's delegation to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities located on the Outer Continental Shelf, or to deepwater ports as defined by 33 U.S.C. chapter 29.

D. The EPA Administrator has delegated to Region 1's Regional Administrator the authority to delegate authority to State or local agencies to implement preconstruction review for prevention of significant deterioration or new or modified major stationary sources under the regulation in 40 CFR 52.21. The State or local agency that receives delegation from EPA Region 1 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 MassDEP's Bureau of Waste Prevention. EPA is relying on the technical and programmatic expertise of MassDEP's Bureau of Waste Prevention in the implementation of this Delegation Agreement on MassDEP's behalf. The Director of the Bureau of Waste Prevention's Business Compliance Division will serve as the point of contact for this Delegation Agreement and the Air Permit Section Chief in the MassDEP regional office with jurisdiction will be the point of contact for PSD applicability determinations and permit decisions for particular facilities in the respective regions. If MassDEP reorganizes such that the Bureau of Waste Prevention is unable to implement the federal PSD program, then MassDEP must immediately notify EPA of this reorganization and in such a case, this Delegation Agreement must be amended.

B. MassDEP will ensure there are adequate resources and trained personnel within the Bureau of Waste Prevention 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, modeling procedures and other issues such as federal Environmental Justice policies.

C. Where the rules or policies of MassDEP are more stringent than the federal PSD program, MassDEP may elect to include such requirements in the PSD permit along with the EPA requirements, but will clearly indicate within the PSD permit itself which permit conditions do not derive from federal PSD requirements.

D. If a State (or local) regulation and a federal regulation apply to the same source, then MassDEP will apply the federal regulation if it is more stringent than the State (or local) regulation. Nothing in this Delegation Agreement shall be construed as precluding or limiting application or enforcement of either the State (or local) regulation or the federal regulation, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.

E. MassDEP will follow EPA policy, guidance, and determinations as applicable for implementing the federal PSD program, whether issued before or after the execution of this Delegation Agreement, including:

1. PSD policy, guidance, and determinations issued by EPA. EPA will provide MassDEP with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate and will collaborate with MassDEP as necessary regarding interpretations of EPA policies, guidance and determinations. Where no current EPA policy or guidance clearly covers a specific situation, MassDEP shall consult with the EPA, Region 1, Office of Ecosystem Protection, Air Planning Branch, Air Permits, Toxics and Indoor Air Unit if it has questions on the interpretation of the EPA regulations.
2. The requirement to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of federal programs, policies, and activities on minority and low-income populations, as set forth in *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Exec. Order 12,898, 59 Fed. Reg. 7,629 (Feb. 16, 1994).

F. MassDEP 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. MassDEP 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 under this Delegation Agreement.

H. With respect to the Endangered Species Act (ESA), the obligations of EPA, MassDEP, and permit applicants will be set forth in a separate designation letter issued under 50 C.F.R. § 402.08 ("ESA Letter"). With respect to Section 106 of the National Historic Preservation Act (NHPA), the respective obligations of EPA, MassDEP, and permit applicants will be set forth in a separate designation letter issued under 36 C.F.R. § 800.2(c)(4) ("NHPA Letter"). With respect to the federal trust responsibility to federally-recognized Indian tribes and implementation of EPA's Indian tribal policies,

EPA alone will have responsibility for tribal consultation. Until such time as the designations described above are completed, EPA shall be responsible for making the respective determinations. In furtherance of EPA's determinations, MassDEP shall:

1. Require PSD permit applicants to submit, as part of their PSD permit applications, any information necessary to determine whether issuance of such permits: (1) may affect federally-listed threatened or endangered species or the designated critical habitat of such species; and, if so, whether permit issuance is likely to adversely affect such species/designated critical habitat and/or jeopardize the continued existence of such species or result in the destruction or adverse modification of designated critical habitat, (2) has the potential to cause effects on historic properties; and, if so, whether such effects may be adverse, and/or (3) has the potential to affect Indian tribes.
 2. Require the applicant to (1) notify, within 5 working days after submitting a PSD permit application, the following agencies, and (2) provide a copy of the permit application if requested by one of the agencies:
 - A. U.S. Fish and Wildlife Service (FWS);
 - B. National Marine Fisheries Service (NMFS);
 - C. The Massachusetts State Historic Preservation Officer (SHPO);
 - D. The Tribal Historic Preservation Officer (THPO) and, via separate copy, the tribal environmental director, for the Mashpee Wampanoag Tribe and for the Wampanoag Tribe of Gay Head (Aquinnah);
 - E. When required by the NHPA Letter: the SHPO for a bordering state, and/or the THPO for a federally-recognized Indian tribe in a bordering state.
 3. If EPA informs MassDEP that EPA requires more time to consult with an Indian tribe before issuance of a draft PSD permit, refrain from issuing the draft PSD permit until EPA informs MassDEP that it may do so.
 4. In all cases, MassDEP will refrain from issuing any final PSD permit until EPA has notified MassDEP that EPA has satisfied its NHPA, ESA, and tribal consultation responsibilities with respect to that permit.
 5. On request by EPA, MassDEP will provide copies of any documents prepared or received by MassDEP related to ESA and/or NHPA compliance.
- I. EPA will review draft PSD permits that MassDEP submits for public comment. If EPA informs MassDEP that EPA does not concur with MassDEP's BACT determinations and/or modeling analyses performed to determine increment consumption and compliance with National Ambient Air Quality Standards, then MassDEP will not issue a final PSD permit until EPA and MassDEP have reached agreement on the BACT determinations and/or modeling analyses. EPA and MassDEP shall collaborate and make every effort to resolve all disagreements in a mutually satisfactory way. If EPA

determines that EPA and MassDEP have reached an impasse and further discussions are not likely to yield such an agreement, EPA will notify MassDEP of its determination in writing and then EPA may, at its discretion, issue a partial *Notice of Revocation* under Section IX of this Delegation Agreement with respect to that particular PSD permit, take exclusive permitting authority for that PSD permit, and, as appropriate, issue a final PSD permit, deny the PSD permit application, or take other appropriate action under 40 CFR part 124.

J. The primary responsibility for the administration and enforcement of the PSD permits issued by EPA to Dominion Energy Brayton Point, LLC, Somerset, MA, April 2, 2009 and October 7, 2009, Northeast Energy Associates, Bellingham, MA, December 23, 2008, University of Massachusetts (UMass), Amherst, MA, July 25, 2005 and October 29, 2008, Braintree Electric Light Department (BELD), Braintree, MA, April 4, 2008, General Electric Aviation (GE), Lynn, MA, March 13, 2008, and Fore River Station, N. Weymouth, MA, December 14, 2006, is delegated to MassDEP. MassDEP-issued modifications to these permits which meet the requirements of 40 CFR 52.21 and 40 CFR part 124 will be considered valid by EPA. Any permit modifications that MassDEP issues to these facilities shall be issued pursuant to this agreement.

K. EPA will retain responsibility for issuance and, if necessary, defense on appeal of the PSD permit to be issued to Pioneer Valley Energy Center (PVEC) in response to PVEC's November 2008 permit application. After that permit has taken final effect, any permit modifications to this facility that MassDEP issues shall be issued pursuant to this agreement, and any future MassDEP-issued modifications to the permit which meets the requirements of 40 CFR 52.21 and 40 CFR part 124 will be considered valid by EPA.

V. Permit Issuance, Modification, and Appeals

A. All permits issued by MassDEP under this Delegation Agreement shall follow the applicable procedures in 40 CFR 52.21 and 40 CFR part 124, as they may be amended from time to time. These provisions include, but are not limited to:

1. The requirements applicable to completeness determinations, as provided by § 124.3;
2. The requirements applicable to a draft permit, fact sheet, and draft permit administrative record, as provided by §§ 124.6, 124.8, and 124.9;
3. The requirements applicable to public notice, public comment, and public hearings, provided by §§ 124.10, 124.11, and 124.12;
4. The requirements applicable to a final permit, response to comments, and administrative record, provided by §§ 124.15, 124.17, and 124.18; and
5. The additional requirements applicable to sources potentially affecting Federal Class I areas, provided by § 124.42 and § 52.21(p), including the timeframes specified in § 52.21(p).

B. The provisions in 40 CFR 124.19 shall apply to all appeals to the EPA Environmental Appeals Board (EAB) on PSD permits issued by MassDEP under this Delegation Agreement, except with respect to permit conditions that do not derive from federal PSD requirements, for which applicable Massachusetts administrative procedures apply. If a PSD permit issued by MassDEP is appealed to the EAB, MassDEP has the primary responsibility for defending the permit before the EAB and the discretion to withdraw the permit under 40 CFR 124.19(d).

C. For purposes of implementing the Federal permit appeal provisions under this delegation, MassDEP will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision of their right to appeal, and this notice is required to state that for federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19:

1. Within 30 days after the final PSD permit decision has been issued under 40 CFR 124.15, any person who filed comments on the draft permit or participated in any public hearing may petition EPA's Environmental Appeals Board to review any condition of the permit decision.
2. The effective date of the permit is 30 days after service of notice to the applicant and commenters 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.
3. If an appeal is made to the EAB, the effective date of the permit is suspended until the appeal is resolved.

D. Major modifications to existing PSD permits shall be processed in accordance with all of the substantive and procedural requirements applicable to new PSD permits. Non-major modifications to existing PSD permits shall be processed in accordance with all applicable PSD policy, guidance, and determinations issued by EPA. Until EPA develops specific procedural requirements for non-major modifications to existing PSD permits, non-major modifications shall be processed according to the procedural requirements of 40 CFR Part 124 applicable to new PSD permits.

E. In the event that EPA determines that a PSD permit does not comply with the requirements of 40 CFR Part 124 related to PSD permits and this Section V. of this Delegation Agreement, EPA shall notify MassDEP that such permit is invalid for federal PSD purposes.

F. MassDEP shall issue (or deny) a final PSD permit within one year of receipt of a complete PSD application, in accordance with Section 165(c) of the Clean Air Act.

G. If at any time the Energy Facilities Siting Board notifies MassDEP that it has received an application for a certificate pursuant to M.G.L. ch. 164, § 69K or § 69K1/2, which would, if granted, exempt the source from, or modify, the terms of any applicable PSD requirement, then MassDEP will immediately notify EPA so that EPA may exercise its concurrent administrative and enforcement authority.

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 MassDEP.

B. In delegated programs, the role of the delegated agency 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 MassDEP's request;
2. If after consultation with MassDEP, EPA determines that MassDEP's enforcement action is inadequate, or that MassDEP is failing to carry out action in a timely or appropriate manner; and/or
3. As part of EPA's role established in an EPA-MassDEP collaborative planning process, which includes those situations where national, regional, or sector initiatives warrant an EPA lead.

VII. EPA and MassDEP Communications

A. MassDEP shall ensure that copies of the following documents are submitted 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	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), FWS, NMFS, SHPO, and THPO of PSD permit application	Copy of letter	Within ten working days after signature
Receipt of comments from FLM, FWS, NMFS, SHPO, and THPO	Forward comment letter	Within ten working days of receipt
Draft PSD permit, public notice	Copy of fact sheet and any supporting technical information, draft PSD permit (including major or minor modifications), and public notice	No later than date of public notice under 40 CFR 124.10
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 PSD permit, response to comments, 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
Petition for review before Environmental Appeals Board (if any)	Copy of petition	Within five working days after receipt

B. MassDEP and EPA will communicate sufficiently to guarantee that each is fully informed and current regarding interpretation of federal PSD regulations (including any unique questions about PSD applicability). MassDEP will make available to EPA, upon request, any records or reports relating to PSD permitting or compliance with PSD requirements that are provided to or otherwise obtained by MassDEP and are not identified in the Table in Section VII.A. above. If MassDEP determines, in accordance with Massachusetts public records requirements, that it cannot or will not provide a record or report to EPA, then EPA and MassDEP will consult on whether such document is essential to EPA's review and whether the information could be provided by alternate means. If EPA concludes that it requires the document and MassDEP concludes that it cannot provide the document, then EPA may proceed according to Sections VI.B.2 and/or IX.B, as appropriate, of this agreement.

C. MassDEP 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 recordkeeping and reporting requirements. In addition to the National Minimum Data Requirements (MDRs) (attached), MassDEP 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 MassDEP will be sent to:

Director, Business Compliance Division
Bureau of Waste Prevention
Department of Environmental Protection
One Winter Street
Boston, MA 02108 and,

Air Permit Section Chief, Bureau of Waste Prevention, for the MassDEP
Regional Office where the PSD project is located.

Correspondence from MassDEP to EPA will be sent to:

Director, Office of Ecosystem Protection
EPA New England, Region 1
5 Post Office Square
Mail Code OEP06-5
Boston, MA 02109-3912

VIII. Future EPA Regulation Revisions

A. MassDEP's delegation to implement and enforce the federal PSD regulations applies to 40 CFR 52.21 and 40 CFR part 124 as they may be amended from time to time, unless MassDEP specifically informs EPA otherwise as provided in Section VIII.C below.

B. If any additional pollutants become "regulated NSR pollutant(s)" within the meaning of 40 CFR 52.21(b)(50) after the date of this Delegation Agreement, MassDEP will implement the federal PSD regulations with respect to such pollutant(s).

C. If, as a result of regulatory revisions after the date of this Delegation Agreement, MassDEP becomes 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, then MassDEP will so inform EPA, and propose either that MassDEP continue to implement the PSD program only for projects that do not trigger the revised regulatory provisions, or that this Delegation Agreement be otherwise amended or revoked. Unless MassDEP and EPA agree otherwise, the provisions of Section IX.B-D will apply.

IX. Administrative

A. This Delegation Agreement supersedes EPA's rescission of delegation dated March 3, 2003.

B. If, after consultation with MassDEP, 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. MassDEP'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. MassDEP is not adequately implementing or enforcing the federal PSD program; or
3. MassDEP 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 part 124, or the Clean Air Act.

C. In the event that MassDEP 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, MassDEP will immediately notify the Director of the Office of Ecosystem Protection and the Chief of the Air Planning Branch. Failure to notify the Director of the Office of Ecosystem Protection and the Chief of the Air Planning Branch does not preclude EPA from exercising its enforcement authority.

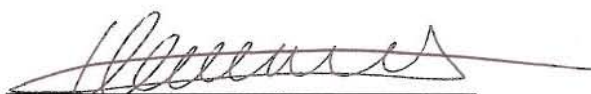
D. In the event that EPA or MassDEP regulations or policies change, EPA and MassDEP will consult to determine whether this delegation should be amended to ensure the continued implementation of EPA's PSD regulations, or, alternatively, revoked.

E. Either EPA or MassDEP may terminate this agreement upon providing the other party 30 days prior notice. Such notice shall include the reasons for such termination.

X. Signatures

On behalf of the MassDEP, 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: 4/4/11



Kenneth L. Kimmell
Commissioner
Department of Environmental Protection

On behalf of the Environmental Protection Agency, I grant full delegation of the federal PSD program, 40 CFR 52.21, to MassDEP pursuant to the terms and conditions of this delegation agreement and the requirements of the Clean Air Act.

Date: 4/11/11



H. Curtis Spalding
Regional Administrator
Environmental Protection Agency
Region 1