

increases under 40 CFR 52.21(aa)(11), subject to the conditions set forth in 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.

II. Terms of Delegation of Authority

A copy of the Delegation Agreement can be viewed or downloaded from the Internet at http://www.ecy.wa.gov/programs/air/psd/PSD_EPA_Final03.pdf. The Delegation of the federal PSD regulations to Ecology is subject to the conditions set forth in the following agreement:

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

Through this agreement, the Washington State Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) establish the legal and procedural bases for Ecology to conduct new source review and to implement and enforce portions of the federal PSD regulations found in 40 CFR 52.21 (effective March 3, 2003).

I. Introduction

Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173-400-117, -141, 113 and -171 (effective September 15, 2001). The provisions of WAC 173-400-117, -141, and -171 as in effect on September 15, 2001, shall hereafter be referred to as the "State PSD regulations."

Based on those changes, EPA granted Ecology full delegation to implement and enforce the federal PSD regulations in a delegation agreement dated February 7, 2002.

EPA recently promulgated revisions to the federal PSD regulations found in 40 CFR 52.21. See 67 FR 80186, (December 31, 2002). In general, these changes affect the applicability of the federal PSD program to modifications to existing major stationary sources. The provisions of 40 CFR 52.21, as revised on March 3, 2003 shall hereafter be referred to as the "federal PSD regulations."

Ecology and EPA desire to continue to have Ecology implement and enforce the federal PSD regulations to the extent possible while Ecology determines how to revise the State PSD regulations to meet the new federal requirements. Accordingly, EPA and Ecology are entering into this partial Delegation Agreement.

As part of the transition process for implementing the new provisions, Ecology and EPA intend to allow permit applicants to withdraw any PSD permit applications submitted prior to March 3, 2003, and currently under review to afford permit applicants the opportunity to re-evaluate their projects in light of the revised federal PSD requirements if they so choose.

II. Legal Authority

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

B. As discussed above, Ecology has adopted by reference, with certain minor changes, the federal PSD regulations found in 40 CFR 52.21, as in effect on July 1, 2000. See WAC 173-400-117, -141, and -171.

C. EPA has determined that Chapter 43.05 of the Revised Code of Washington (RCW), often referred to as "House Bill 1010," conflicts with the delegation requirements of 40 CFR 52.21(u). Based on this determination, Ecology has determined that Chapter 43.05 RCW does not apply to permit to construct requirements of Chapter 173-400 WAC, including the State PSD regulations.

D. The Ecology Division of the Washington Attorney General's Office has issued an opinion¹ stating that the provisions of RCW 70.94.035, "Air Technical Assistance Visits by Ecology," do not prevent enforcement actions, but only require Ecology to wait until the end of the correction period to determine whether enforcement action is appropriate. Based on that opinion letter, EPA has determined that RCW 70.94.035 does not impermissibly interfere with Washington's enforcement authority. See 59 FR 42552 (August 18, 1994) (proposed interim approval of Washington's title V program).

E. Ecology and EPA agree that requirements issued in PSD permits under the authority of WAC 173-400-110, -113 and -141 are federally enforceable requirements of the State Implementation Plan even in cases where a federal PSD permit is not required under 40 CFR 52.21. For purposes of incorporating all applicable requirements into the Title V permit, the components of the PSD permit applicable to State PSD requirements remains federally enforceable as a component of the SIP notice of construction approval.

III. Scope of Delegation

A. Pursuant to 40 CFR 52.21(u), EPA hereby delegates to Ecology partial responsibility for conducting federal new source review and for implementing and enforcing the federal PSD regulations for all sources located in the State of Washington as follows, subject to the terms and conditions of this Delegation Agreement:

1. Ecology has full delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all new major stationary sources.

2. Ecology has partial delegation to conduct federal new source review and to implement and enforce the federal PSD regulations for all physical or operational changes to existing stationary sources² as follows:

a. Except for applications for PAL increases under 40 CFR 52.21(aa)(11), Ecology is delegated authority to receive all permit applications, requests for applicability determination, notifications, reports, notices and other documents required under or that relate to the federal PSD regulations.

b. Ecology is delegated authority to process, issue, and enforce PSD permits for any physical or operational change to an existing stationary source that Ecology determines is subject to the State PSD regulations and the federal PSD regulations, provided, however, that Ecology will note in the permit record any instance where Ecology determines that an emission unit or pollutant is subject to the State PSD regulations but not the federal PSD regulations.

c. Ecology is delegated authority to conduct applicability determinations that relate to the applicability of the federal PSD regulations to physical or operational changes to existing stationary sources, provided, however, that the following additional conditions apply in the circumstances described below. For purposes of this Delegation Agreement, an applicability determination includes a written determination in a preliminary decision or permit.

(i) *Determining the Emissions Increase*
(A) *Applicability Test for Physical or Operational Changes to Existing Electric Utility Steam Generating Units (EUSGUs) and Construction of Replacement EUSGUs.*

(I) Determination—Applicability. Ecology is delegated the authority to act upon requests from sources to determine whether a significant emissions increase will result from a physical or operational change to an EUSGU or the construction of a replacement EUSGU, and to determine whether a significant net emissions increase will occur at the stationary source. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of Ecology's determination along with a copy of the request.

(II) Determination—Baseline Actual Emissions³. Ecology is delegated the authority to act upon requests from sources to use a different time period than that specified in 40 CFR 52.21(b)(48)(i) to calculate baseline actual emissions. Upon issuance of the determination, Ecology will provide to EPA and the Title V permitting authority a copy of the determination along with a copy of the request.

(III) Reporting—Projected Actual Emissions. Ecology is delegated the authority to receive from sources the information required under 40 CFR 52.21(r)(6)(ii) to calculate an EUSGU's projected actual emissions at a stationary source.⁴ Ecology

(a) any physical or operational change to an existing major stationary source and (b) any physical or operational change that would occur at a stationary source not otherwise qualifying under 40 CFR 52.21(b)(1) as a major stationary source if the change would constitute a major stationary source by itself.

³ Sources are required to obtain this determination from Ecology prior to beginning actual construction.

⁴ EUSGUs opting to use the actual-to-projected actual applicability test are required to submit this

¹ Letter from Mary Sue Wilson, Assistant Attorney General, to Chuck Clarke, Regional Administrator, dated June 7, 1994, regarding Supplement to October 27, 1993 and December 30, 1993 Attorney General Opinion Letters for Washington State Department of Ecology.

² The reference to "physical or operational changes to existing stationary sources" covers both