



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 5 2004

REPLY TO THE ATTENTION OF:
A-18J

Lloyd 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:

Lloyd

The United States Environmental Protection Agency (USEPA) has reviewed Wisconsin's June 4, 2004 letter, "Wisconsin DNR 90-Day Response to USEPA Notice of Deficiency Related to the Title V Program, dated March 4, 2004." USEPA found in the March 4, 2004 Notice of Deficiency (NOD) that the Wisconsin Department of Natural Resources (WDNR) had not demonstrated that its Title V fee schedule resulted in the collection and retention of fees sufficient to cover the program cost, had not ensured that all fees collected were used solely for Title V program costs, had not timely issued permits, and had implementation deficiencies in several other program areas.

The WDNR has begun working on addressing these deficiencies. Wisconsin has informed us that it is on schedule to issue its remaining initial Title V permits by December 31, 2004, and WDNR has been working with us to address the programmatic issues. WDNR has also redeployed staff to better align resources with funding. In addition, WDNR has committed, and has begun, to streamline its permitting process. We understand that Wisconsin's ability to fully implement its streamlining effort depends upon the Wisconsin Legislature approving funding for the information technology (IT) advancements needed for this effort. USEPA recognizes the efforts WDNR is making to issue its initial Title V permits and with its streamlining initiative, and encourages WDNR to continue its efforts to better balance all program elements, including Title V, federally enforceable state operating permit (FESOP), and renewal permit issuance, compliance efforts, and increased efficiency.

The 90-Day Response letter includes information on WDNR's Title V program workload and fees, and provides information on the actions Wisconsin intends to take to address the issues raised in the NOD. However, although WDNR has begun to address the

deficiencies in the NOD, the approach outlined in the 90-Day Response letter does not adequately address how Wisconsin will correct these deficiencies. A submittal from WDNR clearly responding to the items below is necessary.

It is unclear what improvements will result from WDNR's full streamlining efforts absent the financial investment necessary for the IT process component. WDNR's next submittal should contain a status report on its budget request for this effort. Wisconsin currently has 88 staff dedicated to Title V program activities. Should WDNR obtain funds to fully support its intended streamlining effort, we recognize that WDNR believes that this current staffing level will be adequate in the long term to fully implement its Title V program. However, WDNR's 90-Day Response letter suggests that, absent the staff reductions that may result from the streamlining efforts, 118 Air Program staff are necessary to perform all required Title V work, including issuance of Title V permits, FESOPs, and renewals. Moreover, in the interim, WDNR's current staff levels are resulting in a significant backlog in the issuance of Title V permits, FESOPs, renewals, and implementation of other areas of its Title V program.

In the 90-Day Response, WDNR states that it will issue by the end of state fiscal year 2008 all initial FESOP permits to create synthetic minor sources. It is important to note that sources without issued FESOP permits are Title V sources, and are counted in the Title V universe until the FESOP permit is issued. Further, sources that have submitted FESOP applications are not protected by application shields as they are under Title V permit applications, making them vulnerable to enforcement actions. Because of the importance of issuing these FESOP permits, Wisconsin must complete issuance of all initial FESOPs in order to resolve the NOD. This must occur prior to March 4, 2006, or 24 months after the issuance of the NOD. To achieve this, it would be reasonable for WDNR to hire more staff, at least temporarily. Alternatively, WDNR could explore other options, such as using contracting services to issue some of the backlogged permits. Other Region 5 states have had some success in that regard.

The 90-Day Response letter also discusses a Compliance Monitoring Strategy (CMS) which contains an alternative evaluation frequency. The workload model provided by WDNR indicates that the number of evaluations will increase in future years. The earlier completion of FESOP work should allow for earlier implementation of a full CMS enforcement program. This would help WDNR reach the goal for a balanced program more quickly.

On the issue of the adequacy of Title V fees, Wisconsin needs to have some means of assuring that its current revenues are, and its long term revenues will be, sufficient to support the program costs. For the reasons discussed in the NOD, WDNR cannot rely on a demonstration that the fees it collects are equal to or greater than the presumptive minimum to establish that its fees are adequate. In the next submittal, WDNR must describe in detail its Title V program costs and how the fees it currently collects cover these costs. Furthermore, WDNR must demonstrate how it will collect additional fees in the future to cover anticipated increases in costs over time. Assuming the streamlining efforts are successful, and WDNR's workload model represents a long term estimate of program needs, reinstating the Consumer Price Index based increases is one easy means by which the State can demonstrate an ability to assure sufficient revenues over time, provided WDNR has demonstrated its current fees are sufficient. In the alternative, WDNR must have another means to continually assess and provide adjustments to its fees to assure long term adequacy.

In making its demonstration of adequate fees, WDNR must bear in mind that fees collected from non-Title V sources cannot be counted towards Title V fees. WDNR currently combines FESOP and Title V fees in one account. WDNR either must separate these funds physically or use adequate accounting to segregate the Title V fees and to ensure that these fees are used only to pay for Title V costs.

USEPA still has questions regarding some of the areas listed as being funded by Title V fees. Without more detailed information, it's difficult to determine if the activities are Title V program work. In the 90-Day Response letter, WDNR states that 21 FTE have been redeployed to align resources with funding, and that 13 staff were placed in new positions, but does not state what these positions are, or if they are funded by Title V fees. Please provide more detailed information in the next submittal about which positions, programs, and sections listed under the "Redeployment" section of the 90-Day Response, are funded by Title V funds. Also, please describe what activities are included in "Other Program Elements."

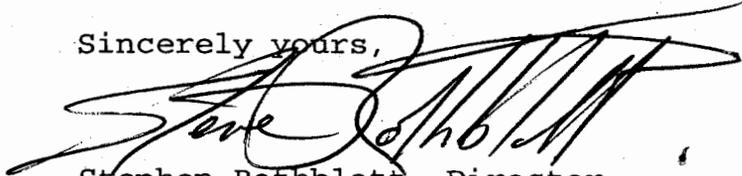
USEPA appreciates WDNR's efforts to work with us to address as expeditiously as possible the programmatic issues identified in the NOD. Regarding WDNR issuing combined Title V and construction permits, WDNR must memorialize its procedure for issuing these permits together. This would be best accomplished in a rule, but a Memorandum of Agreement is a reasonable alternative. WDNR also needs to assure USEPA that it has the

authority to issue combined permits and that nothing in its statutes or regulations prohibits this.

It's our understanding that Wisconsin may need to make changes or corrections to existing regulations in order to address the deficiencies listed in the NOD. Any such changes will need to go through the state and federal approval processes, which we understand could take a year or longer. WDNR's next submittal should include a schedule for when WDNR plans to submit any regulatory changes. It is imperative that WDNR submit any such rule or statute changes as soon as possible. These corrections should be completed by September 4, 2005, eighteen months after the issuance of the NOD, or Wisconsin will be subject to sanctions under section 502(i) of the Act. If Wisconsin has not corrected the deficiencies within 2 years, USEPA will be obligated to promulgate, administer, and enforce a whole or partial Part 71 program. It is also important that Wisconsin provide us with written information and supporting documentation to support any demonstrations it intends to make. USEPA must have a complete and documented record to make a determination that WDNR has adequately addressed the deficiencies in the NOD.

Thank you very much for your attention to these concerns. We look forward to continuing to work with you to ensure these concerns are addressed fully, and we are encouraged by the efforts that WDNR has made thus far in addressing the NOD, as well as its streamlining initiative. If you have any questions please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt", written over a horizontal line.

Stephen Rothblatt, Director
Air and Radiation Division