

March 12, 2001

Bharat Mathur
Director, Air and Radiation Division, EPA
Region V (5A-18J)
77 W. Jackson Boulevard
Chicago, Illinois 60604

Dear Director Mathur:

The Sierra Club Midwest Office would like to thank-you for the opportunity to comment on the State of Wisconsin's Title V delegated program. These comments are submitted on behalf of the Sierra Club Midwest Office in response to U.S. EPA's "Notice of Comment Period on Program Deficiencies," published in the Federal Register on December 11, 2000. The outcome of the settlement between USEPA and Sierra Club allowed for a state-by-state analysis of delegated authority under the Clean Air Act Amendments of 1990, Title V.

The Sierra Club Midwest Office review of the Wisconsin Title V program focused on implementation deficiencies; the shortcomings of state air permits written under the delegated authority of Wisconsin Department of Natural Resources Rule NR 407 – Operating Permits – rather than an analysis of the state's program as compared to the Federal Clean Air Act Title V program.

Our efforts represent a cursory analysis of the program and are by no means complete. We did, however, find lots of room for improvement in Wisconsin's implementation of the Title V program. The Sierra Club asks that Wisconsin EPA promptly address the deficiencies listed herein.

First, we find no means for generating funds through this program as EPA recommends. The minimum levy of fees should be, at a level per ton of pollutant emitted, to insure that the cost of the program (implementation and enforcement) is recovered through these fees.

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Second, of the permits reviewed, many contained what could be perceived as a blanket exemption from compliance during malfunction or upset by not including language specific to this situation. What was included, a malfunction prevention and abatement plan, may not allow for Notice or Finding of Violation exempting the facility from compliance during those situations.

Third, most permits reviewed only allowed for violations to occur during normal operating conditions. Other conditions, i.e. startup/shutdown and malfunction/upset conditions, were not mentioned other than by the aforementioned malfunction and abatement plan. As for maintenance conditions, generous allowances were written into the permit language allowing for large increases in emissions for extended periods.

Fourth, some of the permits reviewed excused facilities from emission reporting requirements and substituted those requirements with a record keeping process (amounts of and dates of fuels used) that did not include any stack monitoring or emission analysis.

Fifth, all permits reviewed limited the use of credible evidence during a violation of applicable requirements by including a general condition or placing language throughout the permits stating, "compliance is determined by..." As underscored by U.S. EPA's Credible Evidence Rule, 62 Fed. Reg. 8314 (Feb. 24, 1997), the Clean Air Act allows citizens, Wisconsin EPA, U.S. EPA, and the facility itself, to rely upon any credible evidence to demonstrate violations of or compliance with permit terms and conditions.

Sixth, it appeared that some permits include unenforceable conditions as a practical matter.

Seventh, it also appears that NR 407.03 gave blanket exemptions to entire source categories that are not clearly authorized through EPA's Title V rules.

I appreciate this opportunity and look forward to the analysis and review documents resulting from submissions under this call for comment. For purposes of this document, the Sierra Club reviewed two permits with particularly close attention: Northern States Power Co., Facility ID 802033320 and Wisconsin Electric Power Oak Creek Station, Facility ID 241007690. If you have any questions about this petition or would like additional information about the specific deficiencies mentioned within, please contact Eric Uram at the Sierra Club Midwest Office, 608-257-4994.

Sincerely,

Eric Uram
Midwest Associate Representative