July 29, 2010

Dennis McLerran  
Regional Administrator  
U.S. EPA Region 10  
1200 6th Avenue, Suite 900  
Seattle, Washington 98101

RE: Washington State Department of Ecology Implementation of EPA’s Tailoring Rule

Dear Mr. McLerran:

The June 3, 2010, Federal Register, pp. 31582 and 31584, asks each state to submit a letter to the appropriate EPA Regional Administrator explaining whether the state will apply EPA’s meaning of the term “subject to regulation” in prevention of significant deterioration permitting and in air operating permits, and if so, whether the state must undertake a regulatory process to do so. As you know, the Washington State Constitution prevents state agencies from adopting future federal regulations. Diversified Inv. P’ship v. Dep’l of Soc. & Health Servs., 113 Wn.2d 19, 28, 775 P.2d 947 (1989). Therefore, the Washington State Department of Ecology (Ecology) will be applying the term “subject to regulation” through amendments to its general permitting rule (WAC 173-400) and its air operating permit rule (WAC 173-401). Ecology anticipates both of these rulemaking efforts will be completed, and the amended rules in effect, by January 2, 2011.

Please let me know if you have any further questions about this matter.

Sincerely,

KATHARINE G. SHIREY  
Assistant Attorney General  
(360) 586-6769

KGS:df

c: Stu Clark  
Nancy Pritchett

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