



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 17 2009

REPLY TO THE ATTENTION OF:

(A-18J)

Mr. John H. Melby, Jr.
Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. Melby:

On May 25, 2006, the Wisconsin Department of Natural Resources (WDNR) requested approval of a revision to its State Implementation Plan (SIP) to incorporate the federal New Source Review "Reform" rules. The U. S. Environmental Protection Agency, Region 5, proposed to approve the SIP revisions on April 20, 2007. *72 Fed. Reg.* 19829. Subsequently, the Sierra Club submitted extensive comments to EPA on May 21, 2007. EPA issued its final approval of Wisconsin's SIP revisions, which was published December 17, 2008, effective January 16, 2009. *73 Fed. Reg.* 76560. The approval is currently the subject of a petition for reconsideration before the Administrator of EPA and a challenge in the United States Court of Appeals for the Seventh Circuit.

Although Region 5 approved Wisconsin's SIP revisions, we did agree with a portion of one of the comments raised by the Sierra Club concerning the differences in citations used with respect to the fuel use prohibition that is part of the definition of "major modification." NR 405.02(21)(b)5 provides that any source which has a fuel use restriction that exists within a permit issued under the authority of NR 405, NR 406, NR 407, and NR 408, is not exempt from switching the type of fuels used. This provision appears inclusive of all permits, except for those permits issued prior to the approval of Wisconsin's Prevention of Significant Deterioration (PSD) program into its SIP on June 28, 1999. *64 Fed. Reg.* 28745. In the event that there exist permits that contain fuel use restrictions that were issued prior to EPA's approval of the PSD program into the Wisconsin SIP, those permits would not be enforceable by NR 405.02(21)(b)5, which does not reference permits issued under the federal regulations.

We, therefore, request that WDNR insert the following citation within NR 405.02(21)(b)5:

The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408, or under an operation permit issued pursuant to ch NR 407; or under 40 CFR 52.21, 40 CFR Part 51, Appendix S, or regulations approved pursuant to 40 CFR subpart I.

[Or, t]he source is approved to use the alternative fuel or raw material under any permit issued under this chapter or ch. NR 406, 407, or 408; or under 40 CFR 52.21 , 40 CFR Part 51, Appendix S, or regulations approved pursuant to 40 CFR subpart I.

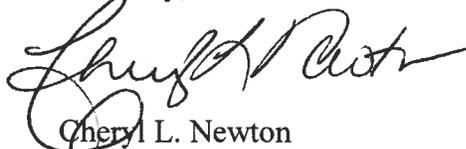
We also request that WDNR revise the language under the definition of “major modification” at NR 408.02(20)(e)(5) to be analogous to the revisions above.

In addition, we request that WDNR modify the language in NR 405.02(21)(b)(6) and NR 408.02(20)(e)(6), which address the exemptions for an increase in hours of operation or the production rate, as set forth above, in order to include permits issued under the federal regulations.

I understand that my staff has discussed these changes with your staff and that a preliminary agreement already exists. I ask that you confirm that WDNR will process this change concurrent with the next major SIP change. In the interim, please confirm that WDNR commits to implement the program consistent with the changes mentioned above. We would appreciate a response to this request in the form of a letter.

Please feel free to contact me, or you may contact Danny Marcus of my staff at 312-353-8781.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

cc: Steven Dunn
Air Management Engineer
Wisconsin Department of Natural Resources