



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

REPLY TO THE ATTENTION OF:

AUG 10 2012

Bart Sponseller, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Mr. ^{Bart}Sponseller:

I am pleased to transmit to you the final report of the New Source Review (NSR) permit program evaluation. The evaluation is the result of a July 12-13, 2010 meeting with your staff to discuss Wisconsin's air permit program implementation.

We appreciate the efforts the Wisconsin Department of Natural Resources (WDNR) has taken to improve its NSR program since our last program evaluation in 2005. In particular, WDNR's data management and electronic permit tracking abilities have noticeably improved as a result of your efforts. WDNR's implementation of its Prevention of Significant Deterioration permitting program continues to produce well written permits.

During the current evaluation, U.S. Environmental Protection Agency noted a small number of issues with WDNR's NSR program. Subsequently, WDNR has been made aware of these outstanding issues and has either responded to the concerns, or is currently in the process of taking action to respond to these concerns. Specifically, we identified one "after-the-fact" construction permit, a practice that is contrary to the NSR regulations. Additionally, we have advised WDNR to submit changes to the definition of "major modification" consistent with our June 17, 2009 letter as soon as possible. On June 1, 2011, WDNR committed to making the change in the next available rule action, which was anticipated to be prior to September 1, 2011. We have yet to receive a submittal containing the requested revisions.

We look forward to working with you to resolve the issues addressed in this report. If you have any questions, please contact Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Czerniak", with a stylized flourish at the end.

George T. Czerniak
Acting Director
Air and Radiation Division

Enclosure

2010 Review of Wisconsin's New Source Review Construction Permit Program

I. Executive Summary

On July 12-13, 2010, the U.S. Environmental Protection Agency conducted an evaluation of the Wisconsin Department of Natural Resources' (WDNR) New Source Review (NSR) construction permitting program. This evaluation is part of EPA's ongoing NSR program oversight of state and local permit programs. WDNR implements a State Implementation Plan (SIP), for any area considered attainment, where the Prevention of Significant Deterioration (PSD) program applies. WDNR implements a SIP-approved nonattainment NSR program in nonattainment areas. In September 2005, EPA conducted an on-site evaluation of the WDNR NSR construction permitting program. In our June 2006 report, we noted that WDNR's strengths included: improvements to the permitting program through established workgroups, WDNR's persistent efforts to ensure proper NSR permitting, WDNR's public notice process, and WDNR's modeling procedures. Among areas for improvement, EPA noted that WDNR needed to improve, WDNR's online permit database, periodic inadequate response to comments, and the content level of permit files at its facilities. We address the follow-up to these issues in section II, below.

As a result of our 2010 evaluation, EPA commends WDNR on its efforts to improve its implementation of the NSR permit program. WDNR has incorporated measures of efficiency and has developed a system to decrease permit issuance times, while consistently implementing the requirements of the SIP. This decreases the permitting burden on Wisconsin industry, while assuring that air quality is protected through the permits issued. EPA has identified areas of concern as discussed below. EPA notes that WDNR must improve its response to comments by responding prior to issuance of a construction permit. WDNR should strive to update the RACT/BACT/LAER Clearinghouse (RBLC) in a more timely fashion after issuance of a PSD permit. WDNR has yet to submit appropriate revisions to the WDNR NSR rules consistent with our June 17, 2009 letter regarding the definition of "major modification." However, we acknowledge receipt of your letter that committed to make the changes in an upcoming rule submittal. Lastly, EPA advises WDNR that its policy of issuing after-the-fact synthetic minor NSR permits fails to comply with the NSR program requirements.

As a follow-up to the initial evaluation, EPA developed a questionnaire to discuss with WDNR during the evaluation. The following are EPA's general findings from the questionnaire and review of Wisconsin's construction permitting program, and our recommendations to address concerns found during our evaluation review.

II. Update on areas of improvement from 2005 program evaluation

In the 2005 report, EPA identified several issues in the WDNR NSR program that needed improvement. These areas include, WDNR's online permit database, periodic inadequate response to comments, and the content level of permit files at its facilities. As a follow-up to the 2005 evaluation, EPA found that WDNR has made a diligent effort to improve its program and address these findings.

WDNR has reformed its permits webpage, which addresses the issue of online permit identification. The system is now more searchable/sortable, and can be searched to find a permit or relevant permit document by simply entering a facility name, Standard Industrial Classification (SIC) code, permit number, or permit issuance date. Once the record sought has been found, the database identifies the facility as a major or minor NSR source. The database also identifies whether each permit is a construction or operation permit. EPA encourages WDNR to further improve the database by adding an additional column that would identify each individual construction permit that is a PSD permit.

Regarding the issue noted in 2005 on the timing of the response or the failure to respond to comments, this practice has not been a persistent recurring problem, although it does occur occasionally. EPA is committed to working with WDNR on issues arising in permits to promote an efficient manner in resolving permit issues before issuance.

EPA did not perform an on-site permit file review in this latest program evaluation. Therefore, EPA cannot directly make a comparison on the content of permit files since the last program evaluation. However, as noted throughout this report, WDNR has established and managed a more thorough electronic records database that should enhance the existing hardcopy permit files. Since WDNR is now committed to maintaining records electronically, citizens will find nearly all relevant permit information available online, in addition to still being able to acquire records through hardcopy at WDNR's facilities.

III. Summary of Evaluation

PSD program implementation

EPA reviews and provides comments on PSD permits public noticed in Wisconsin. We appreciate the effort that the permit writers put into writing PSD permits for facilities in Wisconsin, which include well-developed Best Available Control Technology (BACT) analyses, effective writing from experienced permit writers, and BACT emission rates reflecting current determinations. WDNR also has procedures in place to notify EPA and the interested public of PSD permits as they are public noticed. EPA approved the NSR Reform provisions into the WDNR SIP on December 17, 2008, and WDNR has been appropriately implementing the NSR Reform provisions. The permit writers at WDNR have many years of PSD permit writing experience and are able to effectively implement the program. This continues to be a strength of the permit program.

Permit tracking

WDNR has reformed its online database to be more searchable. The database has also been designed to contain any pertinent permit files that WDNR uploads. This has become a one-stop shop for finding draft/final permits, statement of basis documents, public notice documents, response to comments documents, and other related documents. For example, the database enables anyone to find a permit or relevant permit document by simply searching a facility name, SIC code, permit number, or permit issuance date. This system allows more information to be available to the public. These changes have been an improvement to the system and WDNR has further plans to make additional enhancements.

Response to comments

WDNR must properly address comments made on proposed permits prior to issuing final permits. EPA would like the opportunity to work with WDNR on any permit issues and come to a resolution prior to a permit issuance. In the event that EPA has a concern with a final permit, EPA would have to take a formal action on that permit. Addressing an issue after the permit has been issued is much more burdensome for both EPA and WDNR than addressing the issue prior to permit issuance.

Updating the RBLC

In the past, WDNR has not prioritized the entry of BACT determinations in the RBLC. We encourage WDNR to update the RBLC soon after issuing final PSD permits. The RBLC is a useful tool for all permitting authorities involved in making BACT determinations. For the database to be as useful as it has been in the past, it is essential that every permitting authority does its part in maintaining the database and keep it up to date. During our meeting on the evaluation, EPA noted that WDNR needs to make improvements in this area, and WDNR presented a planned approach to have one dedicated administrative support staff responsible for inputting data into the RBLC immediately after a BACT determination is made by WDNR. EPA supports this approach and believes that WDNR should begin to implement this procedure immediately.

After-the-fact construction permits

We identified a single incident of an "after-the-fact" construction permit issued by WDNR. We have been in contact with WDNR regarding this incident, which led to the rescission of the permit. However, we generally want to highlight that this practice is contrary to the NSR regulations. Though in some instances it appears appropriate to provide a facility with a permit - the decision to issue a permit, after-the-fact, to a major source NSR facility that underestimated emissions/and or inadvertently overlooked the correct pre-construction permit is not consistent with current NSR regulations. EPA encourages WDNR to work with its enforcement section on any warranted action prior to issuing a construction permit to a facility that has commenced construction prior to applying for a permit. A copy of an EPA guidance memo titled "Guidance

on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements” has been shared with WDNR. This guidance addresses two scenarios that involve a source with potential emissions above the applicable major source threshold that failed to obtain either a major NSR permit or synthetic minor limits prior to construction of a new major source or major modification. WDNR should use this guidance whenever enforcement or permitting comes across a source that commenced construction prior to acquiring a permit for construction.

Rule changes regarding language on fuel use prohibitions in NR 405 and NR 408

On June 17, 2009, EPA sent WDNR a letter that included a discussion of the provisions that needed modification in order to be consistent with current rules and regulations. WDNR has yet to submit a SIP revision including the changes requested by the June 17, 2009 letter. EPA acknowledges that WDNR submitted a letter in response, on June 1, 2011, which commits to begin a rulemaking action within 120 days, that would satisfy the EPA request. EPA understands the current climate with respect to delays in processing changes to Wisconsin’s State rules. EPA is requesting that WDNR prepare rule changes for submittal to EPA for approval as soon as possible.

IV. Miscellaneous item outside of evaluation

SIP Submittal regarding revisions to Wisconsin’s rules for sources with 10 TPY or less

On May 5, 2008, EPA received a request from the WDNR to revise Wisconsin’s SIP. This submittal consists of a revision to Wisconsin rule NR 406, Wisconsin’s construction permitting program and to NR 407, Wisconsin’s operating permit program, allowing for a permitting exemption for sources with 10 tons per year (TPY) or less of criteria pollutant emissions. In March 2011 we sent WDNR a letter requesting a 110(l) anti-backsliding demonstration. WDNR has not submitted this demonstration. EPA can not proceed with proposing approval of this rule.

V. Conclusion

EPA commends WDNR on its continued efforts in implementing the PSD program. The expertise of the seasoned PSD permit writers has resulted in well-written PSD permits. We also commend WDNR on the enhancement of its permit-tracking website and look forward to future improvements to include more complete information.

EPA encourages WDNR to be more proactive with updating the RBLC after PSD permit issuance. We remind WDNR of the requirement to fully respond to all comments received on NSR permits before issuing a final permit. EPA also asks WDNR to reconsider after-the-fact synthetic minor NSR permit issuance, which EPA considers to be contrary to NSR requirements. Finally, we repeat our request to WDNR to submit revisions to its SIP per our June 17, 2009 letter. EPA is available to assist in any areas identified as needing improvement, and we look forward to continuing our partnership with WDNR in the issuance of permits.