

(iv) *Plantwide Applicability Limitations*
(A) Ecology PALs.

(I) Ecology is delegated the authority to act upon an application from a source for a PAL pursuant to 40 CFR 52.21(aa)(1)¹⁶.

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(II) Ecology is delegated the authority to act upon an application from a source to renew a PAL pursuant to 40 CFR 52.21(aa)(10).¹⁷

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order along with a copy of the request.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(III) Ecology is delegated the authority to reopen a PAL pursuant to 40 CFR 52.21(aa)(8).¹⁸

(a) Upon issuance of the final permit or order, Ecology will provide to EPA and the Title V permitting authority a copy of the permit or order.

(b) Coordination with Title V Permitting Authority. Ecology will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit or order are included in the Title V permit for the source.

(B) EPA PALs.

(I) Ecology is not delegated the authority to act upon an application from a source to increase a PAL pursuant to 40 CFR 52.21(aa)(11). Applications for PAL increases shall be submitted directly to EPA and EPA shall approve PAL increases through the issuance of a permit under the federal PSD regulations.

(a) Upon issuance of the final permit, EPA will provide to Ecology and the Title V permitting authority a copy of the permit along with a copy of the request.

(b) Coordination with Title V Permitting Authority. EPA will coordinate with the Title V permitting authority to ensure that the terms and conditions required in the PAL permit are included in the Title V permit for the source.

3. Notwithstanding the provisions of subsection III.A.2., Ecology is not delegated authority for any change to a source that is a major modification to an existing stationary source under the federal PSD regulations but

not under the State PSD regulations. All permit applications, notices, and reports relating to such changes received by Ecology shall be promptly forwarded to EPA or the applicant shall be directed to submit the application materials directly to EPA.

4. The parties acknowledge that under certain circumstances the State PSD regulations and federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.

B. Ecology's delegation to conduct new source review and 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. Consistent with previous federal program approvals or delegations, EPA will continue to implement the federal PSD program in Indian Country in Washington because Ecology did not adequately demonstrate its authority over sources and activities located within the exterior boundaries of Indian reservations and in other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust land within the 1873 Survey Area. After consulting with the Puyallup Tribe of Indians, EPA's delegation in this agreement applies to sources and activities on non-trust lands within the 1873 Survey Area. Therefore, Ecology will implement and enforce the federal PSD requirements on these non-trust lands of the 1873 Survey Area as provided in this Delegation Agreement.

C. Ecology's delegation to conduct new source review and to implement and enforce the federal PSD regulations under this Delegation Agreement does not extend to sources or activities under the jurisdiction of the State of Washington Energy Facilities Site Evaluation Council (EFSEC).

D. The EPA Administrator has delegated to the Director of the Region 10 Office of Air Quality, the authority to delegate the federal PSD regulations to any State or local agency. The State or local agency that receives delegation from EPA Region 10 does not have the authority under the federal Clean Air Act to further delegate the federal PSD regulations.

IV. Requirements

A. The responsibility for conducting new source review for all regulated sources as provided by this Delegation Agreement, including those under the jurisdiction of the Industrial Section, the Nuclear and Mixed Waste Program, and local air authorities in the State of Washington, rests with Ecology's Air Quality Program. EPA is relying on the technical and programmatic expertise of the Technical, Information, and Engineering Section (TIES) of Ecology's Air Quality Program in the implementation of this Delegation Agreement on Ecology's behalf. The processing, issuance, and enforcement of

PSD permits, Clean Unit Designations, Pollution Control Project Approvals, and PALs shall be conducted in consultation and coordination with TIES. All applicability determinations under this Delegation Agreement will be made by the Manager of TIES or a higher level manager within Ecology. In no event will an applicability determination be made at a level lower than the Manager of TIES. Ecology will ensure that other Ecology offices and local air authorities are aware that all PSD applicability determinations under this Delegation Agreement must be made by the Manager of TIES or a higher level manager within Ecology.

B. Ecology will ensure that there are adequate resources and trained personnel within the TIES 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, and modeling procedures. EPA will provide PSD training for Ecology staff to meet needs identified by EPA or Ecology.

C. Where the rules or policies of Ecology are more stringent than the federal PSD program, Ecology may elect to include such requirements in the PSD permit along with the EPA requirements.

D. If both a state or local regulation and a federal regulation apply to the same source, both must be complied with, regardless of whether one is more stringent than the other, subject to the requirements of section 116 of the Clean Air Act.

E. Ecology will follow all PSD policy, guidance, and determinations issued by EPA for implementing the federal PSD program as provided in this Delegation Agreement. EPA will provide Ecology with copies of EPA policies, guidance, and determinations through the Region 7 NSR database and/or hard copies where appropriate. Where no current EPA policy or guidance clearly covers a specific situation, Ecology shall consult with the EPA Office of Air Quality on its proposed interpretation of the EPA regulations.

F. Ecology 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. Ecology shall consult with the appropriate State and local agency 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. In order to assist EPA in carrying out its responsibilities under Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, and 50 CFR part 402, subpart B ("Consultation Procedures"), and with Section 305(b)(2) of the Magnuson-Stevens Fishery and Conservation Act ("Magnuson-Stevens Act"), 16 U.S.C. 1801 *et seq.*, and 50 CFR part 600, subpart K ("EFH Coordination, Consultation, and Recommendations"), for federal PSD permits, regarding essential fish habitat, Ecology shall:

1. Within 5 working days of receipt of a complete PSD permit application, notify the

¹⁶ For requests seeking PALs, Ecology intends to use its authority under WAC 173-400-091, -110 and -141 as appropriate.

¹⁷ For requests seeking PAL renewals, Ecology intends to use its authority under WAC 173-400-091, -110 and -141 as appropriate.

¹⁸ Except for those PAL reopenings under 40 CFR 52.21(aa)(8)(ii)(a)(1), Ecology intends to reopen PALs using its authority under WAC 173-400-091 and -110 as appropriate.