

a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim ratesetting formula and FY 2006 Base Charge and rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective October 1, 2005, Rate Schedule BCP–F7, for the Boulder Canyon Project of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending the Commission's confirmation and approval of it or substitute rates on a final basis through September 30, 2010.

Dated: August 11, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule BCP–F7 (Supersedes Schedule BCP–F6)

United States Department of Energy, Western Area Power Administration

Boulder Canyon Project, Arizona, Nevada, Southern California; Schedule of Rates for Electric Service

Effective: The first day of the first full billing period beginning on or after October 1, 2005, and remaining in effect through September 30, 2010, or until superseded.

Available: In the marketing area serviced by the Boulder Canyon Project (BCP).

Applicable: To power Contractors served by the BCP supplied through one meter, at one point of delivery, unless otherwise provided by contract.

Character and Conditions of Service: Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Base Charge: The total charge paid by a Contractor for annual capacity and energy based on the annual revenue requirement. The base charge shall be composed of an energy component and a capacity component:

Energy Charge: Each Contractor shall be billed monthly an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's firm energy percentage multiplied by the Contractor's monthly energy ratio as provided by contract.

Capacity Charge: Each Contractor shall be billed monthly a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent capacity percentage as provided by contract.

Forecast Rates: Energy: Shall be equal to the Rate Year Energy Dollar divided by the lesser of the total master schedule energy or 4,501.001 million kWhs. This rate is to be applied for use of excess energy, unauthorized overruns, and water pump energy.

Capacity: Shall be equal to the Rate Year Capacity Dollar divided by 1,951,000 kWhs, to be applied for use of unauthorized overruns.

Calculated Energy Rate: Within 90 days after the end of each rate year, a Calculated Energy Rate shall be calculated. If the energy deemed delivered is greater than 4,501.001 million kWhs, then the Calculated Energy Rate shall be applied to each Contractor's energy deemed delivered. A credit or debit shall be established based on the difference between the Contractor's Energy Dollar and the Contractor's actual energy charge, to be applied the following month calculated or as soon as possible thereafter.

Lower Basin Development Fund Contribution Charge: The contribution

charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overrun shall be billed at 10 times the Forecast Energy Rate and Forecast Capacity Rate. The contribution charge shall be applied also to each kWh of overrun.

Adjustments: None.

[FR Doc. 05–17000 Filed 8–25–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7961–1]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice Regarding Waiver of Federal Preemption.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption for its heavy-duty diesel regulations for 2007 and subsequent model year vehicles and engines (2007 California Heavy Duty Diesel Engine Standards) and related test procedures including the not-to-exceed (NTE) and supplemental steady-state tests (supplemental test procedures) to determine compliance with applicable standards. By letter dated July 16, 2004, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its 2007 California Heavy Duty Diesel Engine Standards, which primarily align California's standards and test procedures with the federal standards and test procedures for 2007 and subsequent model year vehicles and engines.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket No. OAR–2004–0132. The docket is located

at The Air Docket, room B-108, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566-1742. A reasonable fee may be charged by EPA for copying docket material. Additionally, an electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the electronic docket system, select "search," then key in the appropriate docket ID number for Docket OAR-2004-0132.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (<http://www.epa.gov/OTAQ>). Users can find these documents by accessing the OTAQ Web site and looking at the path entitled, "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (<http://www.epa.gov/docs/fedrgstr/EPA-AIR>).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 343-9256. E-Mail Address: Dickinson.David@EPA.GOV.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of federal preemption pursuant to section 209(b) of the Act for the 2007 California Heavy Duty Diesel Engine Standards.¹

¹ The CARB Board approved the 2007 Heavy Duty Diesel Engine Standards by Resolution 01-38 on October 25, 2001 (See Attachment 1 to CARB's July 16, 2004 Waiver Request Letter). The regulations covered by today's waiver include CARB's amendments to title 13, California Code of

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

As further explained in the Decision Document supporting today's decision, EPA received a series of comments supporting CARB's request for a waiver of federal preemption. EPA did not receive any comment suggesting that CARB's request should be denied or a decision delayed based on the criteria set forth in section 209(b) of the Act. EPA did receive comment that the waiver of federal preemption should otherwise be delayed, but for the reasons set forth below and further discussed in the Decision Document, EPA is granting CARB's request for a waiver of federal preemption.

CARB determined that its 2007 California Heavy Duty Diesel Engine Standards do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its 2007 California Heavy Duty Diesel Engine Standards are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject 2007 California Heavy Duty Diesel Engine Standards. No

Regulations (CCR), section 1956.8. The specific regulatory text and the incorporated document covered by the 2007 Heavy Duty Diesel Engine Standards regulation are: section 1956.8, title 13, CCR, as shown in Attachment 2 to CARB's Waiver Request Letter, and amendments to the related test procedures incorporated in section 1956.8(b), "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel Engines and Vehicles," also shown in Attachment 2. For further discussion of the regulations covered by today's decision please see the Decision Document.

information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its 2007 California Heavy Duty Diesel Engine Standards are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's 2007 California Heavy Duty Diesel Engine Standards are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by October 25, 2005. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 19, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 05-17037 Filed 8-25-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-7960-5]

Notice of Prevention of Significant Deterioration Final Determination for BP Cherry Point Cogeneration Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that on June 21, 2005, the Environmental Appeals Board (“EAB”) of EPA denied review of a petition for review of a Prevention of Significant Deterioration (“PSD”) permit (“Permit”) that EPA Region 10 and the State of Washington’s Energy Facility Site Evaluation Council (“EFSEC”) issued to BP West Coast Products, L.L.C. (“BP”) for construction and operation of the BP Cherry Point Cogeneration Facility (“Facility”), a natural gas-fired cogeneration facility. The Permit was issued pursuant to 40 CFR 52.21.

DATES: The effective date of the EAB’s decision is June 21, 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 EPA Region 10 and EFSEC (“Permitting Authorities”) pursuant to

the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 720-megawatt natural gas-fired, combined cycle combustion turbine cogeneration facility located on a 33-acre parcel of land adjacent to BP’s existing Cherry Point petroleum refinery in Whatcom County, Washington. The Facility will combust natural gas and will employ selective catalytic reduction (SCR) and an oxidation catalyst to reduce emissions.

On November 7, 2003, EFSEC issued the draft PSD permit for public review and comment. On December 21, 2004, after providing an opportunity for public comment and a public hearing, EFSEC approved the Permit. On January 11, 2005, EPA approved the Permit. On February 4, 2005, Ms. Cathy Cleveland (“Petitioner”) petitioned the EAB for review of the Permit.

What Did the EAB Decide?

Petitioner, acting *pro se*, raised the following issues on appeal: (1) The Permitting Authorities failed to protect Peace Arch Park, a Class I area; (2) The Permitting Authorities failed to properly evaluate particulate matter (“PM”) emissions from the Facility and failed to consider the health impacts related to PM; (3) the Permitting Authorities failed to properly model the ambient air quality; (4) the National Ambient Air Quality Standards (“NAAQS”) designation was incorrectly identified in the Permit; (5) EPA’s recommended nitrogen oxide (“NO_x”) limit was not included in the Permit; and (6) the Memorandum of Understanding (“MOU”) between BP and the Province of British Columbia was missing from the Permit attachments.

The EAB denied review of the following three issues because these issues were not raised during the public comment period on the draft Permit or during the public hearing on the draft Permit: (1) the Permitting Authorities failed to protect Peace Arch Park, a Class I area; (2) the Permitting Authorities failed to properly model the ambient air quality; and (3) the NAAQS designation was incorrectly identified in the Permit. The EAB further concluded that the Permitting Authorities properly considered the impacts of emissions of particulate matter less than 10 microns (“PM₁₀”) and particulate matter less than 2.5 microns (“PM_{2.5}”). Moreover, the EAB found that Petitioner failed to demonstrate that the Permitting Authorities committed clear error in adopting a NO_x limit of 2.5 parts per million (“ppm”) rather than 2.0 ppm.

Last, the EAB concluded that Petitioner failed to demonstrate that the Permitting Authorities committed clear error by failing to include the MOU between BP and the Province of British Columbia in the administrative record. 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 the Permitting Authorities’ issuance of PSD Permit No. EFSEC/2001-02 to BP. 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 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-7960-6]

Notice of Prevention of Significant Deterioration Final Determination for Cardinal FG Company

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of final action.

SUMMARY: This document announces that on March 22, 2005, the Environmental Appeals Board (“EAB”) of EPA denied review of a petition for review of a Prevention of Significant Deterioration (“PSD”) permit (“Permit”) that the State of Washington’s Department of Ecology (“Ecology”) issued to Cardinal FG Company (“Cardinal”) for construction and operation of a flat glass production plant (“Facility”) near Chehalis, Washington. The Permit was issued pursuant to 40 CFR 52.21. Ecology has the authority to