



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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AUG 26 2015

REPLY TO THE ATTENTION OF:

Bart Sponseller, Deputy Division Administrator
Air, Waste and Remediation & Redevelopment Division
Wisconsin Department of Natural Resources
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P.O. Box 7921
Madison, Wisconsin 53707-7921

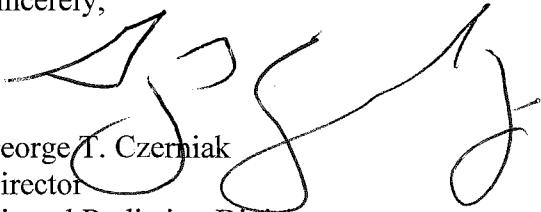
Dear Mr. Sponseller:

I am pleased to transmit to you the final report of the Wisconsin New Source Review (NSR) and Title V program evaluation. The evaluation is the result of a meeting on May 5-6, 2015 of representatives of the U.S. Environmental Protection Agency and the Wisconsin Department of Natural Resources (WDNR) to discuss WDNR's progress in implementing the NSR and Title V programs. The meeting was part of EPA's initiative to evaluate state permit program implementation nationally.

We appreciate the efforts the WDNR has taken to improve its permitting programs since EPA conducted the last program evaluation in 2010. The enclosed report highlights current permit program strengths, areas for improvement, changes since the 2010 evaluation, and recent permit program challenges. We appreciate WDNR's efforts to improve its permit program and to issue quality permits. WDNR is working towards addressing its Title V permit backlog, and we must remain focused on advancing this goal. In addition, we will continue to work with WDNR to address the RACT/BACT/LEAR Clearinghouse data entry issues and any other permit program implementation issues as they arise. Please see the enclosed report for further information.

If you have any questions, please contact Susan Kraj at (312) 353-2654.

Sincerely,


George T. Czerniak
Director
Air and Radiation Division

Enclosure

2015 Review of Wisconsin's New Source Review and Title V Permit Programs

I. Executive Summary

On May 5-6, 2015, the U.S. Environmental Protection Agency (EPA) conducted an on-site evaluation¹ of Wisconsin's New Source Review (NSR) and Title V permit programs. This evaluation is part of EPA's ongoing oversight of state and local NSR and Title V permit programs. Wisconsin's permitting programs were last evaluated by Region 5 in July 2010, and program strengths and areas in need of improvement were identified in EPA's permit program review reports. As had been done with prior program evaluations, EPA provided the Wisconsin Department of Natural Resources (WDNR) with a questionnaire on various permit program topics before our meeting. Our evaluation focused on Wisconsin's responses to the questionnaire.

This final report summarizes EPA's findings and conclusions based on the answers the WDNR gave to the questionnaire, discussions at the May meeting, changes that have occurred since the 2010 evaluation, and EPA staff knowledge of Wisconsin's permit programs from experience with reviewing permits. This report also provides our recommendations to address concerns found during our review.

Based on our evaluation, EPA has determined that WDNR made a significant number of improvements to its Title V permit program since the 2010 program evaluation. WDNR's data management and electronic permit tracking abilities have noticeably improved, especially with the monthly tracking of the status of each pending Title V permit. WDNR has also set internal permit issuance goals to reduce backlogs and has kept EPA updated on its progress. Further, WDNR has issued more permitting implementation guidance and has worked to further streamline some of its processes, including pursuing rule changes.

Regarding WDNR's construction permit program since the 2010 program review, WDNR has addressed most of EPA's concerns from 2010 and has actively worked to improve several aspects of the program. WDNR has improved its response to comments documents, and developed procedures to ensure more consistency in implementing its policies. Additionally, WDNR has developed new guidance and procedures for processing Confidential Business Information requests.

II. Evaluation Summary and Findings

A. Follow-up on the 2010 Title V Program Evaluation

Region 5 last evaluated Wisconsin's permit program in 2010, and at that time noted program strengths and areas in need of improvement. One of the items Region 5 identified as needing improvement was the Title V permit backlog. During our July 2010 program review, WDNR shared with EPA a draft plan to re-prioritize its Title V renewal permits in an effort to reduce backlogs and create a more steady state issuance rate in future years. Although some

¹ The evaluation focused on several aspects of the NSR and Title V programs and should not be taken as a comprehensive assessment of the programs.

streamlining efforts by WDNR have been implemented, as of our May 2015 meeting, there were still a large number of Title V renewal permits backlogged, approximately 90, which represents a backlog of about 23%. WDNR is still working towards reducing its backlog and indicated to us that it expected to issue 80 renewal permits by the end of June 2015, and that by December 2015 it expected its backlog to be 50 permits. WDNR also indicated that in future years it anticipates to have a backlog of no more than 20 permits (approximately 5%). By the end of June, WDNR exceeded its issuance goal and had issued 84 permits. However, it also adjusted its goal of reducing its backlog to 50 permits by December 2015 to June 2016. In addition, WDNR has hired 5 new Title V permit writers to assist with permit writing efforts which should also help reduce backlogs. WDNR noted that there may always be a small permit backlog, due to several reasons, such as modeling issues, enforcement issues, or when waiting for the facility to make certain decisions or changes.

In 2010, EPA performed a permit review of the basic compliance assurance monitoring (CAM) permit content requirements in several permits with CAM plans. EPA concluded that, overall, there did not seem to be any consistent CAM plan format, except that some consistency is naturally occurring in permits for larger sources with CAM plans (such large power plants) since they are written by the same few permit writers. In response to the 2010 questionnaire, WDNR noted that it issued guidance to assist permit writers with CAM implementation and provided training on statewide permit conference calls. However, during our May 2015 evaluation, WDNR stated that it did not have its own CAM guidance nor has it had any additional CAM trainings for permit writers, but that it has not experienced issues with permit writers including CAM plans in permits, since the majority of sources subject to CAM in Wisconsin are large power plants.

Also in our 2010 evaluation report, EPA expressed some concerns with WDNR's renewal permits including references to past permits and preliminary determinations (PDs) that may be 10 or 15 years old and that may not be available on-line. This is still a concern to EPA and we encourage WDNR to have its permit writers ensure that any prior documents that are referenced in the current permit are available on-line. WDNR noted that all permit documents are publically available offline, and any particular documents can be made available online upon request within a day.

Finally, EPA noted in its 2010 program evaluation that WDNR needed to submit its Title V program update to EPA, as no changes or updates have been submitted to EPA for approval since 2001. As of our May evaluation meeting, this was still the case and WDNR was still working on this effort, particularly on updating its fee adequacy demonstration. On August 3, 2015 WDNR submitted a draft Title V program update to EPA.

B. Follow-up on the 2010 NSR Program Evaluation

EPA discussed several areas needing improvement in its 2010 NSR program evaluation report. EPA noted that WDNR needed to improve the timeliness of its response to permit comments, update the RACT/BACT/LAER Clearinghouse (RBLC) in a timely manner, and issue after-the-fact construction permits consistent with national guidance. EPA also requested that WDNR

provide EPA with drafts of responses to permit comments for controversial and complicated sources prior to issuing the final response to comment document.

Since the 2010 program evaluation, WDNR provided more training exercises for staff, consolidated NSR permit writers, and streamlined the sign-off process for final permits. Through these trainings and procedural changes, staff are now more aware of the expectations for when to release the response to comments documents and management now expects to see this document prior to signing the final permit. Additionally, the training and consolidation of NSR permit writers has allowed WDNR to emphasize that facilities are not allowed to take synthetic minor limits in after-the-fact construction permits. WDNR has also consistently discussed issues with EPA when responding to comments on complex and controversial permits.

WDNR has not improved its timeliness and consistency with respect to entering permit decisions in the RBLC. In fact, the most recent RBLC entry from Wisconsin was uploaded in 2011. WDNR acknowledges that although it has on multiple occasions attempted to update the RBLC, it has not succeeded in doing so and still is not consistently entering permits decisions into the database. WDNR has cited software incompatibility, difficulty registering users, remembering frequently changing passwords, and the data loader frequently crashing as reasons why it has been unsuccessful in updating the RBLC. WDNR suggested that it may be more practical for someone at EPA to enter data into the RBLC. While EPA may be willing to consider this as a short term solution, not to exceed one year, EPA considers entering the data into the RBLC to be the long-term responsibility of WDNR. Both WDNR and EPA agree that the RBLC can provide useful information when undergoing a BACT or LAER analysis and that it would be beneficial to keep the database up to date. In the event that the proposal to have EPA enter RBLC data is not implemented, WDNR agreed to convene a workgroup to determine and implement a process to enter data into the RBLC.

C. Current Program Evaluation

Good Permit Quality

EPA notes that WDNR employs knowledgeable staff, uses team leads for NSR and Title V with many years of permitting experience, generally makes sound permitting decisions, implements EPA guidance and policy, and issues good quality permits. Generally, WDNR writes thorough PDs, which explain any changes to the permit, potential emissions, applicable rules, methods of limiting potential emissions, monitoring and recordkeeping requirements, and a well-supported top down BACT analysis for Prevention of Significant Deterioration (PSD) permits.

To ensure consistency among permits issued, WDNR provides templates, model permits, and model PDs to permit writers. WDNR holds monthly calls with its staff to discuss permit-specific issues and to ensure that the staff are aware of any changes that made to templates or procedures. WDNR keeps an online repository of guidance, both internal and external, for permit writers to access to aid with writing permits. For example, guidance such as how to handle plans in permits is final and being used. Other guidance, concerning topics such as how to justify parametric monitoring, malfunction and abatement plans, and what constitutes a description versus an enforceable condition, is still being developed. Often WDNR will provide EPA or

other stakeholders the opportunity to review certain guidance documents while they are being developed.

Streamlining Efforts

WDNR has implemented several streamlining efforts, which have helped WDNR improve its NSR and Title V permit issuance rates. For example, WDNR uses more integrated permits, that is, it combines the construction permit action with the Title V permit action. WDNR is working to improve its integrated permit and is working on changing its PD and permit templates to address both Title I and Title V requirements. Permit identification numbers are also being changed to better identify revisions to Title I conditions when reviewed with Title V integrated permits.

WDNR has also streamlined its public notice procedure and no longer publishes public hearing and permit notices in individual local newspapers, but rather in a centralized newspaper and on a public departmental website. This saves time and money, and minimizes confusion for the public as to which newspaper to view. When needed for timing concerns, WDNR uses a concurrent review process for non-controversial permits where EPA's 45-day review period overlaps with the public 30-day review period. During our May meeting, WDNR agreed with EPA that the existing concurrent review process needs to be revised to better notify EPA that the concurrent review process is going to be used. EPA will follow-up with WDNR to work on revising the concurrent review process.

WDNR has created an Air Management Study Group (AMSG) consisting of various stakeholders, including EPA, in order to receive input from and provide information to interested parties regarding air policies, including rule-making, guidance development, and other initiatives. WDNR worked with this group to provide broad input on several rule revisions aimed at streamlining the permitting process. These rules were undertaken in response to a legislative mandate and, in some cases, a statutory requirement. For example, WDNR is promulgating rules to allow federally enforceable state operating permits (FESOPs) to be non-expiring or with an expiration date for cause. This would reduce the need to issue permit renewals for FESOPs every five years. WDNR is promulgating rules to create an operation permit exemption for natural minor sources as well, thus freeing up additional time to work on Title V permits. WDNR also received state implementation plan (SIP) approval for a rule which exempts sources emitting less than 10 tons per year from being required to get a permit. Finally, WDNR is working on a new Registration Operation Permit for sources that emit 50% or less of the major source thresholds. This will also decrease the number of source specific permits that WDNR has to issue and renew.

WDNR is developing a streamlining rule to allow certain construction activities to occur prior to issuance of a minor construction permit. EPA has expressed concerns that some of the activities allowed by WDNR are inconsistent with federal guidance and could cause potential enforcement issues should a source mistakenly believe it only requires a minor construction permit when in reality it needs to take a synthetic minor limit. In that scenario, the source would have already commenced construction as it is defined in the PSD regulations and would be in violation for commencing construction prior to permit issuance. According to EPA and WDNR policies on

after-the-fact construction permit issuance, such sources would not be allowed to take synthetic minor limits and would then be subject to major NSR review. EPA requests that WDNR continue to work with EPA to determine which activities can be allowed prior to the issuance of a minor permit to ensure that the final rule meets the requirements of the Clean Air Act and EPA policy and can, therefore, be approved by EPA into Wisconsin's SIP.

Improved Response to Comments

As discussed in the "Follow-up on the 2010 NSR Program Evaluation" section above, WDNR has improved its response to permit comments. EPA finds that WDNR is generally adept and thorough in its responses to Title V and NSR permit comments and that WDNR believes that a sufficient response to comments is an important part of the permit record. WDNR has increased its legal and central office review of responses to certain comments before they are issued, which has helped improve the quality and consistency of the responses. Specifically, the legal office reviews all responses to EPA comments and any comments for permits that are controversial, precedent-setting or where a source may contest the permit. New staff are being trained on the response-to-comments aspect of permit writing. WDNR responds to every comment received, and all comments and responses are posted online as part of the permit record. WDNR typically resolves the comments raised to EPA's satisfaction and the permit is modified, where appropriate.

Progress on Outstanding Permitting SIP Submittals

At the time of the May program evaluation, WDNR was continuing efforts to complete rulemakings to update its rules to match federal regulations. Specifically, WDNR is updating its rules to list Nitrogen Oxides (NO_x) as a precursor to ozone and to add increments for Particulate Matter less than 2.5 micrometers (PM_{2.5}). In August of 2012, EPA issued a Finding of Failure to Submit for PM_{2.5} Increments. As a result, EPA must approve PM_{2.5} Increments into Wisconsin's SIP by August 11, 2016, or EPA will be obligated to issue a narrow Federal Implementation Plan. WDNR is diligently working to address this rule deficiency and has packaged the rulemaking for the revisions regarding both NO_x as a precursor to ozone and PM_{2.5} Increments together, and expects the final rule to be issued by October of 2016. EPA urges WDNR to continue working with EPA by sharing drafts of the rule language and requests that the SIP undergo parallel processing to ensure timely approval of these rules into the SIP. As new federal permitting requirements are developed, EPA commits to notify WDNR of new requirements that will mandate a rule change and requests that WDNR continue to partner with EPA and share drafts on rulemakings so that EPA can support WDNR in the development of approvable SIP revisions.

Development of Confidential Business Information Determination Process

On July 19, 2013, WDNR issued guidance that outlines a process for staff to make confidential business information (CBI) determinations. The process includes the following steps:

- Prior to approval of a CBI request, WDNR releases a public notice of the preliminary approval.
- Members of the public have 10 days to request a hearing.

- Before the final determination is made, the information claimed to be CBI is treated as though it is CBI, and if it is determined not to qualify as CBI, WDNR continues to treat it as CBI until the 40-day appeal period after the final determination has passed.

These procedures have helped WDNR to assure that information that is granted CBI status meets the CBI requirements, rather than treating all requested information as CBI. WDNR also assigned a staff member to coordinate CBI requests who works with the permit writer and legal staff to develop a response. The CBI review ensures that the information claimed CBI by permit applicants satisfies Wisconsin's definition of trade secret.

Although positive changes have been made in WDNR's treatment of CBI requests, there is still room for improvement. For example, WDNR mentioned that a few applicants submitted information in a manner not consistent with the department requirements, and this failure was one of the reasons the CBI claim was denied. Additionally, WDNR stated that it denied a hearing request, because the request was not consistent with WDNR's hearing request requirements. EPA suggests that it would be beneficial for WDNR to develop external guidance for the public and CBI applicants, which explains the CBI process, including the application requirements and what constitutes CBI.

In addition, WDNR noted that there is not a consistent level of detail as to what is included in the public notice for the proposed approval of the CBI request. For example, some public notices may contain vague information on what information is being granted CBI status (such as emission factors or throughput) or it may just say that some information in the application is being granted confidential status. Given that WDNR provided the public with the opportunity to request a hearing on the determination, WDNR should provide a short description of the type of information being held as CBI in the public notice.

Because one of the goals of the permitting process is to make information transparent to the public, EPA suggests that in addition to determining if information constitutes a trade secret, WDNR also assess whether or not the information constitutes emissions data. While EPA recognizes that WDNR has an approved PSD and NSR SIP and CBI procedures, when asked to make CBI determinations, EPA relies on 40 CFR Part 2, Subpart B. These regulations provide that information may be claimed as a trade secret, but also specify in section 2.301 that emission data may not be withheld as confidential. A Federal Register notice published on February 21, 1991 (56 FR 7042) provides clarification on what is meant by emission data and examples of what may constitute emissions data. EPA encourages WDNR to review this 1991 Federal Register Notice and aforementioned regulations when considering whether the withheld information should be considered confidential.

Electronic Tracking Improvements

WDNR now uploads available Title V and NSR permit applications onto its electronic system for permit writers to review and the public to view. WDNR also relies on supervisory oversight and electronic tracking of the permit status to identify any permits that have not proceeded to the next phase of the process in a timely manner. WDNR is developing a reminder system that will email a permit writer when too much time has elapsed during the process. In addition, WDNR is

planning to overhaul its permit application forms and intends to move to more application forms being submitted electronically, as well as more e-reporting. WDNR currently accepts electronic forms and applications from facilities, along with a hard copy signature page. However, WDNR's compliance team is implementing a system for the electronic submittal of compliance certifications and stack testing reports.

Good Communication with EPA

WDNR holds statewide monthly permit conference calls with EPA, and quarterly PSD/NSR calls with EPA, in addition to consulting with EPA on specific issues that arise. WDNR thus maintains good communication with EPA. EPA especially finds the PSD/NSR calls to be helpful in terms of understanding upcoming issues in complex construction permits and appreciates WDNR's willingness to participate in such calls. WDNR also involves EPA when policy or guidance assistance is required. WDNR is currently undergoing significant rule changes in a streamlining rulemaking, and has engaged EPA permitting staff in reviewing draft rule language. EPA appreciates the opportunity to review rule changes and the willingness to collaborate in the development of rule language that satisfies the interest and policies of both agencies. WDNR also provides frequent notification to EPA, via email, of permit actions available to review and has a webpage that contains all actions available for public review.

D. State commentary

WDNR noted that its permit staff works closely with its compliance staff and suggested that EPA Region 5 do the same. The lack of communication between EPA's permitting and compliance staff can directly impact WDNR's workload, especially when EPA compliance staff develop Consent Decrees, which WDNR permit program is obliged to adopt through permitting, that contain conditions that are in direct conflict with EPA and WDNR permitting policy. WDNR permit writers provide technical information to WDNR compliance staff and will assist the compliance staff in writing Administrative Orders and Consent Decrees, and compliance staff also review permits before they are public noticed.

WDNR also noted that EPA's once-in-always-in policy for Maximum Achievable Control Technology can create a permit burden for sources. Additionally, assessing air quality impacts for PM_{2.5} and the 1-hour NO_x standard can sometimes delay permit issuance in Wisconsin. WDNR would also like EPA to explain when and how EPA intends to use the Environmental Justice (EJ) Screen tool in EPA's permitting and compliance processes. WDNR believes that protection of vulnerable populations is part of EPA's consideration when setting ambient air quality standards. By assuring protection of these standards, WDNR protects citizens regardless of location within an EJ community.

Additionally, WDNR asked EPA to do more to ensure that all state PSD programs operate in a consistent manner. WDNR expressed particular concern over inconsistencies in how emissions increases from projects involving multiple new and/or existing sources are determined, how to determine if two nominally separate facilities are a single facility, and how to determine if two proposed projects at a single facility are single or separate project. WDNR believes that EPA needs to issue more national guidance on these topics and increase communication between headquarters and its regional permitting staff. In particular, WDNR expressed concern with the

footnote regarding the single source determination in permits recently issued by EPA to facilities on tribal lands, which appears to establish a specific distance for determining adjacency.

WDNR would also like to see EPA continue to host an annual gathering of Region 5 states such as the permitting meeting that Region 5 held concurrently with the permitting and enforcement National Association of Clean Air Agencies conference in 2014. WDNR suggests that useful topics for such a meeting might be methods of processing applications, aggregation and single source determinations. Additionally WDNR appreciates EPA training materials (such as the APTI courses) and face-to-face trainings and meetings for new hires.

III. Recommendations and Conclusion

EPA commends WDNR on issuing high quality permits and responses to comments, and maintaining open communication with EPA. Overall WDNR has a strong permitting program. However, EPA has identified a few areas for improvement.

Wisconsin's Title V permit backlog has been a recurring issue in previous program evaluations and WDNR has made efforts to reduce its backlog. Regardless of when any proposed process or streamlining changes occur, WDNR must continue to prioritize reducing its Title V permit backlog. Additionally, updating the RBLC has also been a longstanding issue for WDNR. WDNR needs to determine how it will improve the timeliness of entering information into the RBLC. EPA also requests that WDNR continue to work with EPA on rulemakings such as the permit streamlining efforts and federally-mandated rule revisions. EPA believes that close communication and coordination will help ensure timely SIP approvals.