

IMPLEMENTATION AGREEMENT
BETWEEN
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

Part 70 OPERATION PERMITS PROGRAM

I. GENERAL

- A. This implementation agreement (IA) defines policies, responsibilities, and procedures, pursuant to 40 Code of Federal Regulations Part 70, by which the operation permits program will be administered by both the Wisconsin Department of Natural Resources (WDNR) and the United States Environmental Protection Agency (USEPA). Such agreement shall be maintained consistent with the Clean Air Act (Act) and other existing regulations, notably the Wisconsin State Implementation Plan (SIP).
- B. Nothing in this IA shall be construed to restrict in any way USEPA's authority to fulfill its oversight and enforcement responsibilities under the Act. Nothing in this IA shall be construed to contravene any provision of Part 70. This IA is in addition to, and does not contravene any other agreements between USEPA and WDNR, such as the Delegation of Authority for the Prevention of Significant Deterioration, §52.21; the Delegation of Authority for New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants; the Memorandum of Understanding Concerning the Enforcement of Significant Violators in Wisconsin; and any Memorandum of Agreement to be developed for the Section 112 toxics program, including Section 112(l) delegations.
- C. This agreement is entered into by the Director of the Bureau of Air Management, WDNR, and the Chief of the Air Toxics and Radiation Branch, Air and Radiation Division, USEPA Region 5.
- D. This IA shall become effective upon signature by both parties. Any revisions to this IA must be in writing and must be signed by WDNR and USEPA.

II. PROGRAM DEVELOPMENT

- A. Each party is responsible for ensuring that its obligations under Part 70 and Title V of the Act are met. Both parties agree to maintain a high level of communication, cooperation, and coordination between their respective staffs to assure successful and effective administration of the operation permits

program.

- B. USEPA will assess WDNR's administration of the operation permits program for consistency with Title V, Part 70, and all other requirements of the Act. This assessment will be accomplished by USEPA review of information submitted by WDNR or any interested person, program audits, permit overview, and compliance and enforcement overview. USEPA will timely notify WDNR of any concerns regarding WDNR's administration of the program, and will work cooperatively with WDNR to reach resolution.
- C. WDNR and USEPA agree that, in accordance with section 70.4(i), operation permits program changes become effective, for purposes of federal law, only upon approval by USEPA. Approval of nonsubstantial program changes may be made by a letter from USEPA to WDNR, but substantial program changes must go through the public notice provisions specified in section 70.4(i). Changes in operation permit program implementation which do not alter the requirements of the State's approved program do not have to undergo USEPA approval.
- D. WDNR and USEPA agree to work together during the development and implementation of any significant changes to the State program to ensure that such changes will meet the requirements of the Act.
- E. WDNR has primary responsibility for:
 - 1. Administering the program in accordance with Part 70, the Act, USEPA policies and guidance, applicable State/local law, any applicable more restrictive State regulations or policies, and
this IA.
 - 2. Making all statutory and regulatory changes to
the approved program necessitated by the interim
A program approval conditions specified in Appendix
of this IA. Making any other program changes
needed to maintain the approval status of the
permitting program.
 - 3. Making any changes to the operation permit
program which are not program approval issues, specified
in Appendix A of this IA.
 - 4. Notifying USEPA in advance of any proposed
changes

that alter the requirements of the approved State program, including but not limited to changes to resource levels and to permit program-related statutes and regulations, and submitting program changes for approval. Notifying USEPA of any significant changes or clarifications in program implementation that do not alter the requirements of the approved State program, including but not limited to implementation policies.

permit

5. If requested by USEPA, providing an accounting which demonstrates how revenue from required fees was collected and spent by WDNR and demonstrating that the fee structure is adequate. If necessary, seeking legislative approval to modify the permit fee system to ensure that it continues to cover the costs of administering the program.

F. USEPA has primary responsibility for:

this

1. Developing a differential oversight system for assessing the State program. Consistent with system, reviewing selected permits and providing effective oversight of the operation permits program to ensure consistency with Part 70.

the

2. Informing WDNR as soon as possible about new Federal regulations and any related litigation results or settlements, new Federal standards, effect of these new requirements, and any action needed to be taken by WDNR.

and

3. Cooperating with WDNR by allowing appropriate flexibility when determining the most effective expeditious means of implementing USEPA policies and guidance.

on

4. Providing ongoing technical and other assistance permit program matters as requested. Reviewing, upon WDNR request, any draft documents which may change or otherwise affect the State's operation permits program, including: legislation and regulations, permit application and monitoring forms, and policy guidance.

Register

5. Providing for final action in the Federal

change within 12 months of any substantial program submitted by WDNR.

III. PROGRAM IMPLEMENTATION

- A. USEPA agrees to inform WDNR as soon as possible about new Federal standards, implementation information and related Federal policies and guidance. WDNR agrees to distribute any such guidance to WDNR permit program staff.
- B. USEPA and WDNR agree to maintain a working document that addresses specific program implementation procedures requiring coordination between USEPA and WDNR.
- C. USEPA and WDNR agree to participate in conference calls as needed to discuss program implementation, including program requirements, operating procedures, and source specific draft and proposed permit issues. USEPA and WDNR agree that staff and lower level management will work together to resolve any issues, and will only elevate issues to higher level management if resolution cannot be timely reached.
- D. WDNR and USEPA each agree to notify the other as early as possible of any problems either party anticipates with any permit or permit application, such as anticipated public controversy, complex equivalency or trading provisions, etc.
- E. USEPA and WDNR agree to work together to determine which permit applications and draft permits may have particular national or regional interest. Permits of interest shall include the development of any general permits. WDNR agrees to make such applications and draft permits available to USEPA prior to the beginning of the public comment period. USEPA agrees to expeditiously comment on such permits.
- F. USEPA and WDNR agree to work cooperatively to resolve jurisdictional issues involving air pollution sources located or wishing to locate on Indian lands.
- G. USEPA and WDNR agree to develop an enforcement agreement or modify the existing Memorandum of Understanding (MOU) entitled "Enforcement of Significant Violators in Wisconsin" that will address each party's responsibilities regarding Title V compliance and enforcement activities. This agreement will provide for the performance of those types of compliance/enforcement activities as previously outlined in the Projected Program Accomplishments (PPAs) in the Fiscal Year 1995 Cooperative Agreement.

H. USEPA will have the lead in processing permit revisions to Phase I acid rain permits. WDNR will not take action on any revision to a Phase I acid rain provision contained in any Part 70 permit prior to USEPA taking action on such revision in a Part 72 Phase I permit.

I. WDNR and USEPA agree to confer on and develop a list of appropriate pollution prevention activities by source category. This would consist of examples of pollution prevention measures that sources could adopt; the list being used to provide a stimulus to sources to devise measures specific to their facilities. WDNR will assume leadership of this project.

J. WDNR agrees to do the following:

take
State

1. Maintain an adequate file (accessible for USEPA audit) for each permittee in accordance with Section IV of this IA.
2. Notify USEPA of any permit actions that do not place within the time frames provided by the program and/or Part 70.
3. Include the following in all draft permit public notices:
 - a. All notice provisions specified in
 - b. A statement outlining citizen's appeal to the Administrator, specified in §70.8(d).
4. If any permit is changed as a result of any administrative or court action, make the permit available to USEPA with the changes identified.
5. Where a permit contains applicable requirements regarding Title VI Stratospheric Ozone, cite the Federal authority in the permit (in addition to

§70.7(h) (2)

rights

any

K. USEPA agrees to do the following:

1. Provide technical support and assistance and training opportunities as available for Title V related activities.

- requirements.
2. When requested by WDNR, assist in determining general or individual Title V permit
3. Provide WDNR the opportunity for involvement and input into new program activities or initiatives.
4. Provide comments or objections to proposed permits in an expeditious manner, but no later than 45 days from receipt/availability of the following permit documentation: the permit application or application summary form, the proposed permit, and any written refusal to accept an affected State's recommendations. USEPA shall:
- a. Include with any objection a statement of the reasons for the objection and the actions that should be taken by WDNR to resolve the basis for the objection.
 - b. Send a copy of its written comments to the permit applicant.
 - c. Issue or deny the final permit if WDNR fails to submit a revised permit for review within 90 days after receipt of an objection.
 - d. Withdraw its objection when satisfied that WDNR has resolved the basis for the objection and provide a copy of the withdrawal to the applicant.
5. Timely notify WDNR when the Administrator receives public petitions which object to the issuance of a permit, and keep WDNR informed concerning USEPA's response. Notify the permit applicant if the Administrator objects to a permit as a result of a public petition to the Administrator.

IV. DATA MANAGEMENT AND INFORMATION TRANSFER

- A. USEPA and WDNR will work together to develop an efficient data management and information transfer system. USEPA and WDNR agree to expeditiously transfer to one another any requested documents.
- B. WDNR and USEPA agree to the following procedures with respect to confidentiality of information:

- 1. Any information obtained or used in the administration of the program shall be available to USEPA upon request without restriction. If the information has been submitted to WDNR with an application for confidentiality, the WDNR shall submit that application for confidentiality to USEPA when providing the information. WDNR may only release such information to an officer, employee or authorized representative of the federal government for the purpose of administering the Federal Clean Air Act.
- 2. Any information obtained from WDNR or from a permit applicant or permittee which is subject to a claim of confidentiality will be treated by USEPA in accordance with the regulations in 40 CFR Part 2.

- C. WDNR agrees to make available to USEPA and the public the following permitting information, except that WDNR may not make available to the public information for which confidential treatment has been granted, or information for which confidential treatment has been requested and the WDNR has not yet acted on the request.

- 1. At a minimum, the following permit documents shall be available to USEPA either through direct electronic access, or when requested, by hardcopy submission to USEPA. USEPA will accept the electronic portions of an application as an application summary if the electronic data constitutes a significant portion of the source's application. If requested, however, WDNR will provide USEPA with any hard copy portions of an application that are not available electronically.
 - a. Operation permit applications summaries

or application

an affected
draft permit

generated by

must

determination documents,
sheets

decisions in

general permits

procedures permits

public and

responses to

compliance

reports, and any

reports required by the

compliance and

- b. Proposed permits
- c. Any written refusal to accept State's recommendations on a
- d. Final permits
- e. Any equivalent documentation permit revision procedures

2. In addition to the above permit documents that be made directly available to USEPA, the WDNR has also agreed to make the following information available to USEPA.

- a. Permit tracking information
- b. Copies of preliminary draft permits, and fact
- c. Copies of all settlements and permit appeals
- d. Records of sources covered by
- e. Records of denied and revoked permits
- f. Records of public notice have undergone, and copies of affected State comments and comments
- g. Copies of monitoring reports, certifications, exceedance other source-generated permitting program
- h. Information regarding

including inspections,
enforcement actions, and
defined in any
Memorandum of
WDNR and USEPA

agreed to by USEPA
the working
section III.B. of this

enforcement activities,
stack test reviews,
other applicable data as
amendments to the enforcement
Understanding (MOU) between
Region 5

- i. Other specific information
and WDNR and referenced in
document identified in

IA

D. USEPA agrees to pursue the development of any necessary conversion programs to address AIRS/AFS compatibility of the current Wisconsin data management system. Based on the full funding requirement of \$150,000, USEPA has expended approximately \$53,646 since 1992 to fund the Wisconsin Air Compliance Database conversion project. Region 5 will continue to seek additional funding for completion of the project.

E. WDNR agrees that any changes to the Wisconsin data management system will be compatible with AIRS/AFS to the fullest extent practicable. WDNR will ensure that AIRS/AFS data includes compliance monitoring and enforcement data, as well as the permit related data elements outlined in the March 17, 1994 memorandum entitled, "Policy on Title V Permit Program Data Elements", signed by John Seitz, Director, Office of Air Quality Planning and Standards.

V. SIGNATURES

/s/
Donald Theiler, Director
Bureau of Air Management
Wisconsin Department of Natural Resources

Date: 5/29/95

/s/
Gary Gulezian, Chief
Air Toxics and Radiation Branch

Date: 5/11/95

Air and Radiation Division
United States Environmental Protection Agency

APPENDIX A
PROGRAM REVISIONS

I. INTERIM APPROVAL REVISIONS

- A. USEPA and WDNR agree to work together to help ensure that Wisconsin's operation permit program will receive full approval prior to the expiration of interim program approval.
- B. WDNR agrees to develop a schedule to correct all interim program approval deficiencies and submit the revised program by October 7, 1996. USEPA agrees to take action on the corrective program submittal by April 7, 1997.
- C. WDNR agrees to revise Wisconsin's operation permits program to address all interim approval issues, as outlined below. For further information on these issues, refer to the final interim approval of Wisconsin's program (60 FR 12128, March 6, 1995).

- 1. Revise Wisconsin's operation permit program regulations to provide for criminal fines against any person who knowingly makes any false material statement, representation, or certification in a permit application.
- 2. Revise the following legislation and regulations to provide an operation permit application shield for "new" and "modified sources" (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(1)(b), Wis. Stats.; s.144.3925(7), Wis. Stats.; s.NR 407.06(2), Wis. Adm. Code; and s.NR 407.08, Wis. Adm. Code.
- 3. Revise the following legislation and regulation to provide for operational flexibility, as required by 40 CFR 70.4(b)(12)(i), for "new" and "modified sources" (as defined by ss.144.30(20s) and (20e), Wis. Stats.): s.144.391(4m), Wis. Stats.; and s.NR 407.025, Wis. Adm. Code.
- 4. Revise the appropriate legislation and regulations to provide the authority to deny a renewal application for a source that is not in compliance. Revise s.NR 407.09(1)(f)1., Wis. Adm. Code, if necessary, to reference the correct statutory

authority.

- Wis.
5. Revise ss.NR 407.14(1)(b), (c), (d), and (h),
Adm. Code, to provide that if the conditions
specified in these provisions are met, and the
conditions meet the requirements of 40 CFR
70.7(f)(1), WDNR is required to reopen a permit
for
cause.
6. Revise s.NR 407.05, Wis. Adm. Code, to include
the
duty to supplement or correct permit
applications.
7. Revise s.144.3935(1)(a), Wis. Stats., to provide
WDNR the authority to issue operation permits to
"new" and "modified" Part 70 sources (as defined
by
ss.144.30(20s) and (20e), Wis. Stats.) that are
not
in compliance.

Revise s.NR 407.05(4)(h)2.c., Wis. Adm. Code, to
require that compliance plan application
requirements for noncomplying new and modified
sources include a narrative description of how the
sources will achieve compliance.

Revise s.NR 407.05(4)(h)3.c., Wis. Adm. Code, to
require a compliance schedule for noncomplying new
and modified sources, consistent with the schedule
of compliance requirements in 40 CFR
70.5(c)(8)(iii)(C).

Revise s.NR 407.05(4)(h)4., Wis. Adm. Code, to
require progress reports for noncomplying new and
modified sources.

Revise s.NR 407.09(4)(b), Wis. Adm. Code, to
require a compliance schedule and progress reports
in operation permits issued to noncomplying new and
modified sources, consistent with the schedule of
compliance and progress report requirements in 40
CFR 70.6(c)(3) and (4).

8. Revise ss.NR 407.03(1)(d), (g), (h), (o), (s),
(sm), and (t), Wis. Adm. Code, to ensure that no
Part 70 sources are exempted from the requirement
to obtain an operation permit.

II. OTHER REVISIONS

- A. WDNR and USEPA agree to work together to maintain a high quality operation permit program in Wisconsin that meets all Federal and State requirements.

- B. WDNR agrees to report to USEPA by October 1, 1995, on the status of the following implementation issues. For additional information regarding these issues, refer to USEPA's Technical Support Document, Attachment J, on the review of Wisconsin's Title V program (dated September 26, 1994). Wisconsin's program requires new and modified sources to apply for an operation permit at the same time as they apply for a construction permit. WDNR should address its approach for integrating construction permit review and operation permit review for new and modified sources prior to USEPA's approval of Wisconsin's Title V program. This description should address how Title V requirements will be met for applications received during this period, including duty to apply requirements, application content requirements, and permit issuance requirements.

- C. WDNR agrees to change the specific program elements outlined in this section as expeditiously as possible. If possible, WDNR will consolidate these program changes with the required interim approval changes and process them simultaneously. WDNR agrees to make the following program changes:
 - 1. To clarify that Wisconsin's program meets the requirements of §70.6(d)(1), revise s.NR 407.10, Wis. Adm. Code, to include the §70.6(d)(1) provision: "Notwithstanding the permit shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a Part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit."

 - 2. Correct two references in Wisconsin's regulations which incorrectly cite the program's compliance certification requirements. The reference in section NR 407.09(4)(a)3.c., Wisconsin Administrative Code (s.NR 407.09(4)(a)3.c., Wis. Adm. Code) to s.NR 439.03(7) is incorrect. The correct reference is s.NR 439.03(8). The reference in s.NR 439.03(1)(c), Wis. Adm. Code, to s.NR 439.03(7) is incorrect. The correct reference is s.NR 439.03(8).

"new

to

□70.3(b) (3) .

3. Modify s.144.391(2) (b), Wis. Stats., to allow
and modified sources" that are exempted from
obtaining a permit pursuant to □70.3(b) to elect
apply for a permit, in accordance with

4. To clarify that Wisconsin's program meets the requirements for USEPA permit review, revise s. 144.3935, Wis. Stats., to refer to all sources, not just "existing sources".

5. Revise s. 407.01(2), Wis. Adm. Code, to clarify that the purpose of this chapter is to establish a schedule of dates for requiring operation permits for various categories of sources, not just "existing sources".

6. Modify WDNR's permit application instruction booklet to be consistent with State and Federal program requirements. Specifically, the instructions do not adequately address the inclusion of insignificant activities with

respect

to determining permit applicability under NR 407.03, Wis. Adm. Code.