

issue PSD permits pursuant to the "Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 10 to the State of Washington Department of Ecology," dated March 28, 2003 ("PSD Delegation Agreement"). The PSD Delegation Agreement was entered into pursuant to 40 CFR 52.21(u).

DATES: The effective date of the EAB's decision is March 22, 2005. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act ("CAA"), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of August 26, 2005.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 10, 1200 Sixth Avenue (AWT-107), Seattle, Washington 98101. To arrange viewing of these documents, call Dan Meyer at (206) 553-4150.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, EPA, Region 10, 1200 Sixth Avenue (AWT-107), Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

- A. What Action Is EPA Taking?
- B. What Is the Background Information?
- C. What Did the EAB Decide?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit issued by Ecology pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 650 ton-per-day flat-glass production plant located approximately five miles south of Chehalis, Washington. The Facility will employ the "3R Process" to limit carbon monoxide ("CO") and nitrogen oxides ("NO_x") emissions from its natural gas-fired glass furnace.

On July 23, 2004, Ecology issued the draft Permit for public review and comment. On October 6, 2004, after providing an opportunity for public comment and holding a public hearing, Ecology issued the final Permit to Cardinal. On November 5, 2004, the Olympia and Vicinity Building and Construction Trades Council ("Petitioner") petitioned the EAB for review of the Permit.

C. What Did the EAB Decide?

Petitioner raised the following issues on appeal: (1) Ecology improperly rejected "oxy-fuel technology" as technically infeasible to control CO and NO_x emissions from the Facility's glass furnace, (2) Ecology failed to conduct a cost-effective analysis of oxy-fuel for limiting NO_x and CO emissions, (3) Ecology's best available control technology ("BACT") emission limits for the Facility's glass furnace should be more stringent, and (4) Ecology failed to conduct a BACT analysis for the Facility's "trackmobile."

The EAB concluded that Petitioner failed to demonstrate that Ecology committed clear error in eliminating oxy-fuel as BACT due to concerns regarding its technical feasibility. Moreover, the EAB found that Ecology's determination regarding the issue of technical feasibility was sufficient to eliminate oxy-fuel as BACT without conducting a full cost effectiveness analysis. The EAB further concluded that the Petitioner failed to demonstrate that Ecology committed clear error in adopting NO_x and CO emission limits, rather than the lower limits suggesting by the Petitioner. Last, the EAB concluded that Ecology correctly determined that the trackmobile is not subject to PSD review because the trackmobile does not fall within the statutory definition of "stationary source" under CAA section 302(z), 42 U.S.C. 7602(z). For these reasons, the EAB denied review of the petition for review in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the PSD Permit and consequently, notice of Ecology's issuance of PSD Permit No. PSD-03-03 to Cardinal. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the CAA, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 11, 2005.

Ronald A. Kreizenbeck,
Acting Regional Administrator, Region 10.
[FR Doc. 05-17028 Filed 8-25-05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7960-7]

Notice of Prevention of Significant Deterioration Final Determination for Sumas Energy 2 Electric Generating Facility

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that on May 26, 2005, the Environmental Appeals Board ("EAB") of EPA denied review of a petition for review of a Prevention of Significant Deterioration ("PSD") permit amendment ("Permit Amendment") that EPA, Region 10 and the State of Washington's Energy Facility Site Evaluation Council ("EFSEC") issued to Sumas Energy 2, Inc. ("SE2"). The Permit Amendment extends the original PSD permit ("Original Permit") issued to SE2 for construction and operation of the SE2 electric generating facility ("Facility"). The Permit Amendment was issued pursuant to 40 CFR 52.21.

DATES: The effective date of the EAB's decision is May 26, 2005. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act ("CAA"), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of August 26, 2005.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA Region 10, 1200 Sixth Avenue (AWT-107), Seattle, Washington 98101. To arrange viewing of these documents, call Pat Nair at (208) 378-5754.

FOR FURTHER INFORMATION CONTACT: Pat Nair, EPA Region 10, Idaho Operations Office, Office of Air, Waste and Toxics, 1435 North Orchard Street, Boise, ID 83706.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

- A. What Action Is EPA Taking?
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A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit Amendment issued by EPA Region 10 and EFSEC ("Permitting Authorities") pursuant to 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 660-megawatt natural gas-fired combined cycle electric generation facility located in Sumas, Washington, about one-half mile south of the Canadian border. The Facility will combust only natural gas and will employ selective catalytic reduction ("SCR") and catalytic oxidation technology.

Both the Province of British Columbia ("Province") and Environment Canada, Canada's national environmental protection agency, filed petitions for review challenging the issuance of the Original Permit. On September 6, 2002, the Permitting Authorities jointly issued the Original Permit to SE2 pursuant to section 165 of the CAA, 42 U.S.C. 7475, 40 CFR 52.21, and the terms and conditions of EFSEC's delegation of authority from EPA Region 10 under 40 CFR 52.21(u).

On March 25, 2003, the EAB issued an order that denied the petitions for review in part and remanded in part to correct a typographical error that was inadvertently retained from the draft permit. The Original Permit subsequently became effective on April 17, 2003 and remained in effect until October 17, 2004.

On June 1, 2004, SE2 applied to the EFSEC for an extension of the Original Permit. On January 11, 2005, after providing an opportunity for public comments and holding a public hearing, EFSEC approved the Permit Amendment. On January 21, 2005, EPA approved the Permit Amendment. The Permit Amendment authorizes an 18-month extension of the Original Permit.

Subsequent to issuance of the Permit Amendment, the Province petitioned the EAB for review of the Permit Amendment.

C. What Did the EAB Decide?

The Province raised five main issues in its petition for review: (1) SE2's application for permit extension was untimely; (2) SE2's application lacked the required construction schedule; (3) the best available control technology ("BACT") re-analysis for startup and shutdown emissions was incomplete; (4) the BACT analysis for nitrogen oxide ("NO_x") emissions was inadequate; and (5) the Permit Amendment should not have been granted for an 18-month period.

The EAB denied review of the Province's petition for review in its entirety. First, the EAB concluded that the Permitting Authorities did not err in concluding that SE2's permit extension application was filed in a timely manner. Specifically, the EAB found that SE2 was not required to submit the permit extension application six months before expiration of the Original Permit. Second, the EAB found that the Province failed to demonstrate that the Permitting Authorities clearly erred in determining that SE2 provided a construction schedule in its application. Third, the EAB determined that the Permitting Authorities conducted a complete BACT re-analysis for startup and shutdown emissions by reviewing the Original Permit BACT analysis for these emissions and concluding that there was no new information that would warrant any changes to the analysis. Moreover, the EAB concluded that the Province failed to demonstrate why the Permitting Authorities' BACT analysis for NO_x emissions was in error. Finally, the EAB found that the Permitting Authorities had discretion to grant an 18-month extension of the Original Permit and the Province failed to show why the Permitting Authorities' decision to grant an 18-month extension was in clear error. For these reasons, the EAB denied the Province's petition for review of the Permit Amendment in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit decision is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register**. This notice constitutes notice of the final agency action denying review of the Permit Amendment and consequently, notice of the Permitting Authorities' issuance of PSD Permit No. EFSEC/2001-02 Amendment 1 to SE2. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought by filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the Clean Air Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: August 1, 2005.

Ronald A. Kreizenbeck,
Acting Regional Administrator, Region 10.
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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7960-3]

Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action and response to comment.

SUMMARY: In a **Federal Register** notice issued on October 9, 1996, the Environmental Protection Agency ("EPA") requested comment on how it calculates the economic benefit that regulated entities obtain as a result of violating environmental requirements. EPA makes this calculation as a part of establishing an appropriate penalty for settlement purposes. The Agency's policy is that any civil penalty should at least recapture the economic benefit the violator has obtained through its unlawful actions. Because enforcement staff typically use the BEN (short for benefit) computer model to perform the economic benefit calculations, the Agency requested comments on the BEN model as well as the larger benefit recapture issues. In a subsequent **Federal Register** notice issued on June 18, 1999, EPA responded to the comments on the October 1996 **Federal Register** notice; provided advance notice of the changes EPA proposed to make to its benefit recapture approach and the BEN computer model; and requested a second round of comment of those proposed changes. This notice responds to the comments on the June 1999 notice and contains the changes EPA will implement in its benefit recapture program.

ADDRESSES: The Agency has dedicated a page of its website to the computers models the enforcement program uses to address benefit recapture as well as ability to pay claims and the evaluation of the costs of supplemental environmental projects (SEP's). The web address for those models is: www.epa.gov/compliance/civil/econmodels/index.html.

FOR FURTHER INFORMATION CONTACT: For further information, contact Jonathan Libber, Office of Civil Enforcement, Special Litigation and Projects Division, at (202) 564-6102, or through electronic