



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY Access via relay - 711

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August 18, 2005

Mr. Thomas Skinner
Region V Administrator – R-19J
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Subject: Wisconsin DNR Response to USEPA Notice of Deficiency Related to the "Title V Program", dated March 4, 2004

Dear Mr. Skinner:

I am very pleased to provide you with Wisconsin's official response to EPA's Notice of Deficiency (NOD) regarding the state's operation permit program. I believe our response clearly addresses the issues raised in the NOD published in the Federal Register, Volume 69, Number 43, on March 4, 2004, and demonstrates that Wisconsin does indeed have adequate resources to run an effective Title V program. I trust you will reach the same conclusion after Region V reviews these materials. I'd like to draw your attention to a few highlights of our submittal:

- the Air Management Program processed the state's entire Title V Federal Operation Permit backlog for major air pollution sources by December 30, 2004,
- the backlog of federally enforceable state operation permits is scheduled for completion by December 31, 2005,
- we have finalized rules for expanded use of general permits and the use of registration permits,
- the state budget bill included financing for the information technology system we need to further streamline the air permitting program, and
- the state budget bill also established a new non-Title V fee that will provide the air program with a revenue stream to support non-Title V work and will clarify accounting and proper fee expenditure for the permitting programs.

Of course our official submittal is quite extensive and will cover each of these points and all of the issues raised in the Notice of Deficiency. Attachment A provides a table itemizing the main components of the Notice of Deficiency, the source of the issue, how the Air Management Program addressed the issue and a reference to applicable attachments.

Completion of Permit Work

US EPA identified within Section C. of the NOD that Wisconsin had not issued Title V permits to its sources in a timely fashion. While US EPA did acknowledge Wisconsin's schedule to complete these permit reviews by December 31, 2004, US EPA included this matter in its NOD based upon the totality of facts and circumstances that were associated with the State's Title V program at the time of the NOD.

As of October 2003, Wisconsin had 148 Title V permits yet to issue. Through Governor Jim Doyle's Grow Wisconsin Plan, Wisconsin was successful in issuing the remaining Title V permits. The last of the remaining Title V permits was issued on December 30, 2004 (Attachment B). As a result, Wisconsin has addressed this issue raised by US EPA in its NOD.

US EPA identified several programmatic issues of concern with Wisconsin's permit programs within Section D of the NOD. Although some of these matters are in regard to the State's Title I construction permit program and the procedures and effect of inclusion of terms and conditions from Title I permits into Title V permits, US EPA determined it was appropriate for these issues to be raised in the context of the NOD. These programmatic issues are addressed in detail below.

Expiration of New Source Review Permits

At the time of the US EPA's issuance of the NOD, Wisconsin law stated that construction permits expire 18 months after permit issuance. US EPA asserted that this legal construct would allow the basis of the construction permit terms and conditions to expire and could cause Wisconsin to lose authority to include such conditions in a renewed Title V permit. Since Wisconsin construction permits expired after 18 months, EPA was concerned that the state would not have the authority to include expired construction permit conditions in Title V permits. EPA stated in the NOD that because Wisconsin's laws do not ensure that construction permit conditions exist independently of Title V permits, the State's program does not meet the program approval requirements of Title V and 40 CFR Part 70.

2005 Wisconsin Act 25 included the following amendment to the law governing this matter (the text of the law is included in section 2192p of the Wisconsin Budget Attachment):

Section. 285.66(1), Wis. Stats. CONSTRUCTION. Unless otherwise specified in a construction permit, the authorization to construct, reconstruct, replace or modify a stationary source is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the authorization in the construction permit for the purposes of commencing or completing construction, reconstruction, replacement, or modification. Unless otherwise specified in a construction permit, the department may only extend the term of the authorization in the permit for up to 18 additional months beyond the original 18-month period. If construction, reconstruction, replacement, or modification is not completed within the term specified in the permit or any extension granted by the department, the applicant shall apply for a new construction permit. Notwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit.

With the revisions to s. 285.66(1), Wis. Stats. Wisconsin has addressed US EPA's concern that Title I construction permit conditions may expire by clearly stating in the law that such conditions are permanent unless the construction permit is revised or a new construction permit is issued. As a result, only a Title I permit action may change the construction permit conditions.

Combined New Source Review and Title V Permits

US EPA raised a concern that Wisconsin's Title V permits must specify the origin of and authority for each term or condition in a Title V permit. US EPA states in the NOD that "Wisconsin does not identify NSR conditions or specify the origin and authority of the NSR conditions in combined permits."

To address the matter of origin and authority of NSR conditions that are included in Title V permits, Wisconsin issued guidance to permit staff on June 3, 2004 (Attachment C). This guidance requires staff to identify pre-construction permit conditions that are included in Title V permits by referencing the pre-construction permit in which the term or condition originated, along with the referenced authority for the

term or condition. Wisconsin issued additional guidance on October 28, 2004 (Attachment D) to staff in regard to the interface between pre-construction and Title V permits further clarifying procedures for combining these types of permits. Further support for this effort is provided in informational materials prepared for the May 2005 Natural Resources Board Meeting (Attachment X) and in a summary of work being conducted by the Air Permit Improvement Initiative Workgroup 4 (Attachment Y). As a result of the implementation of the procedures required by these guidance memorandums, the Department has addressed US EPA concerns over this issue.

Federal Enforceability

US EPA stated in its NOD that “(all) terms and conditions of a permit issued pursuant to a program approved into a state’s SIP are federally enforceable. 40 CFR 52.23. Wisconsin, however, does not identify all terms and conditions of its construction permit as federally enforceable. Instead, Wisconsin currently identifies permit requirements in title V permits originating from Wisconsin’s non-SIP toxics program (Wis. Admin. Code NR 445) as enforceable by the state only, even when the requirements were established in a permit issued pursuant to a SIP-approved program. Wisconsin’s failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits is contrary to 40 CFR 70.6.”

To address this matter, Wisconsin issued guidance to permit staff on June 3, 2004 (Attachment C) directing that conditions included in Title V permits that had originated in pre-construction permits should not be flagged as “state-only” conditions. As this guidance has been implemented in all Title V permits issued after June 7, 2004, Wisconsin has addressed US EPA’s concerns over this issue.

Insignificant Emissions Units (IEUs)

US EPA stated in its NOD that “Wisconsin’s regulations contain criteria for sources to identify IEUs in their applications, (Wis. Admin. Code NR 407), and require that permit applications contain information necessary to determine the applicability of, or to impose, any applicable requirement. Although Wisconsin’s regulations are consistent with EPA’s regulations at 40 CFR Part 70, the State is not properly implementing its regulations because it is not including these applicable requirements in its title V permits. Therefore, Wisconsin’s implementation of its regulations is inconsistent with part 70.”

To address this concern, Wisconsin has amended its Title V permit template to include a listing of insignificant emissions units within the preamble of the permit. The State has also modified Part 2 of its permit to include the terms and conditions that may apply to these insignificant emissions units, noting, as US EPA had within its March 5, 1996 White Paper 2, that insignificant emissions units typically are associated with inconsequential environmental impacts and present little potential for violations of the generally applicable requirements contained within Part 2 of the permit. Thus if there were no observed, documented or known instances of non-compliance, certification of compliance with the generally applicable requirements is appropriate. Attachment E contains the amended permit template and Part 2 of the permit.

With this change to Wisconsin’s Title V permit content, the State has addressed US EPA’s concern about this issue.

Completion of FESOPs by March 4, 2006

US EPA stated a concern in its August 5, 2004 letter responding to Wisconsin’s June 4, 2004 letter entitled “Wisconsin DNR 90-Day Response to USEPA Notice of Deficiency Related to the Title V Program, dated March 4, 2004” over the State’s schedule to issue remaining FESOPs by July 2008. US EPA stated “(it) is important to note that sources without issued FESOP permits are Title V sources, and are counted in the Title V universe until the FESOP permit is issued. Further, sources that have submitted FESOP applications

are not protected by application shields as they are under Title V permit applications, making them vulnerable to enforcement actions. Because of the importance of issuing these FESOP permits, Wisconsin must complete issuance of all initial FESOPs in order to resolve the NOD.”

To address US EPA’s matter of concern over initial FESOP issuance, Wisconsin has developed a strategy to issue these remaining FESOPs by March 4, 2006. The strategy was finalized on April 21, 2005 and is included as Attachment F. On January 1, 2005, Wisconsin had identified 159 FESOPs to complete, and as of July 28, 2005 had completed necessary review of 49 of these permits. A memo to permit staff directing the completion of this work effort by December 31, 2005, or at the latest, by March 4, 2006, is included in Attachment G. By following this strategy and schedule, Wisconsin will address US EPA’s concern in regard to FESOP issuance.

Workload Analysis and Fee Sufficiency

As part of its response to EPA’s March 4, 2004 Notice of Deficiency (NOD), the Wisconsin Department of Natural Resource Air Management Program has prepared a Workload Analysis (WLA) and a companion fee analysis for state fiscal years ‘05-’08. The purpose of these analyses is to evaluate the staff resources, and corresponding funding needs, that would be required to operate a complete, balanced stationary source regulatory program over this time period. The analyses do not cover all parts of the Air Program, but rather focus on the portions of the program related to regulating stationary sources, the parts of the program impacted by the NOD.

Operation of the Air Management Program has evolved over the past several years in response to a number of factors.

- Governor Doyle’s Grow Wisconsin initiative.
- The Air Permit Improvement Initiative (APII), launched by DNR Secretary Scott Hassett in the fall of 2003, which responds to Grow Wisconsin and seeks streamlined ways to issue permits to regulate air emission sources in Wisconsin.
- 2003 Wisconsin Act 118, state legislation that called for the development of a registration permit program and expanded use of general permits within the Air Program, and established timelines for permit issuance, among other things.
- EPA’s Notice of Deficiency, which calls for correction of a number of permit, programmatic, and funding issues within the DNR Air Program.

The Air Management Program developed a strategy to respond to these factors. Key points in this strategy are summarized below.

- Develop detailed and focused plans to issue Title V permits to major (FOP) and synthetic minor (FESOP) sources according to NOD deadlines. Work on other permitting activities (renewals, revisions) will be very limited until issuance of initial permits is completed.
- Invest staff resources in the APII effort. Streamlined permitting procedures and information technology improvements would be identified and developed that would reduce permitting staffing needs in subsequent years.
- Implement the changes called for by 2003 Wisconsin Act 118 through the APII effort.
- Later in the FY ‘05-’08 period, as initial permit issuance and APII efforts are completed, redirect staff from permitting activities to compliance assistance, compliance assurance, and enforcement activities. This would enable the Air Program to fully implement the EPA CMS policy (currently projected to occur in FY ‘07).

This program strategy and details are reflected in both the workload analysis (Attachment H) and fee analysis (Attachment I), and forms the foundation for those analyses. In addition, the draft FY06-07 EnPPA agreement (Attachment W) provides further documentation.

In the workload analysis that Air Management developed shortly after receiving the Notice of Deficiency and at the beginning of the Air Permit Improvement Initiative, we estimated a need for 33 FTE in FY07 and 32 FTE in FY08 for non-Title V activities. As the permit streamlining activities have taken longer than anticipated and the program was not able to request information technology funding to support the streamlining before the biennial budget for FY06 and FY07, the Air Program will not be able to shift as many FTE into the non-Title V funding account quite as quickly as initially planned. To ensure that we meet our Title V commitments, conservative assignment of staffing resources to the new non-Title V account seems appropriate. The state budget funds 10 FTE in FY07 for non-Title V work and we will request an additional 14 FTE be assigned to this account in FY08 in the 2007-09 Biennial Budget.

These analyses show that Wisconsin does indeed have adequate staffing and funding levels to support a well balanced Title V program through state fiscal year 2008 (FY08). The workload analysis identifies the staffing levels required to meet our Title V commitments; while the fee analysis demonstrates we have adequate funding to support those staff and related expenditures. In addition, the fee analysis demonstrates, based on the balance projected for the Title V account, that the Air Management Program will have sufficient funding through FY08 without restoration of the consumer price index. As the adequacy of state funding is evaluated in each biennial budget process, the Air Management Program will be closely watching funding levels so future adjustments can be made if needed.

Changes to Fee Structure Instituted in Biennial Budget

The Wisconsin 2005-07 biennial budget bill has been enacted into law as 2005 Wisconsin Act 25. While the entire budget bill may be obtained on the Wisconsin State Legislature website, located on <http://www.legis.state.wi.us/2005/data/acts/05Act25.pdf>, the pages pertaining to the Air Program are included in Attachment J. Act 25 will be incorporated into existing statutes by the Wisconsin Revisor of Statutes Bureau. Current statutes (updated through May 12, 2005) may be found on their website: <http://www.legis.state.wi.us/rsb>.

The budget bill includes funding for the first two years of the information technology (IT) portion of permit streamlining, the creation of a new appropriation to separate Title V from non-Title V funding and expenditures, and a new fee structure for the non-Title V program that takes effect on January 1, 2006. In anticipation of securing the IT permit streamlining funding, the program worked with a consultant for the past six months to develop a systems design. The design provides a comprehensive roadmap to move our separate database systems into an integrated, streamlined system. The details of the IT portion of the permit streamlining project are outlined in Attachment K. A compact disk is also included to provide all the links of supporting material in the attachment. The timeline included in the report is two years. However, the IT project will be developed and implemented over a four year period. The funding for the third and fourth years of the effort will be requested in the 2007-2009 biennial budget.

The expenditure authority for the Title V program is included in s. 20.370 (2) (bg). Language has been included to clarify the fees collected from this account are to be imposed on "owners and operators of stationary sources for which operation permits are required under the federal clean air act". Similar language was included in the DNR programs outside the Air Program that received funding from this account. These programs have initiated changes to their activity codes to ensure staff code their time appropriately: Title V vs. non-Title V as reflected in Attachment L.

The expenditure authority for the non-Title V program is included in s. 20.370 (2) (bh). This account is for "stationary sources of air contaminants for which an operation permit is required under 285.60 but not under the federal clean air act".

The changes to the stationary source fee structure will be programmed into the emission fee and permit databases in the fall of 2005 to assist with the new billing structure that will be implemented in Spring

2006. The flowchart of the structure is included in Attachment M. The fee analysis has also been updated to reflect the final budget bill.

The budget bill also includes a requirement that the Department of Natural Resources submit a report to the Joint Committee on Finance. Two of the items the agency must report on are: 1. the progress on the development of an information technology system for the air pollution permitting program, and 2. an analysis of the costs of the air pollution permitting program and the revenues necessary to run the program after the information technology system is implemented.

Since the non-Title V fee established in s. 20.370 (2) (bh) was just established, there is some uncertainty about the amount of revenue that it will receive in the biennium. In addition, the stationary source funding account previously received emission fees from both Title V and non-Title V sources. To ensure that the non-Title V fee account would be solvent in its first two years, the state Legislature included a one time transfer of \$175,000 from the existing emission fee account as starter funds.

Therefore, we believe adequate fee structures and funding are in place to separate accounts to prevent commingling of funds, to assure Title V fee collected will be used for their intended purpose, and to produce the information technology system efficiencies assumed within our workload analysis.

Internal Management Systems

The Wisconsin State Management Accounting and Reporting Tool (WISMART) is the financial system the DNR utilizes. The system requires separation of duty, is based on Generally Accepted Accounting Principles (GAAP) and has several checks and balances built into the procedures. The Bureau of Finance has financial oversight responsibility for the DNR and each program is assigned a management accountant. The management accountants work closely with their programs to ensure proper financial procedures of the DNR and state are followed. Management accountants must also follow the DNR Internal Control Plan (Attachment N). The five sections of the internal control plan are: control environment, risk assessment, control activities, information and communication, and monitoring. The plan is reviewed and updated annually with significant changes to the plan reported to the Wisconsin State Controller's Office.

A budget code is established for each funding source or appropriation. One key component of the budget code is the activity code. The activity code is also used by staff when completing timesheets. The Air Program works closely with the Bureau of Finance to define activity codes, the funding sources of the activities and developing budgets for the funding sources. Examples of communication between the Air Program and Bureau of Finance are included in Attachment O.

The Activity Code Handbook is maintained by the Bureau of Finance and updated monthly. It is available to all staff on the DNR's Intranet site. Attachment P provides more information on the handbook. As the program updates activity codes, emails are also sent to staff to notify them of the changes or additions (Attachment Q).

In addition to the financial management systems, the WDNR utilizes a work planning system for planning resources to meet Department objectives according to funding constraints. Attachment R provides information on the work planning process and provides the FY05 work plan. The program managers evaluate the implementation of the work plan on a quarterly basis and adjust resources accordingly. Attachment S is an example of the Work Plan to PALs report and a quarterly performance measure report on funding commitments. PALs is the Payroll and Leave System (timesheet data) the agency uses.

As part of a Continuous Quality Improvement (CQI) approach to addressing program management, the Air Management Program developed a Management Response Plan, Attachment T, utilizing scenario planning. It was adopted to enable the program to be more strategic in work planning and budget development.

The redeployment of the Air Program in October 2003 used the Management Response Plan and work planning data to make sound decisions to meet funding constraints. Information on the redeployment is included in Attachment U.

The program reported to the Legislative Audit Committee last Fall on the progress made on each of the recommendations in the Audit Report of the Air Management Program. The report also highlighted the relationships of our response to the Legislative Audit Bureau recommendations to the permit streamlining effort and the NOD. The committee was quite impressed with the report and commended the Air Management Program on their diligence and progress.

As clearly demonstrated by all of these materials, the Wisconsin Air Management Program has accounting and management controls in place to adequately administer the fees and resources of the Title V program, prevent the improper use of this funding source, and prevent the use of Title V funds as match for the EPA 105 Air Pollution grant.

In conclusion, after your review, I believe you will concur with my assessment that Wisconsin's Air Management Program has adequate authority and fiscal and staffing resources to implement the Title V provisions of the 1990 Clean Air Act Amendments. During your review, please feel free to contact Lloyd Eagan (608-266-0603 or lloyd.eagan@dnr.state.wi.us) or Sheralynn Stach (608-264-6292 or sheralynn.stach@dnr.state.wi.us) if you have questions about the materials in the attached package.

Sincerely,



Scott Hassett
Secretary

Attachments

cc: Pat Henderson – Governor's Office (no attachments)	Al Shea – AD/5 (no attachments)
Joint Legislative Audit Committee (no attachments)	Lloyd Eagan – AM/7 (w/attachments)
Steve Rothblatt – EPA, Region (w/attachments)	Jeff Hanson – AM/7 (w/attachments)
Cheryl Newton – EPA, Region 5 (no attachments)	Sheralynn Stach – AM/7 (w/attachments)
Pamela Blakely – EPA, Region 5 (w/attachments)	Marcia Penner – LS/5 (w/attachments)
Air Management Team (no attachments)	Dan Derr – FN/1 (no attachments)
Bruce Nilles – Sierra Club (w/attachments)	

Attachment Table of Contents (including page numbers)