



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

DEC 03 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 the following comments on the Wisconsin Department of Natural Resources' (WDNR) draft permit for WPL Neenah Generating Facility (#471153870-P20 and #14-DMM-200). The draft permit is a combined Title V renewal and an after the fact Prevention of Significant Deterioration permit for previously constructed glycol heaters and a diesel-fired emergency fire pump. In order to ensure that the project meets Federal Clean Air Act requirements, that the permit will provide necessary information so that the basis for the permit decision is transparent and readily accessible to the public, and that the permit record provides adequate support for the decision, EPA has the following comments:

1. EPA is concerned by WDNR's approach to not conduct a Best Available Control Technology (BACT) determination for Particulate Matter less than 2.5 micrometers ($PM_{2.5}$). While $PM_{2.5}$ was not a regulated pollutant at the time that the units were constructed, as an after the fact permitting action, EPA believes the standards in affect at the time of permit issuance are to be considered when making a final decision. In the preamble to the greenhouse gas tailoring rule EPA articulated this view stating that, "permitting and licensing decisions of regulatory agencies must generally reflect the law in effect at the time the agency makes a final determination on a pending application" (75 FR 31593). Several Environmental Appeals Board decisions additionally support this approach¹. EPA suggests that WDNR conduct a BACT determination for $PM_{2.5}$ and revise the draft permit to incorporate the $PM_{2.5}$ BACT limit or provide additional justification as to why, in this instance, $PM_{2.5}$ emissions will not be evaluated under BACT per Agency guidance and case law.
2. The permit contains over 20 footnotes. In some cases where the footnote is purely informational, the use of a footnote may be appropriate. However, many of the footnotes included in the permit seem to contain language that is intended to be federally

¹ See *Ziffrin v. United States*, 318 U.S. 73, 78 (1943); *State of Alabama v. EPA*, 557 F.2d 1101, 1110 (5th Cir. 1977); *In re: Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 614-616 (EAB 2006); *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 478 n. 10 (EAB 2002).

enforceable and should be contained in the body of the permit as an applicable requirement. For example, footnote 5 on page 9 defines of startup and shut down of the turbine which provides information which may significantly alter the meaning of applicable emission limitations. EPA believes that this language should be contained in the body of the permit. Similarly, it appears that the following footnotes should be permit conditions: footnote 5, 7, 9, 11, 13, 15, 20, and 21. Please review all the footnotes in the permit and ensure that any footnote that contains requirements that are intended to be enforceable are included in the permit as permit conditions.

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,

A handwritten signature in cursive script that reads "Genevieve Damico".

Genevieve Damico
Chief
Air Permits Section