

(A-18J)

November 9, 2005

Lloyd L. Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707

Dear Ms. Eagan:

On May 26, 2005, the United States Environmental Protection Agency (USEPA) received a revision to Wisconsin's State Implementation Plan (SIP) from the Wisconsin Department of Natural Resources (WDNR). This revision authorizes the WDNR to allow a source to commence construction prior to the issuance of its construction permit, if the source demonstrates that delaying construction would cause it undue hardship.

The Clean Air Act (CAA) sets forth preconstruction requirements for the Prevention of Significant Deterioration (PSD) program. The CAA states that major sources may not be constructed unless a permit has been issued. Additionally, a state's minor New Source Review (NSR) program must ensure that the construction of a source will not result in a violation of the SIP, or interfere with attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

WDNR has not demonstrated in its SIP submittal that the proposed construction permit waiver rule will comply with PSD and NSR program requirements. USEPA has determined that the submittal is incomplete because no implementing regulations have been submitted, as discussed below. Because this submittal is incomplete, it cannot be processed as a revision to Wisconsin's SIP and is being returned to the WDNR.

In order for USEPA to consider the submittal to be complete, the WDNR must submit the regulations necessary to implement the statutory change requested in this SIP revision. This submittal is to contain at a minimum: a demonstration that the rule revision does not interfere with attainment or maintenance of the NAAQS; a demonstration that the rule does not conflict with the CAA, PSD, or NSR programs; criteria for who is eligible to apply

for the waiver and under what circumstances; the process for how a waiver is to be submitted and acted on; a statement of source liability and risk for construction prior to permit issuance; and a statement that the source shall not operate prior to permit issuance.

If you have any questions, please do not hesitate to contact me, or have your staff contact Susan Siepkowski, at (312) 353-2654.

Sincerely yours,

/s/

Stephen Rothblatt, Director
Air and Radiation Division