BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: WISCONSIN DEPARTMENT OF ADMINISTRATION UNIVERSITY OF WISCONSIN – MADISON WALNUT STREET HEATING PLANT Petition number V-2005-4 Permit No. 113134230-P10 Proposed by the Wisconsin Department of Natural Resources	)))))))))	ORDER RESPONDING TO PETITIONER'S REQUEST THAT THE ADMINISTRATOR OBJECT TO ISSUANCE OF STATE OPERATING PERMIT

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR OBJECTION TO PERMIT

On February 21, 2005, pursuant to its authority under the State of Wisconsin implementing statute, Wis. Stat. Ann. §§ 285.62-285.64, and regulations, Wis. Admin. Code § NR 407, Title V of the Clean Air Act (Act), 42 U.S.C. §§ 7661-7661f, and the U.S. Environmental Protection Agency's implementing regulations in 40 C.F.R. part 70 (part 70), the Wisconsin Department of Natural Resources (WDNR) proposed a Title V renewal operating permit for the University of Wisconsin - Madison's Walnut Street Heating Plant (Walnut Street Plant). The Walnut Street Plant serves the University of Wisconsin Madison Campus and primarily consists of steam generating boilers and a back up generator which burn natural gas or low sulfur distillate fuel oil.

On May 31, 2005, EPA received a petition from David Bender of the Bender Law Offices, on behalf of the Sierra Club (Petitioner), requesting that EPA object to issuance of the Walnut Street Plant permit, pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d).

Petitioner alleges that the permit is not in compliance with the requirements of the Act, 40 C.F.R. part 70, EPA policy, and requirements applicable to the Walnut Street Plant. Petitioner specifically alleges that the permit (1) fails to include conditions that meet the legal requirements for monitoring; (2) contains conditions that violate the requirements related to credible evidence; (3) contains conditions that violate EPA policy requiring a permit to be practically enforceable; and (4) limits federal enforceability by failing to apply source-wide limits to every emission unit at the source and illegally making the limits not federally enforceable.

EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which requires the Administrator to issue an objection if the Petitioner

demonstrates to the Administrator that the permit is not in compliance with the applicable requirements of the Act. *See also* 40 C.F.R. § 70.8(d); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2nd Cir. 2002). Based on a review of the available information, including the petition, the proposed permit, the preliminary determination (Wisconsin's statement of basis), comments submitted on the draft permit, additional information provided by the permitting authority in response to EPA's inquiries, the information provided by Petitioner, and relevant statutory and regulatory authorities and guidance, I grant the Petitioner's request in part and deny it in part, for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1) of the Act requires each state to develop and submit to EPA an operating permit program to meet the requirements of Title V. EPA granted final full approval of the Wisconsin Title V operating permit program effective November 30, 2001. 66 *Fed. Reg.* 62946 (December 4, 2001).

Sections 502(a) and 504(a) of the Act make it unlawful for major stationary sources of air pollution and other sources subject to Title V to operate except in compliance with an operating permit issued pursuant to Title V that includes emission limitations and such other conditions necessary to assure compliance with applicable requirements of the Act.

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a), through the state Title V programs, require states to submit all operating permits proposed pursuant to Title V to EPA for review. EPA will object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) requires the Administrator to object to a permit if a Petitioner demonstrates that the permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. Petitions must be based on objections to the permit that were raised with reasonable specificity during the public comment period, unless the Petitioner demonstrates that it was impracticable to raise the objection within the public comment period, or unless the grounds for the objection arose after the close of the public comment period. If the permitting authority has not yet issued the permit, it may not do so unless it revises the permit and issues it in accordance with section 505(c) of the Act, 42 U.S.C. § 7661d(c). However, a petition for review does not stay the effectiveness of the permit or its requirements if the permitting authority issued the permit after the expiration of EPA's 45-day review period and before receipt of the objection. If, in response to a petition, EPA objects to a permit that has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. § 70.7(g)(4) or (5)(i) and (ii), and 40 C.F.R. § 70.8(d).

BACKGROUND

The University of Wisconsin (UW) submitted to WDNR an application to renew the Title V permit for the Walnut Street Plant on March 8, 2001. WDNR noticed the draft Title V permit on October 15, 2003, and the proposed Title V permit on February 21, 2005. During the public comment period, WDNR received comments on the draft permit, including comments from the Petitioner. WDNR issued the final permit on April 11, 2005.

WDNR notified the public that June 6, 2005, was the deadline, under the statutory timeframe in section 505(b)(2) of the Act, to file a petition requesting that EPA object to the issuance of the final Walnut Street Plant permit. Petitioner submitted its petition to object to the issuance of the Walnut Street Plant permit to EPA on May 23, 2005. Accordingly, EPA finds that Petitioner timely filed this petition.

ISSUES RAISED BY THE PETITIONER

I. Adequate Monitoring

Petitioner asserts that necessary monitoring is strictly regulated by 40 C.F.R. § 70.6(a)(3)(i), and recites that section of the regulations. Petitioner further notes that 40 C.F.R. § 70.6(c)(1) provides that "[a]ll part 70 permits shall contain ... testing, monitoring reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." Petitioner states that section 504 of the Act and 40 C.F.R. § 70.6(a)(3) require that permits indicate the frequency at which testing shall take place, and asserts that the Administrator must object to the permit because conditions of the permit fail to meet the applicable requirements of the Act and the Code of Federal Regulations. Petition at 1-2.

A. Particulate Matter Monitoring for B20 and B21

The Petitioner alleges that there are insufficient monitoring requirements for particulate matter (PM) from boilers B20 and B21. Citing section I.A.1.b.(1) of the permit, the Petitioner notes that the permit provides only that the facility "not burn fuels other than natural gas and distillate fuel oils" to ensure compliance with the PM limit. The Petitioner further notes that footnote 1 to the permit states that "[t]his restriction will ensure that the facility can meet the allowable limit since at the maximum heat input capacity the emissions are less than this limit." The Petitioner contends that the assumption that fuel restriction achieves compliance is insufficient to assure compliance, fails to meet the standards of part 70, and violates the Wisconsin State Implementation Plan (SIP). The Petitioner notes that section NR 439.06(1) and (1m) of the Wisconsin SIP specifies two compliance demonstration methods for nonfugitive PM, and that neither is required as a monitoring/compliance method in the Walnut Street Plant permit. Finally, the Petitioner states that the permit does not require a stack test for particulate matter from the two boilers; nevertheless, WDNR states in section I.A.1.c.(1) that "EPA Method 5, including backhalf condensibles, shall be used" whenever there is stack testing. The Petitioner concludes that it

appears that WDNR admits that periodic stack testing of total PM is appropriate, but that WDNR does not include a stack testing requirement in the permit. Petition at 2.

Response

Although Petitioner characterizes the issues described above as inadequate monitoring, Petitioner's allegations are directed at the PM compliance demonstration requirement for boilers B20 and B21 in section I.A.1.b(1) of the permit.[1] Specifically, Petitioner alleges that this compliance demonstration requirement (i.e., burning only natural gas and distillate fuel oils) is not adequate to assure compliance with the PM limit for boilers B20 and B21. The Petitioner further alleges that the Wisconsin SIP requires the use of one of the two compliance demonstration methods specified in section NR 439.06(1) and (1m) of the SIP. Petitioner also alleges that WDNR, having apparently found stack testing to be appropriate, should include a stack testing requirement in section I.A.1.b of the permit.

Petitioner alleges that the fuel restriction requirement in section I.A.1.b(1) of the permit is based on WDNR's assumption that the PM limit for boilers B20 and B21can be met by burning only natural gas and distillate fuel oils, and that this assumption is not adequate to assure compliance with the relevant PM limit. 40 C.F.R. § 70.7(a)(5) requires that a permitting authority provide with a draft Title V permit "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." In the statement of basis (SOB) for the Walnut Street Plant Title V renewal permit at issue, #113134230-P10, WDNR refers to the SOB for the original Title V permit, #113134230-P01, for a description of compliance methods. SOB at 12. The SOB accompanying the original Title V permit contains calculations that show that, based on the heat content of natural gas and distillate fuel oils, along with the heat input capacity rating of the boilers, the maximum PM emissions possible while firing natural gas or distillate fuel oils are inherently less than the allowable PM limit for boilers B20 and B21.

The SOB for the original permit states at page 13 that "...the facility must meet the allowable emission rate of 0.10 lb PM/MMBtu from each stack according to NR 415.06(2)(c). The facility can meet this allowable emission rate at their maximum theoretical emission rate for PM. Therefore, the draft permit should require that they burn only natural gas and distillate fuel oil and that they keep weekly records of fuel used to demonstrate compliance with the allowable emission rate."

The basis for WDNR's compliance demonstration requirement, as described above, is consistent with EPA's previous assessments regarding PM emissions while burning only natural gas or distillate fuel oils. In the proposed National Standard of Performance (NSPS) for Stationary Combustion Turbines, EPA explained that it would not regulate PM because "PM emissions are negligible with natural gas firing due to the low sulfur content of natural gas[, and that e]missions of PM are only marginally significant with distillate oil firing because of the low ash content." 70 Fed. Reg. 8314, 8321 (February 18, 2005). Similarly, in response to a petition to object to the proposed permit for the Public Service Company's Fort St. Vrain Station in Platteville, Colorado, EPA stated that "PM emissions are negligible with

[1] The PM monitoring requirements for boilers B20 and B21 are provided in section I.A.1.c of the permit.

natural gas firing due to the low sulfur content of natural gas." *In the Matter of Public Service Company, Fort St. Vrain Station*, Petition No. VIII-2005-02 ("*Public Service Company*") at 8.

As described above, WDNR has explained with calculations in the initial permit's SOB, which is incorporated by reference into the SOB for the current renewal permit, why its fuel limitation requirement is adequate to assure compliance with the PM limit for boilers B20 and B21. WDNR's basis for this permitting decision is consistent with EPA's previous assessment regarding PM emissions while firing natural gas or distillate fuel oils. I, therefore, deny the petition on this issue.

The Petitioner further states that section NR 439.06(1) and (1m) of the Wisconsin SIP requires one of two compliance demonstration methods for non-fugitive PM and that the permit is flawed because neither one is required in the permit. Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. In its comment dated May 22, 2003, Petitioner expressed a concern with WDNR's exclusive reliance on AP-42 factors for determining compliance with permit limitations and requested that WDNR require stack testing for boilers B20 and B21 during natural gas and fuel oil firing. However, none of the comments mentioned section NR 439.06(l) or (1m) of the Wisconsin SIP, much less claimed that the failure of WDNR to incorporate one of these two PM compliance demonstration methods into the Walnut Street Title V renewal permit for boilers B20 and B21 is a SIP violation. In its response to comments, WDNR defended its use of the AP 42 emissions factors. WDNR also stated in its response that "[n]o additional or periodic testing is required by [section NR 439 of the Wisconsin SIP]." WDNR's response to comments did not specifically discuss section NR 439.06(1) and (1m) of the Wisconsin SIP.

Petitioner's allegation regarding section 439.06(1) and 439.06(1m)'s applicability to boilers B20 and B21, as presented in this petition, is sufficiently different from the issues raised in the public comments described above such that WDNR could not have reasonably anticipated, and could not have been expected to explain in its response to comments why the PM compliance demonstration methods provided in sections NR439.06(1) and (1m) do not apply to boilers B20 and B21. The Petitioner has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. Therefore, I deny the petition on this issue.

Petitioner asks the Administrator to object to the Walnut Street Title V permit because WDNR did not include in section I.A.1.b of the permit a stack testing requirement for PM emissions from boilers B20 and B21. However, Petitioner has not shown that stack testing for PM emissions is an applicable requirement for boilers B20 and B21. Rather, Petitioner argues that, by specifying in the permit a PM testing method for boilers B20 and

B21, WDNR has apparently admitted that stack testing for PM emissions is appropriate for these boilers and, therefore, should require such testing in the permit. This argument does not demonstrate that any applicable requirement directs the facility to conduct stack testing for PM emissions from boilers B20 and B21. In fact, as previously mentioned, WDNR stated in its response to comments that "[n]o additional or periodic testing is required by [section NR 439.06 of the Wisconsin SIP]." Also, as described above, WDNR has shown in the permit record that its fuel restriction requirement is adequate to assure compliance with the PM limit for boilers B20 and B21. For these reasons, I deny the petition on this issue.

B. Visible Emission Monitoring for B20 and B21

The Petitioner alleges that there are insufficient monitoring requirements for visible emissions (VE) from the two 186.5 MMBtu/hour boilers, B20 and B21. The Petitioner states that the only VE monitoring requirement identified in the permit for these two boilers is in section I.A.2.b(1) of the permit, which requires that the source burn only natural gas or distillate fuel oils. Petitioner asserts that this is insufficient monitoring for VE. Petitioner notes that WDNR states in footnote 2 to the permit that burning natural gas or fuel oil is sufficient monitoring for VE by explaining that, "[s]ince the facility is restricted to clean burning fuels, it is unlikely that the facility will exceed the limit so long as no other fuels are burned, therefore these requirements are sufficient." Citing to section 504 of the Act and 40 C.F.R. § 70.6(a)(3), Petitioner asserts that a Title V permit must require sufficient monitoring to assure compliance. Petitioner argues that a "presumed, 'likely' compliance method does not satisfy the monitoring requirement in Part 70." The Petitioner further contends that, even assuming that visible emissions from natural gas would not exceed 20% opacity, WDNR's assumption cannot hold for unspecified fuel oil, especially during periods of startup and shutdown, which are not excluded from the 20% opacity limit. Petitioner claims that WDNR has no historical data upon which to base its assumption about VE compliance. Petition at 3. The Petitioner points to section NR 439.06(9)(a) of the Wisconsin SIP and to 40 C.F.R. § 52.2570(c)(98)(i), which, Petitioner alleges, require monitoring either by (1) Method 9 in 40 C.F.R. part 60, Appendix A, which is incorporated by reference into NR 484.04, or (2) by the installation, calibration, maintenance and operation of a continuous emissions monitor (CEM) that meets the applicable performance specifications of 40 C.F.R. part 60, Appendix B or 40 C.F.R. part 75, Appendices A to I, and follows a quality control and quality assurance plan for the monitor which WDNR has approved. Petition at 3. Petitioner avers that WDNR's failure to require one of the two monitoring options violates the Wisconsin SIP. Petitioner also states that section I.A.2.c. of the permits states that Method 9 is appropriate for VE compliance demonstrations, but that the permit fails to require testing as a "compliance demonstration" method. Petition at 3.

The Petitioner notes also that, according to statements made by WDNR, the stack through which boilers B20 and B21 will emit is equipped with a CEM, but this CEM is designated in section I.B.5.b of the permit as the compliance demonstration for boiler B22 only. Petitioner asserts that, since there is already a CEM in place to measure VE from the stack shared by all three boilers, WDNR should require the CEM as the monitoring method for all three boilers. Petition at 3.

Response

As with the issues in Section I.A of this Order, although Petitioner characterizes the issues in section I.B as inadequate monitoring, Petitioner's allegations are mainly directed at the VE compliance demonstration requirement for boilers B20 and B21 in section I.A.2.b(1) of the permit.[2] Specifically, Petitioner alleges that this compliance demonstration requirement (i.e., burning only natural gas and distillate fuel oils) is not adequate to assure compliance with the VE limit for boilers B20 and B21. Petitioner further alleges that the Wisconsin SIP requires the use of one of the two compliance demonstration methods specified in section NR 439.06(9)(a) of the SIP. Petitioner also alleges that the permit notes that Method 9 is appropriate for VE compliance demonstration but fails to include testing as a compliance demonstration method. The only VE monitoring issue Petitioner raised regarding boilers B20 and B21 is that the CEM should be used to monitor the VE from these boilers as well as boiler B22. We discuss the compliance demonstration issues and the monitoring issue separately below.

Compliance Demonstration

Petitioner alleges that the permit's VE compliance demonstration requirement for boilers B20 and B21 is inadequate because it is not based on historical data but on WDNR's presumption that the facility will *unlikely* exceed these boilers' VE limit by burning only natural gas and distillate fuel oils. As previously mentioned, 40 C.F.R. § 70.7(a)(5) requires that a permitting authority provide with a draft Title V permit "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." WDNR included in the permit a VE compliance demonstration requirement for boilers B20 and B21, which requires that the facility burn only natural gas and distillate fuel, but did not explain in the SOB or elsewhere in the permit record how this permit requirement is sufficient to assure compliance with these boilers' opacity limit. Rather, as Petitioner notes, the permit simply states at footnote 2 that the compliance with the fuel restriction makes it "*unlikely* that the facility will exceed the limit so long as no other fuels are burned . . . ." Permit at p. 13, fn.2 (*emphasis added*). WDNR has neither concluded nor demonstrated that the VE limit for boilers B20 and B21 will not be exceeded under its fuel restriction requirement. I, therefore, grant the petition on this issue. As required by 40 C.F.R. § 70.7(a)(5), WDNR must clearly explain the basis for its permitting decision to rely on limiting fuel usage to demonstrate and assure compliance with the VE limit for B20 and B21 or must add to the permit compliance demonstration methods and associated periodic monitoring which WDNR has demonstrated is sufficient to assure compliance with the Act and Part 70.

Petitioner further alleges that WDNR violated the Wisconsin SIP by failing to include one of the two methods provided in section NR 439.06(9)(a) of the Wisconsin SIP.[3] As previously mentioned, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public

[2] The VE monitoring requirements for boilers B20 and B21 are provided in section I.A.2.c of the permit.
[3] Although Petitioner refers to the methods provided in section 439.06(a) as monitoring requirements, the Wisconsin SIP identifies them as the methods and procedures for demonstrating compliance with VE limits.

comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. As described above, in its comment dated May 22, 2003, Petitioner expressed a concern with WDNR's exclusive reliance on AP-42 factors for determining compliance with permit limitations and requested that WDNR require stack testing for boilers B20 and B21 during natural gas and fuel oil firing. None of the comments mentioned section NR section 439.06(9)(a) of the Wisconsin SIP, much less claimed that failure to incorporate one of the two VE compliance demonstration methods provided in section NR 439.06(9) into the Walnut Street Title V renewal permit for boilers B20 and B21 is a SIP violation. As mentioned above, in its response to comments, WDNR defended its use of the AP-42 emissions factors. WDNR also stated in its response that "[n]o additional or periodic testing is required by [section NR 439 of the Wisconsin SIP]." WDNR's response to comments did not specifically discuss section NR 439.06(9)(a) of the Wisconsin SIP.

Petitioner's allegation regarding section 439.06(9)(a)'s applicability to boilers B20 and B21, as presented in this petition, is sufficiently different from the issues raised in the public comments described above, such that WDNR could not have reasonably anticipated, and could not have been expected to explain in its response to comments, why the VE compliance demonstration methods in section NR439.06(9)(a) do not apply to boilers B20 and B21. Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. Therefore, I deny the petition on this issue.

Monitoring

Petitioner notes that the stack through which boilers B20 and B21 emit is equipped with a CEM, which is designated as the compliance demonstration method for boiler B22. Petitioner argues that, because the CEM is in place to measure VE from the stack shared by boilers B20, B21, and B22, WDNR should require it as the monitoring method for all three boilers. Although in its February 17, 2005, response to comments, WDNR stated that "[t]he VE CEM has been located so that it monitors emissions from all the boilers," WDNR has since explained to EPA that its response was an error. In a February 19, 2007, e-mail to EPA, WDNR states that "[t]he opacity monitor is in B22's breeching prior to it tying into the breeching of B20 and B21 before heading on to the stack." Because Petitioner has not alleged or shown that a CEM is required for B20 and B21, and its argument is based on its erroneous information from WDNR regarding the existing CEM's location, I deny the petition on this issue.

C. Periodic Stack Testing

The Petitioner alleges that the permit is deficient because it fails to require stack testing. Citing permit sections I.A.1.c., I.A.3.c.(1), and I.D.1, the Petitioner notes that there are several references to testing methodologies throughout the permit, but the permit does not

require a stack test. To illustrate its claim, the Petitioner notes that section I.A.3.c.(1) of the permit states that EPA Method 6 is appropriate when stack testing for sulfur dioxide (SO2) emissions is required, but section I.A.3.b of the permit only requires fuel certification for SO2 compliance. The Petitioner alleges that stack testing is required to assure compliance under part 70. Petitioner further alleges that stack testing is required under section NR 439.075(2)(a) of Wisconsin's SIP because the UW-Madison campus has an emission point with allowable emissions above 25 tons per year (TPY) of total reduced sulfur and 100 TPY of PM. Petition at 4.

Response

The Petitioner alleges that stack testing is required to assure compliance under 40 C.F.R. part 70. The Petitioner references permit conditions I.A.1.c., I.A.3.c.(1), and I.D.1, all of which identify the reference methods to be used whenever testing is required. As with its allegations in Issue I.A, Petitioner appears to be arguing that stack testing should be required wherever the permit provides a testing methodology. This argument does not show that any applicable requirement in fact requires stack testing. With respect to Condition I.A.1.c, which requires the use of EPA Method 5 whenever stack testing for PM emissions is required for boilers B20 and B21, I have concluded in the response to Issue I.A., above, that the SOB, in conjunction with the SOB from the initial permit, demonstrates that the fuel restriction requirement in section I.A.1.b is adequate to assure compliance with the PM limit for boilers B20 and B21, and have rejected Petitioner's claim for stack testing for the reasons stated in that response. Condition I.A.3.c.(1) is marked with an asterisk (*), which indicates that it is not a federally enforceable requirement. Accordingly, Condition I.A.3.c.(1) is not an applicable requirement under Title V and is therefore not subject to the Agency's review in this Title V petition process. Condition I.D.1 contains the compliance testing requirements, including reference test methods, that apply when testing is required. The condition is not meant to address whether and when testing is required. Petitioner has not demonstrated how this condition is deficient. The Petitioner has not identified any applicable requirement that requires the source to stack test, nor has the Petitioner shown that compliance with any applicable requirement cannot be demonstrated without stack testing. Therefore, I deny the petition on this issue.

Petitioner also cites to section NR 439.075(2)(a) of the Wisconsin SIP as requiring stack testing for emissions points with allowable emissions above 25 TPY of total reduced sulfur, or 100 TPY of PM, SO_2, or VOC. Petitioner, however, did not identify the specific emission point that is the subject of its allegation. Based on our review of the permit record, we have learned that the allowable PM and SO_2 emissions from boilers B20 and B21, as well as the allowable SO_2 emissions from boiler B22, are above the relevant applicability thresholds provided in section NR 439.075(2)(a) of the Wisconsin SIP.[4] As mentioned above, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see

[4] We could not determine from the permit record the allowable emissions from the emergency generator.

also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. As previously noted, in its comment dated May 22, 2003, Petitioner expressed a concern with WDNR's exclusive reliance on AP-42 factors for determining compliance with permit limitations and requested that WDNR require stack testing for boilers B20 and B21 during natural gas and fuel oil firing. None of the comments, however, mentioned section NR section 439.075(2)(a) of the Wisconsin SIP, much less claimed that this SIP provision requires stack testing for any specific emissions unit. As mentioned above, in its response to comments, WDNR defended its use of the AP-42 factors. WDNR also stated in its response that "[n]o additional or periodic testing is required by [section NR 439 of the Wisconsin SIP]." Response to comments at 2. WDNR's response to comments did not specifically discuss section NR 439.075(2)(a) of the Wisconsin SIP.

Petitioner's allegation that section 439.075(2)(a) requires stack testing, as presented in this petition, is sufficiently different from the AP-42 issue raised in the public comments described above, such that WDNR could not have reasonably anticipated, and could not have been expected to explain in its response to comments, whether section NR 439.075 applies to any of the boilers. The Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. Therefore, I deny the petition on this issue.

D. Particulate Matter Monitoring for B22

The Petitioner claims that there are insufficient monitoring requirements for PM emissions from boiler B22. The Petitioner notes that section I.B.1.a(1) of the permit limits PM emissions from boiler B22 to 0.05 lb/MMBtu, and PM emissions from all boilers to 0.10 lb/MMBtu, and that section I.B.1.b(1) of the permit relies upon a single monitoring requirement to ensure compliance with these limits: that the facility "not burn fuels other than natural gas and distillate fuel oils." The Petitioner notes that footnote 7 to section 1.B.1.b(1) of the permit states that "[t]his restriction will ensure that the facility can meet the allowable limit since at the maximum heat input capacity the emissions are less than this limit." The Petitioner alleges that this "presumed compliance" is insufficient to and fails to satisfy the monitoring requirements of Title V and part 70. Petition at 4.

The Petitioner states that section NR 439.06(1) and (lm) of the Wisconsin SIP require specific compliance demonstration methods for particulate matter; however, none of these monitoring options are required in the Title V permit for the Walnut Street Plant. Petitioner cites to section I.B.1.b. of the permit as an example that WDNR does not require stack testing in the permit, but notes that section I.B.1.c(3) states that "EPA Method 5, including backhalf condensibles, shall be used" whenever stack testing is required. Petitioner concludes that WDNR apparently agrees that periodic stack testing of total PM is appropriate, but does not require it in the permit. Petition at 4-5. Finally, Petitioner cites to section NR 439.075(2)(a) of the Wisconsin Administrative Code as requiring periodic stack testing. Petition at 5.

Response

Again, although Petitioner characterizes the issues described above as inadequate monitoring, Petitioner's allegations are directed at the PM compliance demonstration requirement for boiler B22 in section I.B.1.b(1) of the permit.[5] Specifically, Petitioner alleges that this compliance demonstration requirement (i.e., burning only natural gas and distillate fuel oils) is not adequate to assure compliance with the PM limits for boiler B22. Petitioner further alleges that the Wisconsin SIP requires the use of one of the two PM compliance demonstration methods specified in section NR 439.06(1) and (1m) of the SIP. Petitioner also alleges that WDNR appears to find stack testing appropriate but fails to include such requirement in section I.B.1.b of the permit.

Petitioner alleges WDNR presumes that the PM limits for boiler B22 can be met by burning only natural gas and distillate fuel oils, and that this presumption is insufficient and fails to satisfy Title V and Part 70. As discussed above, 40 C.F.R. § 70.7(a)(5) requires that a permitting authority provide with a draft Title V permit "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." On page 4 of the SOB for the Walnut Street Plant Title V renewal permit at issue, #113134230-P10, WDNR refers generally to the SOB for the construction permit #98-POY-99 for a description of the control technologies for boiler B22. The SOB for the construction permit contains calculations on pages 3-4 that show that, based on the heat content of natural gas and distillate fuel oil, along with the heat input capacity rating of 357 million Btu per hour for boiler B22, the maximum PM emissions possible while firing natural gas or distillate fuel oil are less than the allowable PM limit of 0.05 lb/MMBtu. Therefore, WDNR has shown that the draft permit requirement, that the source burn only natural gas or distillate fuel oil in boiler B22, will demonstrate compliance with the allowable emission rate of 0.05 lb/MMBtu, as well as the NSPS limit of 0.1 lb/MMBtu.

As previously discussed, WDNR's permitting decision to rely on fuel restriction to demonstrate PM compliance is consistent with EPA's previous assessments regarding PM emissions while burning only natural gas or distillate fuel oils. Specifically, in the Title V petition response *Public Service Company*, EPA noted that "PM emissions are negligible with natural gas firing due to the low sulfur content of natural gas." *Public Service Company* at 8. Similarly, in the proposed NSPS for Stationary Combustion Turbines, EPA explained that it will not regulate PM in this NSPS because "PM emissions are negligible with natural gas firing due to the low sulfur content of natural gas[, and that e]missions of PM are only marginally significant with distillate oil firing because of the low ash content." 70 Fed. Reg. at 8321.

As described above, WDNR has explained with calculations in the construction permit's SOB, which is incorporated by reference into the SOB for the current renewal permit, why its fuel limitation requirement is adequate to assure compliance with the PM limits for boiler B22. WDNR's basis for this permitting decision is consistent with EPA's previous assessment regarding PM emissions while firing natural gas or distillate fuel oils. I therefore deny the petition on this issue.

The Petitioner also alleges that the Wisconsin SIP requires the use of the PM

[5] The PM monitoring requirements for boiler B22 are provided in section I.B.1.c of the permit.

compliance demonstration methods specified in section NR 439.06(1) and (1m) of the Wisconsin SIP. As previously discussed, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; *see also* 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. WNDR received a comment that the AP-42 emissions factors for gas and oil combustion are not accurate enough and that emissions from the boilers should be tested. However, none of the comments mentioned section NR 439.06(l) or (1m) of the Wisconsin SIP, much less claiming that failure to incorporate one of these two PM compliance demonstration methods into the Walnut Street Title V renewal permit for boiler B22 is a SIP violation. As mentioned above, in its response to comments, WDNR defended its use of the AP-42 emissions factors. WDNR also stated in its response that "[n]o additional or periodic testing is required by [section NR 439 of the Wisconsin SIP]." WDNR's response to comments did not specifically discuss section NR 439.06(1) and (1m) of the Wisconsin SIP.

Petitioner's allegation regarding section 439.06(1) and 439.06(1m)'s applicability to boiler B22, as presented in this petition, is sufficiently different from the issues raised in the public comment described above such that WDNR could not have reasonably anticipated, and could not have been expected to explain in its response to comments why the PM compliance demonstration methods provided in sections NR439.06(1) and (1m) do not apply to boiler B22. The Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. I therefore deny the petition on this issue.

Petitioner also seeks to include in section I.B.1.b of the permit a stack testing requirement for PM emissions from boiler B22. However, Petitioner has not shown that stack testing for PM emissions is an applicable requirement for boiler B22. Rather, Petitioner argues that, by specifying in the permit the PM testing method for boiler B22, WDNR has apparently admitted that stack testing for PM emissions is appropriate for this boiler and should therefore require such testing in the permit. This argument does not demonstrate that any applicable requirement directs the facility to conduct stack testing for PM emissions from boiler B22. In fact, as previously mentioned, WDNR stated in its response to comments that "[n]o additional or periodic testing is required by [section NR 439.06 of the Wisconsin SIP.]." Also, as described above, WDNR has shown in the permit record that its fuel restriction requirement is adequate to assure compliance with the PM limits for boiler B22. For these reasons, I deny the petition on this issue.

E. SO2 Monitoring for B22

The Petitioner states that section I.B.2.b.(1) of the permit requires the Walnut Street Plant to demonstrate compliance with the SO2 limit for boiler B22 by "obtaining and maintaining a certification of the sulfur content in each shipment of the distillate fuel oil from the supplier." Petitioner maintains that this is insufficient monitoring because it fails to

comply with the requirements of part 70 and the Wisconsin SIP. Specifically, the Petitioner states that section NR 439.06(2) of the Wisconsin SIP provides options, including fuel sampling, as permissible monitoring for SO2. The Petitioner contends that, when fuel sampling is used as the monitoring method for SO2, the samples must be taken in compliance with the procedures in section NR 439.08 of the Wisconsin SIP. These requirements include liquid fossil fuel sampling, determining the sulfur content in liquid fossil fuel, and determining the heat content in liquid fossil fuel. The Petitioner alleges that the monitoring requirements in the permit are deficient because the permit fails to require these sampling methods, and because the permittee cannot ensure compliance with NR 439.08 when it relies on a third-party supplier to conduct fuel sampling. Petition at 5-6.

Response

Again, although Petitioner characterizes the issues described above as inadequate monitoring, Petitioner's issues are directed at the SO_2 compliance demonstration requirement for boiler B22 in section I.B.2.b(1) of the permit.[6] Specifically, the Petitioner alleges that this compliance demonstration requirement, which authorizes the source to demonstrate compliance with the SO_2 limit by obtaining a certification of the sulfur content in each shipment of distillate fuel oil from the supplier, is deficient because it fails to comply with section NR 439.06(2) of the Wisconsin SIP, which requires the use of the methods and procedures specified in section NR 439.08 of the SIP when performing periodic fuel sampling and analysis. Petitioner further alleges that the permittee cannot ensure compliance with section NR 439.08 if it relies on a third-party supplier to conduct fuel sampling.

As previously discussed, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. As mentioned above, WDNR received a comment that the AP-42 emissions factors for gas and oil combustion are not accurate enough and that emissions from the boilers should be tested. However, none of the comments mentioned sections NR 439.06(2) or 439.08 of the Wisconsin SIP, much less claimed that they are required by the Wisconsin SIP as the SO_2 compliance demonstration methods and procedures for boiler B22. As previously mentioned, in its response to comments, WDNR defended its use of the AP-42 emissions factors. WDNR also stated in its response that "no additional or periodic testing is required by [section NR 439 of the Wisconsin SIP]." WDNR's response to comments did not specifically discuss section NR 439.06(2) or NR 439.08 of the Wisconsin SIP.

Petitioner's allegation regarding sections NR 439.06(2) and 439.08's applicability to boiler B22, as presented in this petition, is sufficiently different from the issues raised in the public comment described above such that WDNR could not have reasonably anticipated, and could not have been expected to explain in its response to comments, whether sections

[6] The SO_2 monitoring requirements for boiler B22 are provided in section I.B.2.c of the permit.

NR 439.06(2) and 439.08 of the Wisconsin SIP apply to boiler B22. The Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. Therefore, I deny the petition on this issue.

F. The Monitoring Requirements for the Emergency Generator

The Petitioner alleges that, for the same reasons that the monitoring requirements are deficient for boilers B20-B22, the monitoring requirements are deficient for the emergency generator B01. Specifically, the Petitioner alleges that the permit presumes compliance with VE and PM limits due solely to the fact that it is limited to burning fuel oil. The Petitioner cites to permit conditions I.C.2.b. and I.C.3.b.

Response

Again, although Petitioner characterizes the issues described above as inadequate PM and VE monitoring, Petitioner's allegations are directed at the PM and VE compliance demonstration requirements in section I.C.3.b and I.C.2.b of the permit for the emergency generator.[7] Petitioner alleges that these requirements are deficient for the same reasons that the permit does not assure compliance with the PM and VE limits for B20-B22.

In earlier sections of the Petition, the Petitioner alleges that the permit's PM and VE compliance demonstration requirements for boilers B20 and B21 and its PM compliance demonstration requirement for boiler B22, all of which require burning only natural gas and distillate fuel oils, are deficient because (1) this fuel restriction is not adequate to assure compliance with these emission limits; and (2) the Wisconsin SIP requires the use of the reference methods set forth in section NR 439.06 for demonstrating compliance with the relevant PM and VE limits. The Petitioner is now alleging that the permit's PM and VE compliance demonstration requirements for the emergency generator are deficient for the same reasons.

As discussed above, 40 C.F.R. § 70.7(a)(5) requires that a permitting authority provide with a draft Title V permit "a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions)." With respect to the permit's PM compliance demonstration requirement for the emergency generator, the SOB for the Title V renewal permit at issue, #113134230-P10, states that compliance demonstration methods for the emergency generator were reviewed in the SOBs for the original Title V permit, #113134230-P01, and the construction permit #98-POY-099, and that they remain unchanged. SOB at 12. The SOB for the renewal permit also states that, "[t]he facility removed the 750 kW standby generator from [permit #] 113134230-P01 and replaced it with a 1250 kW emergency generator." The SOB accompanying the original Title V permit contains calculations for maximum PM emissions while firing only natural gas or distillate fuel; however, these calculations are for the 750 kW generator that has been removed, and not for the 1250 kW generator that is currently at the

[7] The PM and VE monitoring requirements for the emergency generator are provided in sections I.C.3.c and I.C.2.c of the permit, respectively.

facility. Although the SOB for the renewal permit includes a statement that the emergency generator will be limited to 200 hours of operation per year, no calculations for the new 1250 kW generator are included in the SOB for the renewal permit to show that limiting fuel usage and the length of operation as described above will assure compliance with the PM limit for the current emergency generator. For this reason, I grant the petition on the issue of whether the fuel restriction in the permit is adequate to assure compliance with the PM limit for the emergency generator. As required by 40 C.F.R. § 70.7(a)(5), WDNR must explain its permitting decision to rely on fuel restriction to demonstrate that the 1250 kW emergency generator, not the 750 kW generator, complies with the relevant PM limit, or must add to the permit compliance demonstration methods and associated periodic monitoring which WDNR has demonstrated are sufficient to assure compliance with the Act and Part 70.

With respect to the permit's VE compliance demonstration requirement for the emergency generator, Footnote 17 of the permit states that "[i]t is not expected that the visible emission limitation of 20% opacity would be exceeded while firing these fuels. Therefore restricting the type of fuel used is adequate to ensure compliance with the emission limitation." As with the permit's VE compliance demonstration requirement for boilers B20 and B21, WDNR failed to justify in its SOB why the fuel restriction would ensure compliance with the opacity limit for the emergency generator. For this reason, which is described in more detail in section I.B of this Order, I grant the petition on this issue and direct WDNR to explain, in accordance with 40 C.F.R . § 70.7(a)(5), the basis for its permitting decision to rely on the fuel restriction to demonstrate compliance with the VE limit for the emergency generator, or to add to the permit compliance demonstration methods and associated periodic monitoring which WDNR has demonstrated is sufficient to assure compliance with the Act and Part 70.

With respect to Petitioner's allegation that the Wisconsin SIP requires the use of the PM and VE compliance demonstration methods provided in section NR 439.06 of the SIP, our response is the same as those provided earlier in this Order. As previously discussed, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period. In its comment dated May 23, 2003, Petitioner noted that a new emergency generator has been installed and asked why this new generator was not reviewed under the PSD regulations. However, as previously mentioned, none of the comments mentioned section NR 439.06(1), 439.06(1m), or 439.06(9)(a), much less claimed that these are the required PM and VE compliance demonstration requirements for the emergency generator. Therefore, WDNR could not have reasonably anticipated this issue, and could not have been expected to discuss in its response to comments why these compliance demonstration methods provided in section NR 439.06 of the Wisconsin SIP do not apply to the emergency generator. The Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. Therefore, I deny the petition on this issue.

II. Credible Evidence

Petitioner states that section 113 of the Act, 42 U.S.C. § 7413, authorizes EPA to bring enforcement actions "on the basis of any information available to the Administrator." Petitioner asserts that, in the September 9, 1999, Region 9 Title V Permit Review Guidelines (Region 9 guidelines), p. III-46, EPA interpreted this language to mean any "credible evidence" that a court would accept. Petition at 6. Petitioner further cites to the Region 9 guidelines to assert that "any credible evidence can be used to show a violation of, or, conversely, demonstrate compliance with, an emission limit." Id.

The Petitioner alleges that the permit contains numerous conditions that violate the credible evidence rule because they specify certain types of data to be used to determine compliance. Petitioner asserts that EPA has stated that permit language should not specify that certain types of data may be used to determine compliance. Instead, the permit should simply tell the source what to do. Petition at 6, quoting Region 9 guidelines at III-47.

Petitioner notes that the Walnut Street Plant permit is divided into four separate columns for (1) pollutant; (2) numeric limit; (3) compliance demonstration method; and (4) compliance demonstration, monitoring and reporting, citing section I.A(1)(a)-(c) as an example. The preamble to the permit states that the "Compliance Demonstration" column (column "c" throughout the permit) lists methods that "may be used to demonstrate compliance with the associated emission limit or work practice standard." Petitioner alleges that this provision impermissibly enumerates the evidence to be used to determine compliance. Petitioner asserts that, because this language has the potential to be interpreted as limiting the evidence that can be used to enforce the permit's limits, it violates the credible evidence rule. Petition at 7.

Petitioner further notes that the permit has two definitions of the "Compliance Demonstration" requirements in the permit. The second definition, at page 4 of the permit, states that the "Compliance Demonstration" column of the permit "contains testing requirements and methods to demonstrate compliance with the conditions." According to Petitioner, this provision appears to limit the methods to demonstrate compliance to only those listed in the specific column of the permit labeled "compliance demonstration." This, according to Petitioner, also is a violation of the credible evidence rule. Petition at 7. Additionally, Petitioner notes that the permit defines the requirements in the "Reference Test Methods, Recordkeeping, and Monitoring" column of the permit as test methods that "must be used" whenever testing is required. Petition at 7, quoting Walnut Street Plant permit at 3.

The Petitioner notes that the Walnut Street Plant permit contains language, at page 3, which is a "vague reference" to the credible evidence rule: "[n]otwithstanding the compliance determination methods which the owner or operator of a source is authorized to use under ch. NR 439, Wis. Admin. Code, the Department may use any relevant information or appropriate method to determine a source's compliance with applicable emission limits." Petition at 7, quoting the Walnut Street permit at 3. The Petitioner claims, however, that there are two significant problems with this attempt to comply with the credible evidence

rule. First, the sentence refers to compliance demonstration methods in NR 439, rather than those in the permit. Petitioner asserts that this provision allowing WDNR to use any evidence despite NR 439 does not cure the restrictive evidence provisions in the permit. Second, the Petitioner claims that the sentence authorizes only WDNR to use credible evidence to determine the facility's compliance. The permit states that "...the Department may use any relevant information...," which implies that EPA and citizens may not use "any relevant information" to enforce the permit. Petition at 7-8.

Petitioner claims that the permit contains other violations of the credible evidence rule, including, but not limited to, sections I.A.2.b(1), I.A.3.b(3) and (4), I.B.2.b(1), I.B.3.b(2)(c), I.B.3.b(3), I.B.3.b(4), I.B.5.b(1), I.C.2.b(1), and I.C.3.b(1). Petition at 8.

Response

As discussed above, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period and none of the comments mentioned credible evidence, much less claiming that any of the specific permit provisions identified in the petition limits the use of credible evidence to show a violation or demonstrate compliance with the terms of the permit. Therefore, WDNR could not have anticipated, and could not have been expected to address, this issue in its response to comments. The Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. I, therefore, deny the petition on this issue.

III. Practical Enforceability

The Petitioner alleges that the permit contains numerous conditions which are not practically enforceable. Petitioner cites to the Region 9 guidelines, p. III-46, which states, among other things, that "[a] permit is enforceable as a practical matter (or practically enforceable) if permit conditions establish a clear legal obligation for the source and allow compliance to be verified." Petitioner asserts that, for a permit condition to be enforceable, the "permit must leave no doubt as to exactly what the facility must do to comply with the condition." Petition at 8. Petitioner asserts that a permit condition is not practically enforceable if it references documents, procedures, or instructions that are described in a manner that is insufficient to allow such items and their content to be specifically, finally and conclusively identified. Specific numbers must be in the permit, and terminology, such as "reasonable precautions" or "best engineering practices" must be defined. Petition at 9.

Petitioner alleges that the permit is not practically enforceable by citizens because it does not require the documents necessary to determine compliance to be publicly available at WDNR's offices. Petitioner cites, as an example, that section I.B.2.b(1) of the permit

requires the source to demonstrate compliance with sulfur dioxide limits by obtaining fuel sulfur content certifications from fuel vendors. However, the permittee is required only to maintain the records, not send them to WDNR. As a result, the public does not have easy access to the data necessary to determine compliance. Petition at 9.

Petitioner further asserts that, if WDNR grants the permittee permission to submit summary excess emission reports pursuant to section I.D.3.a(2) of the permit, the public will not have the information otherwise required in full excess emission reports, which is necessary to determine the source's compliance with permit limits. The Petitioner asserts that the decision to require or waive the full excess emission report requirement grants WDNR too much discretion. This allows WDNR to negotiate the condition "off permit," and bypasses the permitting process requirements and procedures.

Response

The Petitioner cites section I.B.2.b(1) of the permit as an example of a condition that is not practically enforceable because the permittee is only required to maintain, but not to submit to WDNR, records that Petitioner alleges are necessary to demonstrate compliance. Section I.B.2.b(1) states that "to demonstrate compliance with I.B.2.a(1)(c), the permittee shall obtain and maintain a certification of the sulfur content in each shipment of the distillate fuel oil from the supplier." Petitioner is correct that this section does not require the permittee to submit the sulfur content certifications to WDNR. However, sections NR 439.04 and NR 440.205 of the Wisconsin SIP, which WDNR identifies in the permit as origin and authority for the requirement in section I.B.2.b(1), do not require the permittee to submit the certifications to WDNR. Furthermore, section I.D.2.b(1) of the permit requires the permittee to submit to WDNR every six months the results of monitoring or a summary of monitoring results, which would include results from the sulfur content certifications. Subsection I.D.2.b(1)(c) provides that all deviations from and violations of applicable requirements shall be clearly identified in the submittal. The Petitioner fails to explain why the required reporting in the permit would be inadequate to demonstrate compliance with the sulfur dioxide limit and therefore render such limit practically unenforceable. Other than the sulfur dioxide limit, the Petitioner has not identified any other applicable requirement that is not practically enforceable due to the lack of necessary information to determine compliance. For these reasons, I deny the petition on this issue.

Petitioner also alleges that the permit is not practically enforceable if, pursuant to section I.D.3.a(2), WDNR authorizes the facility to submit a summary of excess emissions in lieu of a full excess emissions report, because WDNR would not have the information necessary to determine compliance with permit limits in that event. Contrary to Petitioner's broad allegation, section I.D.3.a(2) of the permit allows WDNR to require a summary report only for emissions in excess of the visible emissions limits for boiler B22 in section I.B of the permit, and not for emissions in excess of any other permit limit. Furthermore, WDNR cites section NR 439.09(10)(d) of the Wisconsin SIP as the origin and authority for section I.D.3.a(2) of the permit. Section NR 439.09(10) authorizes WDNR to require either a full excess emissions report or a summary thereof, and its subsection NR 439.09(10)(d) prescribes the formats for a summary excess emissions report. Section I.D.3.a(2) of the

permit appropriately incorporates these SIP requirements into the permit. In addition, as previously mentioned, section I.D.2.b(1) of the permit requires the permittee to submit to WDNR every six months the results of monitoring or a summary thereof, and subsection I.D.2.b(1)(c) of the permit requires that all deviations, including those that constitute violations of applicable requirements, must be clearly identified in the submittal. Excess emissions are deviations from the permit because they are outside of or differ from what is allowed by the permit terms.[8] Accordingly, all exceedances must be reported and clearly identified in the required semi-annual monitoring reports. Petitioner fails to demonstrate that the visible emissions limits in section I.B of the permit are not practically enforceable. For these reasons, I deny the petition on this issue.

IV. Source-Wide Limits and Federal Enforceability

Citing to section I.A.3.a.(1) of the permit, the Petitioner states that the entire University of Wisconsin-Madison campus is a single major source under part 70, and that it is subject to a 1.5 lb/MMBtu SO2 limit. The Petitioner notes that this source-wide limit is included only in the section of the permit applicable to boilers B20 and B21, and contends that it should be included in a section of the permit applicable to the entire facility, as well as in a Title V permit for all other emission units on the UW Madison campus. The Petitioner argues in the alternative that the SO2 limit should be applied to each source of SO2 in the permit. Petition at 9-10.

The Petitioner also states that the limit in section I.A.3.a.(1) of the permit is followed by an asterisk. The Petitioner notes that WDNR has identified this designation as denoting a term that is not federally enforceable. The Petitioner alleges that this is an illegal limitation of federal enforcement, citing to the March 4, 2004, *Notice of Deficiency for Clean Air Act Operating Permit Program in Wisconsin* (69 *Fed. Reg.* 10167, 10170-71) ("All terms and conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable.") Petition at 10.

Response

Petitioner alleges that the SO2 limit in section I.A.3.a(1) is not practically enforceable as a source-wide limit because the limit is in a permit section that applies only to boilers B20 and B21. As discussed below, section I.A.3.a(1) of the permit is designated with an asterisk (*), which indicates that it is not a federally enforceable requirement. Accordingly, section I.A.3.a(1) is not an applicable requirement under Title V and, therefore, is not subject to the Agency's review under this Title V petition process. For this reason, I deny the petition on this issue.

Petitioner also alleges that section I.A.3.a(1) is not practically enforceable because of its asterisk designation, which makes this permit requirement not federally enforceable. As stated above, Title V of the Act states that a "petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the

[8] Note that not all deviations from permit terms are violations of the permit.

Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period)." Section 505(b)(2) of the Act; see also 40 C.F.R. § 70.8(d). EPA reviewed the comments submitted on the Walnut Street Plant's draft Title V permit during the public comment period and none of the comments raised issues with the designation of section I.A.3.a(1) as not federally enforceable. Petitioner also has not shown that it was impracticable to raise this issue during the public comment period, or that the issue arose only after the close of the public comment period. I therefore deny the petition on this issue.

CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I am granting in part and denying in part the petition filed by David Bender on behalf of the Sierra Club. Because this permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. § 70.7(g)(4) or (5)(i) and (ii), and 40 C.F.R. § 70.8(d). I hereby require the Walnut Street Plant Title V renewal permit be re-opened for cause pursuant to sections 505(b) and 505(e) of the Act and 40 C.F.R. §§ 70.7(g) and 70.8(d). WDNR shall have 90 days from receipt of this Order to resolve the objections identified above and to terminate, modify, or revoke and reissue the Walnut Street Plant Title V renewal permit accordingly.

Dated: NOV - 5 2007

Stephen L. Johnson
Administrator