



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

MAR 16 2015

REPLY TO THE ATTENTION OF:

Ms. Kristin Hart  
Chief  
Permits and Stationary Source Modeling Section  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison, Wisconsin 53707-7921

Dear Ms. Hart:

The U.S. Environmental Protection Agency has reviewed the draft revisions to the Wisconsin Administrative Code Chapters NR 400, 406, 407 and 445 and has the following comments:

- 1) EPA does not believe it is appropriate to include the following activities in the list of exclusions when determining if construction, reconstruction, replacement, relocation, or modification has commenced in NR 406.03(1e): (a) Installation of building supports or foundations, (b) Laying underground piping or conduit, (c) Erecting storage structures, and (j) Paving. When determining which activities are allowed prior to issuance of a minor construction permit, EPA believes it is appropriate to allow facilities to begin activities that would be allowed to occur before a major New Source Review (NSR) permit was issued. If the allowed activities are inconsistent between the minor and major NSR program, it can lead to non-compliance issues in the instance in which a source mistakenly believes it only requires a minor NSR permit. For example, under the Wisconsin Department of Natural Resources' (WDNR) draft rules a source which requires a minor NSR permit may commence installation of building supports or foundations prior to issuance of a permit, which is prohibited under major NSR guidance. A situation may arise in which a source believes that its project only requires a minor NSR permit, and begins constructing foundations. However, if upon WDNR's review of the source's application it becomes apparent that the source was in fact required to receive a synthetic minor or major NSR permit, and be in violation of major NSR EPA has previously discussed what activities are allowed and prohibited before a major NSR permit is issued in guidance documents<sup>1</sup>. In EPA's guidance on what activities can commence prior to issuance of a prevention of significant deterioration permit, EPA explicitly prohibits the installation of building supports and foundations, paving, laying underground pipe work, and construction of permanent storage structures. Thus EPA does not think activities (a), (b), and (j) are appropriate to include in the list of activities

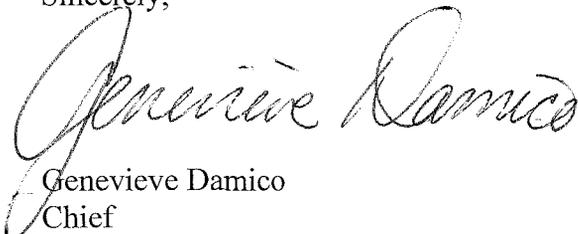
<sup>1</sup> December 18, 1978 Memorandum on Interpretation of "Constructed" as it Applies to Activities Undertaken Prior to Issuance of a PSD Permit. <http://www.epa.gov/Region7/air/nsr/nsrmemos/cnstrctd.pdf>

in NR 406.03(1e). EPA believes that for activity (c), the erecting of storage structures, it should be specified that only temporary storage structures are allowed in the exclusion.

- 2) As discussed in comment 1 above, EPA has concerns with some items included in the exclusion of 406.03(1e). Until the issues discussed in comment 1 above are resolved, EPA does not believe it is appropriate to revise to NR 407.04(1)(b)3 to apply the exclusions provided in NR 406.03(1e) when determining the date the initial operation permit application shall be submitted.
- 3) To ensure clarity, EPA suggests that WDNR consider revising the wording of NR 407.03(1)(1s)(d)(4) to "Other emission information indicating that the source is not a natural minor source becomes available".
- 4) In the analysis section of the rule, it states that "Sections 8 and 9 amend the process for revoking construction permits... ..in cases where a facility has closed or was never constructed." However, there is nothing in NR 406.11(1) that provides for when facilities were never constructed.

We look forward to working with you to address all of our comments. If you have any further questions, please feel free to contact Andrea Morgan, of my staff, at (312) 353-6058.

Sincerely,



Genevieve Damico  
Chief  
Air Permits Section