



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

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

Dear Ms. Good:

I am pleased to transmit to you the final 2020 Wisconsin New Source Review and Title V Program Evaluation Report. The U.S. Environmental Protection Agency Region 5 staff had a virtual meeting with your staff and permit program manager on June 24, 2020 to discuss the findings of our program evaluation. EPA appreciates the opportunity to discuss Wisconsin's air permit program with your staff.

Please see the enclosed report for further information regarding EPA's program evaluation findings, including program strengths and highlights as well as areas that both agencies will continue to focus on improving. We appreciate your staff's assistance and responsiveness during the program evaluation, and we look forward to continuing our cooperative working relationship.

If you have any questions, please contact me or Susan Kraj of my staff, at (312) 353-2654.

Sincerely,

**JOHN
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John Mooney
Director
Air and Radiation Division

Enclosure



**Review of Wisconsin Department of Natural Resources
New Source Review and Title V Programs
2020 Evaluation Report**

United States Environmental Protection Agency, Region 5
Air & Radiation Division
77 West Jackson Boulevard
Chicago, Illinois 60604

September 2020

Summary

EPA conducted an evaluation of the Wisconsin Department of Natural Resources's (WDNR) New Source Review (NSR) and Title V permitting programs as part of our required ongoing oversight of state and local NSR and Title V programs. In the fall of 2019, EPA provided WDNR with a questionnaire regarding various permit program implementation topics. EPA and WDNR discussed the state's response during a conference call on March 3, 2020. As part of the program evaluation, EPA reviewed two WDNR construction permits and two operating permits that included specific permitting topics identified in the questionnaire. On June 24, 2020, EPA had a conference call with WDNR to discuss the findings of this program evaluation.

This evaluation report summarizes EPA's findings and conclusions regarding WDNR's compliance with the statutory and regulatory requirements for the NSR and Title V permitting programs, including several program strengths and opportunities for continued improvement. These findings and conclusions are based on WDNR's answers to the questionnaire, our discussion of WDNR's responses during the conference call, EPA's review of the permits WDNR provided for the evaluation, and EPA staff knowledge of the program based on experience with reviewing WDNR's permits and programs. This report also summarizes several concerns that WDNR raised to EPA during the evaluation. This program evaluation, however, is not comprehensive in its scope and did not evaluate all facets of WDNR's implementation of its permit programs. EPA appreciated the opportunity to discuss Wisconsin's air permit program for this evaluation. We believe WDNR's responses to our questionnaire and subsequent discussions were informative and productive. EPA will continue to work with WDNR to assure continued successful implementation of the air permit programs.

I. Findings Related to the 2015 Permit Program Evaluation

EPA conducted an on-site evaluation of WDNR's NSR and Title V programs on May 5, 2015, and issued a report summarizing our findings on August 26, 2015.¹ (2015 Program Evaluation Report). While the 2015 Program Evaluation Report noted strengths in WDNR's implementation of the NSR and Title V programs, it also identified areas needing improvement and provided specific recommendations for addressing those areas. As part of the 2020 evaluation, we revisited our recommendations from the 2015 Program Evaluation Report to assess WDNR's progress in addressing the 2015 recommendations. The following section describes our findings relating to the 2015 Program Evaluation Report recommendations.

A. RACT/BACT/LAER Clearinghouse

In the 2015 Program Evaluation Report, EPA noted that WDNR needed to update the RACT/BACT/LAER Clearinghouse (RBLC) in a timelier manner. Due to staffing issues, WDNR had not entered data in the national RBLC for several years, which resulted in approximately 25 permitting actions not being entered into the clearinghouse in accordance with WDNR's Section 105 Federal Grant commitments. In early 2019, WDNR hired an intern to add all backlogged entries to the RBLC and to keep up with entries for subsequent permits. As of August 2019, WDNR reported that entry of all backlogged items to the RBLC was completed.

¹ See https://www.epa.gov/sites/production/files/2018-09/documents/wisconsin_program_evaluation.pdf

WDNR plans to make this a recurring task for summer interns going forward, and created a way to track the entry of major source permits into the RBLC to allow quality assurance of this task. However, due to the Covid-19 pandemic in the spring of 2020, WDNR was unable to hire another intern to enter the RBLC data into the database for 2020. WDNR needs to ensure that data is timely entered into the RBLC data, and intends to hire an intern in 2021 to catch up on RBLC entries.

B. Compliance Assurance Monitoring Consistency in Permits

In the 2015 Program Evaluation Report, EPA noted that Compliance Assurance Monitoring (CAM) requirements were not always being applied consistently across permits. Since 2015, WDNR has developed CAM guidance and CAM trainings for permit writers. Standard CAM permit conditions and associated instructions are included in the permit template for permit writers to edit as needed. WDNR provided all permit writers with CAM training on December 5, 2019 and include CAM training for new permit staff. In addition, WDNR has a small group of experienced permit writers (Peer Review Team) that peer review all operation permits. This Peer Review Team regularly reviews and provides feedback to permit writers to improve CAM requirements, and their review of all operation permits ensures statewide consistency. Permit program Policy Coordinators and Peer Review Team members periodically provide updates and information regarding CAM to permit writers during monthly permit calls and are available to answer staff questions on CAM.

II. Findings Since the 2015 Program Evaluation

One permitting implementation issue arose after EPA issued the 2015 Program Evaluation Report. In July 2015 WDNR drafted a policy for assessing Particulate Matter 2.5 micrometers or less in diameter (PM_{2.5}) in modeling and permitting, which was finalized in 2016. Between 2015 and 2018, EPA and WDNR had several conference calls and meetings to discuss this policy and to reach a solution for permit implementation. As of February 2018, EPA and WDNR documented seven permit scenarios and resolved how WDNR would implement its PM_{2.5} policy for each of these scenarios. WDNR also revised its permit template language with instructions for permit writers for how to handle these various permit situations. Specific modeling instructions and standard language have been added to the permit template that is used for all permits. For the permitting scenarios that don't occur frequently, EPA and WDNR agreed to use a case-by-case approach to address PM_{2.5}.

III. Findings from the 2020 Program Evaluation

A. Program Strengths and Highlights

1. WDNR has made great progress in reducing the number of backlogged Title V permits. The 2015 Program Evaluation Report noted that WDNR had a Title V backlog of 23%, and in 2019, WDNR's percentage of backlogged Title V permits was reduced to about 10%. WDNR has taken many steps to reduce its backlog. In 2019, WDNR and EPA signed a Memorandum of Understanding to use a concurrent review permit process which combines the public notice and EPA's 45-day review to shorten the amount of

time it takes to issue permits. In addition, WDNR has revamped its permit tracking and permit assignment processes. There are now new tools for permit writers to be able to track the time spent on permits and identify where delays may be occurring in the process.

WDNR has also begun a large effort to overhaul operation permit renewal applications. These changes are intended to improve application information provided by the source early in the permitting process and reduce the additional time associated with follow-up with the source. Previously, WDNR had been accepting brief applications and now has a more thorough checklist for applications that identifies mandatory items to be included in the application to be deemed complete. WDNR created a team to work on this effort as well as to do a technical review of permit applications. In addition, WDNR has revamped the way permits are to staff to better monitor and balance permit writers' workloads. All of these changes are expected to improve and shorten the permit issuance process and time.

2. WDNR has made significant progress in improving permit consistency between permit writers. As mentioned above in the discussion on CAM, WDNR has a Peer Review Team made up of several experienced permit writers that review all operation permits before they are public noticed. The Peer Review Team regularly provides feedback to permit writers on draft permits and their review of all operation permits ensures statewide consistency. Peer reviewers verify that the permit writer has adequately reviewed and included all applicable requirements, included adequate synthetic minor conditions, and incorporated correct permit citations. The supervisor that signs the public notice and Preliminary Determination is responsible for ensuring that any peer review comments have been adequately addressed. In addition, WDNR has updated its permit template language, along with the instructions for using the permit template, to promote permit consistency.
3. Permit writer retirements coupled with hiring new staff have made training a continuous necessity. This year, WDNR developed a formal training program for new employees. WDNR now provides extensive resources to new permit writers, including: guidance documents, engineering guides, recorded training webinars, and live training sessions. Although developing this new training program was very time intensive, WDNR has a robust training program and is better prepared to train future permit writers.

B. WDNR Concerns and Suggestions

In its response to EPA's questionnaire, WDNR provided feedback to EPA. As raised in the 2015 Program Evaluation Report, WDNR noted that increasing communication between EPA's permitting and enforcement staff can directly impact and reduce WDNR's workload. For example, when EPA compliance staff develop Consent Decrees (CD) that contain terms that are in direct conflict with EPA or WDNR permitting policy, WDNR must then incorporate into a permit. WDNR and EPA will need to continue to increase communications to address this issue. Regarding CDs, EPA and WDNR permit staff should continue to make efforts to stay in communication. Although there have not been as many new CDs in recent years, sources that

have complied with the terms of an existing CD may be ready to terminate the CD and revise its permit accordingly.

In addition, several interactions between WDNR permit staff and EPA enforcement staff have demonstrated the need for better channels of communication and increasing EPA compliance staffs' understanding of basic permit processes and principles. WDNR will continue to bring these issues to EPA permit staff's attention and believes that joint meetings, conferences, and training with both permit and enforcement staff have been a great start at making progress on this topic. WDNR also suggested more joint face-to-face conferences for both permit and enforcement staff in the future.

WDNR asked EPA to do more to ensure that all state permit programs operate in a consistent manner. This was also raised in the 2015 Program Evaluation Report with respect to NSR project consistency. WDNR also has concerns with keeping up with federal NSPS and NESHAP standards, which are continually updated and changed. WDNR has communicated to us that templates for permit requirements for these standards would be extremely helpful and would help assist WDNR with its workload as well. WDNR has also stated that there should be an effort by EPA for more national consistency in implementing these standards, or at least regional consistency, and that permit templates would help with that.

Finally, WDNR expressed concerns with EPA's national Electronic Permitting System. While this system is currently voluntary, if this system becomes required nationally it will require WDNR to input permit data into another system, creating duplicative efforts.

C. Permit File Review Findings

As part of this program evaluation, WDNR identified four permits for EPA to review: the Superior Refinery Prevention of Significant Deterioration (PSD) construction permit; the Badger Mining Taylor Plant/Taylor Coating Plant Federally Enforceable State Operating Permit; the R2H Flavor Technology construction permit; and the JP Pulliam Title V renewal permit. Based on EPA's review of these permits, we found:

1. WDNR adequately responded to the public comments. Two of the permits received comments during the public comment period. WDNR fully responded to all of the comments and explained how WDNR applied the regulatory requirements.
2. WDNR could have been more clear in the Preliminary Determination of one of the permits regarding which pollutants have a synthetic minor limit. One section of the Preliminary Determination states that the facility's potential to emit for Nitrogen Oxides, Carbon Monoxide, and Volatile Organic Compounds will be limited such that the source will be a synthetic minor source, but another area of the Preliminary Determination states that the facility will be synthetic minor because emissions of Particulate Matter will be limited to less than the major source thresholds. WDNR committed to be more vigilant in ensuring that the Preliminary Determination and permit clearly identify any pollutants or units that have synthetic minor limits.

3. At the request of a permittee, WDNR included a synthetic minor PSD limit in an operation permit for a source that historically was a major source for PSD. WDNR clarified that, when requested by a permittee, it includes PSD synthetic minor limits in operation permits in cases where no construction occurred and there is no increase in emissions. Under Wisconsin's rules, such changes are not considered modifications and do not require a construction permit. Wisconsin further clarified that its operation permit rules, at NR 407.09(2)(d)2., Wis. Adm. Code, require that future operation permits contain provisions consistent with any conditions in a previously issued permit that are still applicable to a source, including any conditions that a permittee requested in order to avoid being considered a major source or major modification under PSD. Therefore, under Wisconsin's operation permit rules, synthetic minor limits elected by a permittee will continue to be included in future operation permits unless the source pursues the appropriate construction permit action to have the condition removed. While EPA appreciates WDNR's interpretation of its own rules, we highlighted a possible vulnerability for using an expiring operation permit to set a synthetic minor PSD limit. If the permittee does not submit a timely renewal application or if the operation permit gets revised without the limit being included, the source would be operating without an enforceable synthetic minor PSD limit and it would call into question whether or not the source is subject to PSD. WDNR has taken note of this possibility and will work to inform facilities of the potential risk when seeking this type of limit in their operation permits.