

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<sub>x</sub>, CO, and PM<sub>10</sub>; (2) Ecology exercised discretion warranting review by the EAB when it failed to address the withdrawn comments; and (3) Ecology should have considered the withdrawn comments because Petitioner incorporated them by reference into his own oral comments at a public hearing on the draft permit.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the issues were not preserved on appeal because the Petitioner's oral comments at the hearing did not incorporate the withdrawn comments by reference and because the Petitioner's comments regarding Ecology's BACT determination lacked sufficient specificity.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obligation to respond to the written comments submitted by Fletcher and Williams because the comments had clearly been withdrawn.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.*

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## 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.

**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 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<sub>x</sub>"), volatile organic compounds ("VOC"), particulate matter ("PM"), particulate matter with an aerodynamic diameter less than 10 micrometers 2 ("PM<sub>10</sub>"), sulfur dioxide ("SO<sub>2</sub>") and sulfuric acid mist, ("H<sub>2</sub>SO<sub>4</sub>"). The facility would combust only natural gas and employ selective catalytic reduction ("SCR") and catalytic oxidation technology to limit its NO<sub>x</sub>, carbon monoxide ("CO") and SO<sub>2</sub> 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<sub>x</sub> and PM<sub>10</sub> emissions by reducing actual emissions elsewhere in the Fraser Valley airshed is