

riparian habitat and special status species, dated October 23, 2000, by C. Overby and J. Agyagos, filed on October 24, 2000.

(25) Summary of January 10, 2001, technical conference, issued on February 8, 2001.

(26) Declaratory Order, issued on December 20, 2001.

For further information, please contact Dianne Rodman at (202) 502-6077.

Magalie R. Salas,

Secretary.

[FR Doc. 03-11123 Filed 5-5-03; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Regulations Governing Off-the-Record Communications; Public Notice

April 29, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable

proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v). The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP02-90-000/001.	4-18-03	David Swearingen.
2. CP02-90-000.	4-18-03	James Martin.
3. CP02-90-000.	4-23-03	Pamela Neubert.
4. Project No. 2042-000.	4-22-03	Nancy Kochan.

Magalie R. Salas,

Secretary.

[FR Doc. 03-11119 Filed 5-5-03; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL -7493-1]

Notice of Prevention of Significant Deterioration Final Determination for the Sierra Pacific Industries Cogeneration Facility in Aberdeen, WA

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of final action.

SUMMARY: This document announces that on January 7, 2003, the Environmental Appeals Board ("EAB") of EPA denied a petition for review of a permit issued for the Sierra Pacific Industries cogeneration facility in Aberdeen, Washington ("SPI") by the State of Washington's Department of Ecology ("Ecology") pursuant to the

Prevention of Significant Deterioration of Air Quality ("PSD") regulations. Ecology issued the PSD permit pursuant to the "Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program," between EPA, Region 10 and Ecology dated February 7, 2002 ("PSD Delegation Agreement") authorized under the regulations for PSD.

DATES: The effective date for the EAB's decision is January 7, 2003. 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 May 6, 2003.

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, Seattle, Washington 98101. To arrange viewing of these documents, call Daniel Meyer at (206) 553-4150.

FOR FURTHER INFORMATION CONTACT:

Daniel Meyer, EPA, Region 10, 1200 Sixth Avenue (OAQ-107), Seattle, Washington, 98101.

SUPPLEMENTARY INFORMATION: This supplementary 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 EPA's EAB on a permit issued by Ecology to SPI pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

On October 17, 2002, Ecology issued a PSD permit pursuant to Section 165 of the CAA, 42 U.S.C. 7475, 40 CFR 52.21, and the terms and conditions of the PSD Delegation Agreement for installation and construction of a wood-waste-fired boiler and steam-driven electricity-generating turbine at SPI's cogeneration facility in Aberdeen, Washington. The facility is subject to PSD for nitrogen oxides ("NO_x"), carbon monoxide ("CO"), particulate matter ("PM"), and particulate matter with an aerodynamic diameter less than 10 micrometers ("PM₁₀"). During the public comment period preceding issuance of the permit, written comments objecting to the permit were submitted by David Fletcher and his consultant, John Williams. These comments were withdrawn in writing before the end of the public comment period. Ecology did

not respond to these written comments before issuing the final permit. After issuance of the final PSD permit, Stanley W. Cleverly ("Petitioner") filed a petition challenging the PSD permit, alleging that (1) the permit did not require best available control technology ("BACT") for emissions of NO_x, CO, and PM₁₀; (2) Ecology exercised discretion warranting review by the EAB when it failed to address the withdrawn comments; and (3) Ecology should have considered the withdrawn comments because Petitioner incorporated them by reference into his own oral comments at a public hearing on the draft permit.

C. What Did the EAB Decide?

On January 7, 2003, the EAB denied review of the petition. The EAB determined that the issues were not preserved on appeal because the Petitioner's oral comments at the hearing did not incorporate the withdrawn comments by reference and because the Petitioner's comments regarding Ecology's BACT determination lacked sufficient specificity. The EAB also determined that Ecology was under no legal obligation to respond to the written comments submitted by Fletcher and Williams because the comments had clearly been withdrawn. The EAB therefore concluded that Ecology did not exercise any discretion warranting review when Ecology determined that no response to the comments was needed.

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 permit to be published in the **Federal Register**. This notice being published today in the **Federal Register** constitutes notice of the final Agency action denying review of the PSD permit and, consequently, notice of the Ecology's issuance of PSD permit No. PSD-02-02 to SPI. 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 Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: April 23, 2003.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 03-11190 Filed 5-5-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7493-2]

Notice of Prevention of Significant Deterioration Final Determination for Sumas Energy 2 Electrical Generating Facility in Sumas, WA

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of final action.

SUMMARY: This document announces that on March 25, 2003, the Environmental Appeals Board ("EAB") of EPA remanded in part and denied review in part of two petitions for review of a permit issued for the Sumas Energy 2 ("SE2") electrical generating facility in Sumas, Washington by EPA, Region 10 and the State of Washington's Energy Facility Site Evaluation Council ("EFSEC") pursuant to EPA's Prevention of Significant Deterioration of Air Quality ("PSD") regulations. EFSEC and EPA issued the PSD permit pursuant to the "Agreement for Partial Delegation of the Federal Prevention of Significant Deterioration (PSD) Program," between EPA and EFSEC dated January 25, 1993 ("PSD Delegation Agreement") authorized under the resolutions for PSD.

DATES: The effective date for final agency action on the SE2 PSD permit is April 17, 2003, the day EFSEC and EPA reissued the PSD permit consistent with the EAB's order. 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 May 6, 2003.

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, Seattle, Washington 98101. To arrange viewing of these documents, call Daniel Meyer at (206) 553-4150.

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

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- 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 EPA's EAB on a permit issued by EPA and EFSEC ("permitting authorities") pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

On September 6, 2002, the permitting authorities jointly issued a PSD permit 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 under 40 CFR 52.21(u), for what ultimately will be a 660-megawatt natural gas-fired combined cycle electric generation facility that would be located in Sumas, Washington, about one-half mile south of the U.S.-Canadian border. The facility is subject to PSD for nitrogen oxides ("NO_x"), volatile organic compounds ("VOC"), particulate matter ("PM"), particulate matter with an aerodynamic diameter less than 10 micrometers 2 ("PM₁₀"), sulfur dioxide ("SO₂") and sulfuric acid mist, ("H₂SO₄"). The facility would combust only natural gas and employ selective catalytic reduction ("SCR") and catalytic oxidation technology to limit its NO_x, carbon monoxide ("CO") and SO₂ air emissions.

Subsequent to issuance of the PSD permit, the Province of British Columbia ("B.C.") and Environment Canada petitioned the EAB for review of the permit.

C. What Did the EAB Decide?

On March 25, 2003, the EAB denied B.C.'s petition for review of the permit. The EAB did, however, remand the permit based on Environment Canada's petition for review for the very limited purpose of correcting a typographical error in the final permit which was inadvertently retained from the draft permit.

B.C. raised essentially four arguments in support of its petition for review: (1) That the Best Available Control Technology ("BACT") analysis failed to consider permit limitations on startup and shutdown operations; (2) that EFSEC failed to consider more stringent Canadian air quality standards in determining BACT; (3) that EFSEC failed to fully consider and respond to public comments; and (4) that SE2's proposal to offset NO_x and PM₁₀ emissions by reducing actual emissions elsewhere in the Fraser Valley airshed is