



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

MAR 27 2008

REPLY TO THE ATTENTION OF:

(A-18J)

Kevin K. Kessler, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707

Re: Follow-up to Weston Generating Station Title V Modification Permit and Petition Response

Dear *Kevin* Mr. Kessler:

On December 19, 2007, the U.S. Environmental Protection Agency issued an Order responding to the Petition from the Sierra Club on the Wisconsin Public Service Corporation – Weston Generating Station’s Title V Modification Permit, number 737009020-P02 (P02). The Order grants in part and denies in part the petition submitted by the Sierra Club. As you are aware, the Wisconsin Department of Natural Resources (WDNR) has to revise and submit to EPA a proposed permit which responds to the objections identified in the Order. The purpose of this letter is to request that WDNR also address the issues related to the petition outlined below.

In the Order, EPA denied several issues because they were outside of the scope of the permit modification. EPA interpreted the regulations at 40 C.F.R. § 70.7 as limiting the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action, and found that the preamble to the final 40 C.F.R. part 70 rulemaking supports this interpretation. In the Order, EPA denied additional issues as moot, noting that, although WDNR had included revisions in the draft permit P02 that it issued for public comment, it did not incorporate them into the final permit P02.

As discussed above, EPA denied several issues of the Petition because they were based on terms of the original Title V permit rather than on terms that were modified in permit P02. Permit P02 was a facility wide permit, and contained the same terms as the original Title V permit, as well as changes from the original permit. However, our review of the public notice document, preliminary determination, and permit record for permit P02, disclosed some lack of clarity as to what portions of permit P02 were open for comment. That is, whether WDNR was seeking comment on all provisions in permit P02, or only certain provisions being changed from the original Title V permit. For example, the public notice states:

“This revision request includes changes to a number of permit emission limitation and

stack parameters at the existing plant, changes to several compliance demonstration methods and removal of the Weston 1 & 2 car thaw pit and five (5) probable diesel generators from the permit.” It also states, “The DNR hereby solicits written comments from the public regarding the preliminary determination to approve an operation permit.”

The preliminary determination from permit P02 states at page 34:

“The emission limitations for B01 (PM), B02 (PM), B03, and B22 will remain unchanged as a result of this proposed revision...”

When processing a permit modification, a permitting authority may limit the comment opportunity to those portions of the permit relevant to the changes being addressed. However, if the permitting authority seeks to do so, it is important for the permitting authority to make this clear in the public notice and statement of basis, and specify the portions of the permit that is being changed. These changed portions of a draft permit can be identified in a number of ways; for example, by highlighting or otherwise marking them, or by providing a redline/strikeout version for comment. The language cited above from Weston’s public notice and preliminary determination for permit P02, did not clearly express what is open for comment. WDNR should ensure in any future action on a permit modification that it specifies what portions of a permit are open for comment.

Several issues raised in the Petition related to the heat input limit for Unit 3. In the Order, EPA denied these issues because they were based on terms of the original Title V permit rather than on terms that were modified in permit P02. Unit 3 was originally permitted in an EPA-issued pre-construction permit, EPA-5-77-A-4, in May 11, 1977. Condition (8) of this 1977 permit states:

Approval to construct one 321 MW electrical generating unit is hereby granted to the Wisconsin Public Service Corporation subject to the conditions expressed herein and consistent with the materials and data included in the application filed by the Corporation. Any departure from the conditions of this approval or the terms expressed in WPSC’s application must receive the prior written authorization of U.S. EPA (emphasis added).

Weston’s 1975 permit application contains the heat input limit for the construction of Unit 3.¹ However, WDNR included in permit P02 a higher heat input for Unit 3, without explaining the reason for the change to the original heat input limit.² Although we denied the Petition on this issue for the reasons discussed above, EPA believes that WDNR must explain why the heat input limit for Unit 3 in permit P02 differs from that in the original 1977 EPA-issued permit. If

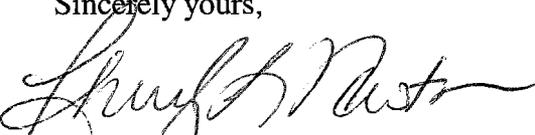
1 Weston’s October 28, 1975, permit application for the construction of Unit 3 refers on page 4 to Tables 4.7-1 and 4.7-3 in the environmental report, included with the application, for the fuel analysis information. The information included in these tables specifies the size of the unit, or heat input, to be 3,423.48 MMBtu/hr.

2 A heat input of 3,906 MMBtu/hr for Unit 3 was included in Weston’s original Title V permit as well as permit P02.

WDNR took a permitting action to revise the heat input limit, WDNR must include this information in the statement of basis for permit P02. However, if Weston did not modify the 1977 permitted heat input limit, then the heat input required by the 1977 permit remains, and, therefore, should be the heat rate that is incorporated in permit P02. Because WDNR must make permit revisions to the Weston permit to address the issue granted in the December 19, 2007 Order, EPA recommends that WDNR also ensure that the applicable heat input is permitted when the Weston permit is revised.

If you would like to discuss this matter further, please feel free to contact me or have your staff call Pamela Blakley, Chief of the Air Permits Section (312) 886-4447.

Sincerely yours,



Cheryl L. Newton, Acting Director
Air and Radiation Division