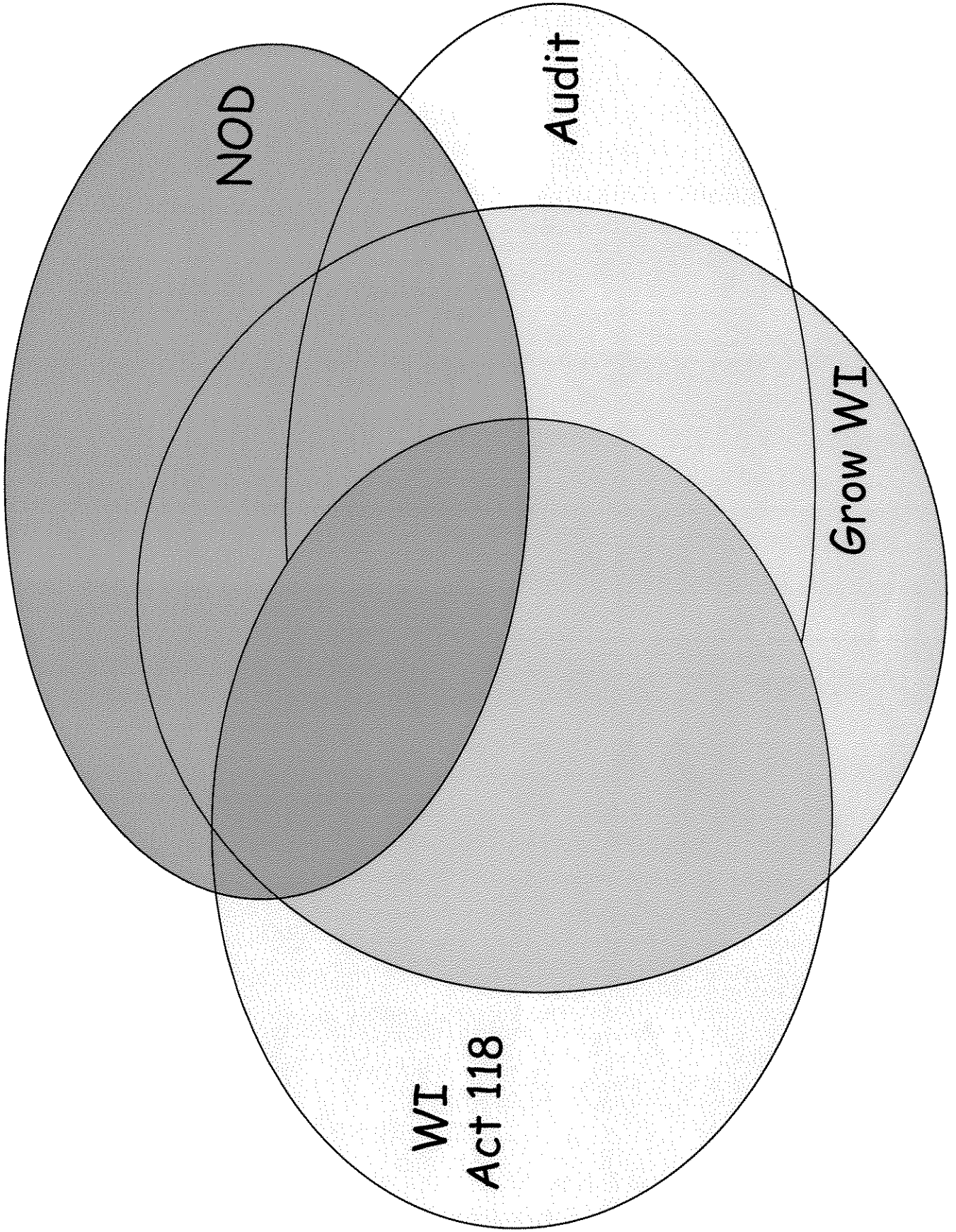
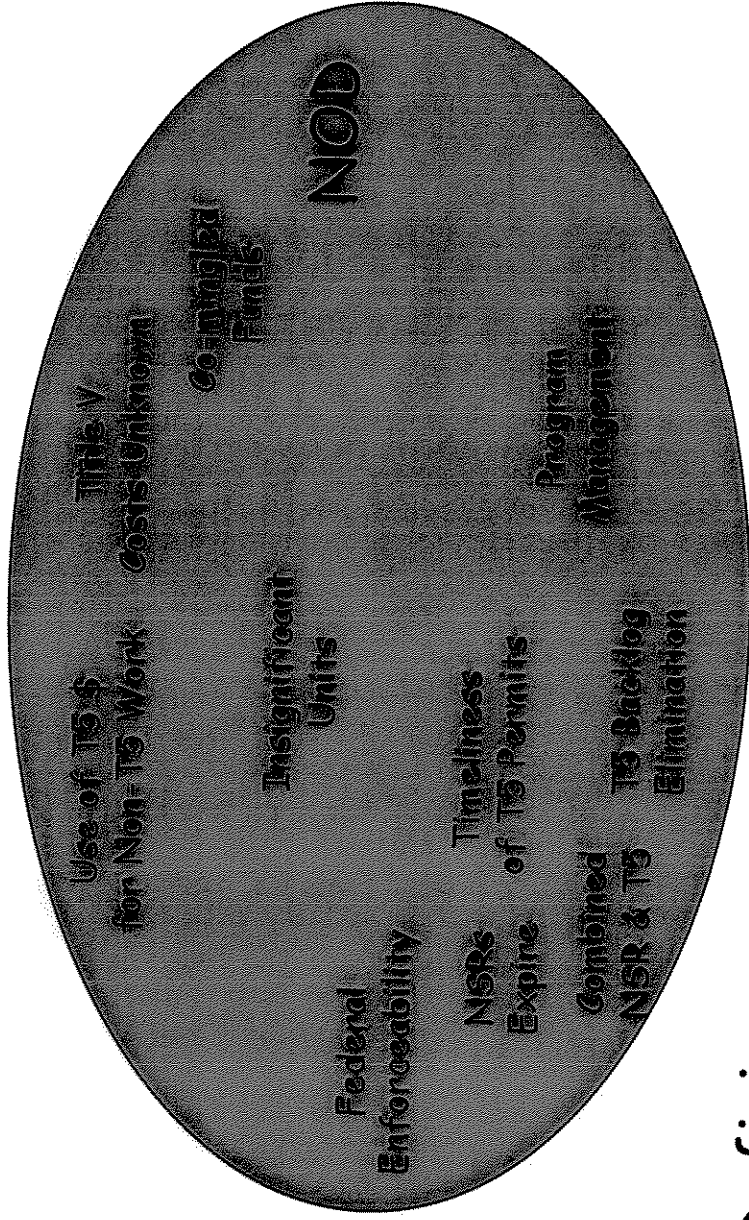


**Understanding the Work
that Lies Ahead**

March 24, 2004





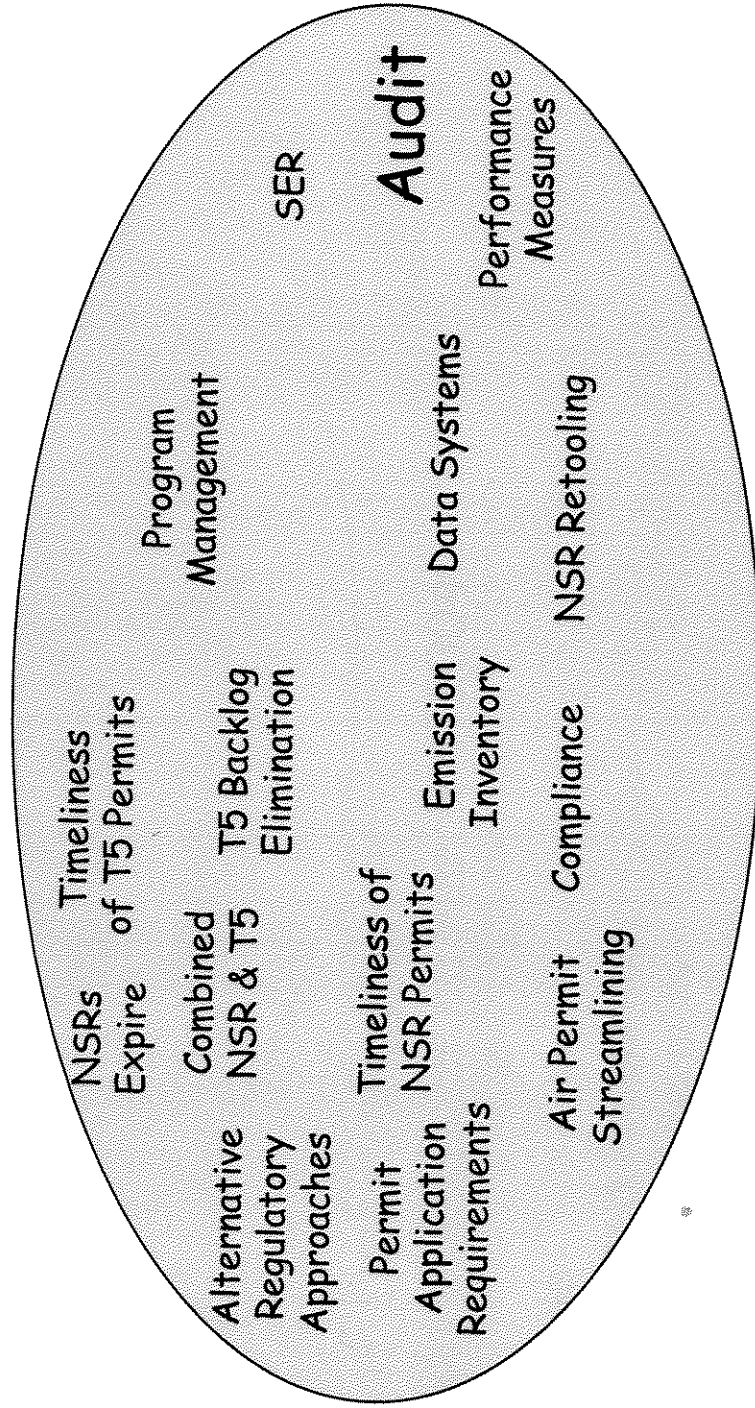


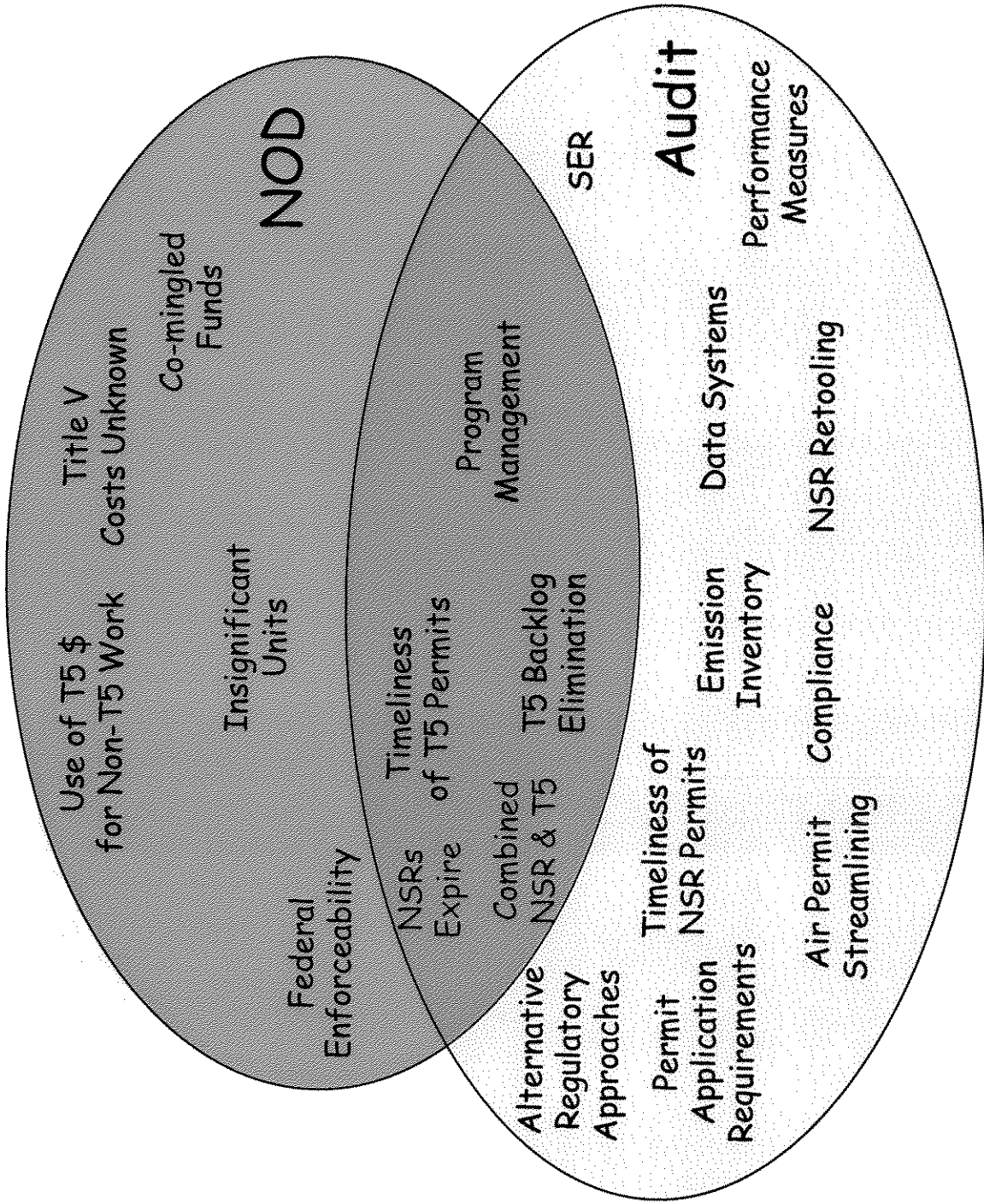
EPA Notice of Deficiency Published in Federal Register on March 4, 2004

- Title V Fee Schedule
- Administration of Fees & Resources
- Timely Issuance of Title V Permits
- 4 Programmatic Issues
- Significant Action by June 4, 2004
- Address Deficiencies by September 4, 2005

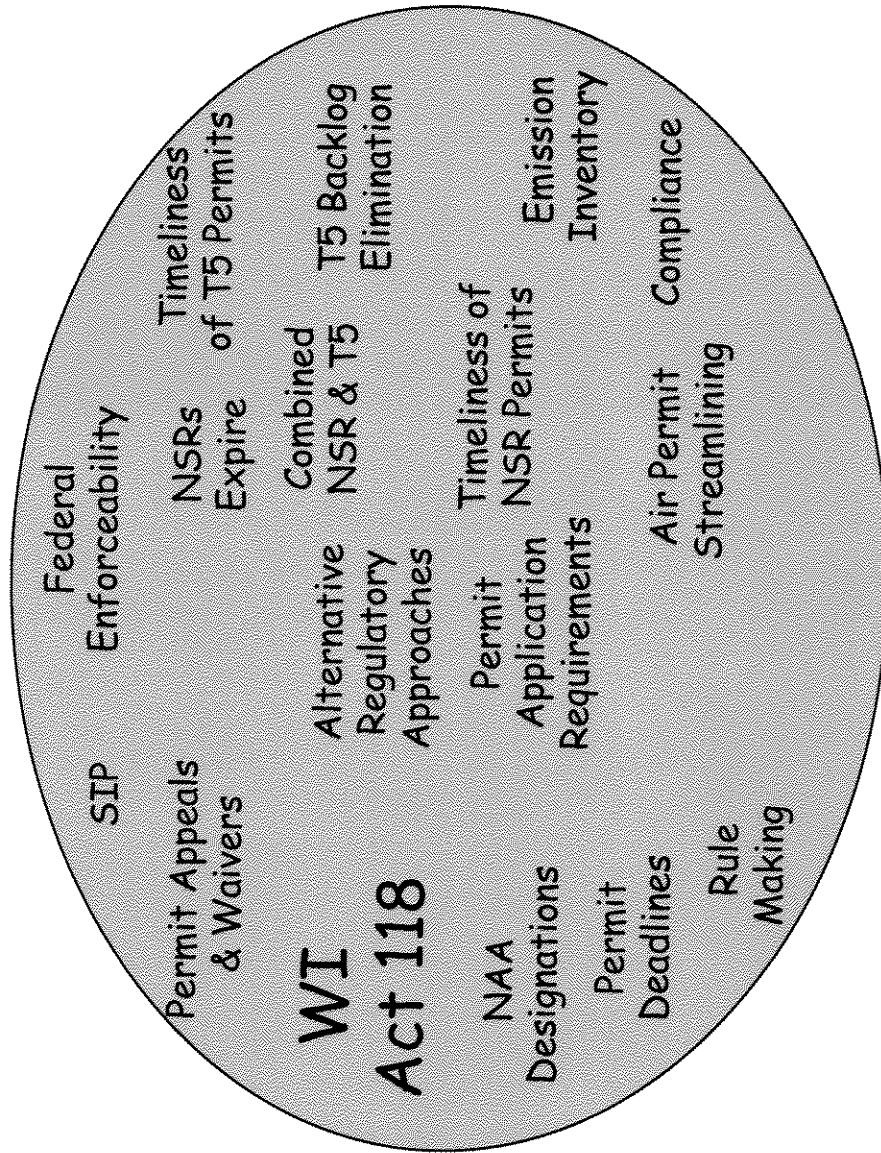
Legislative Audit Report

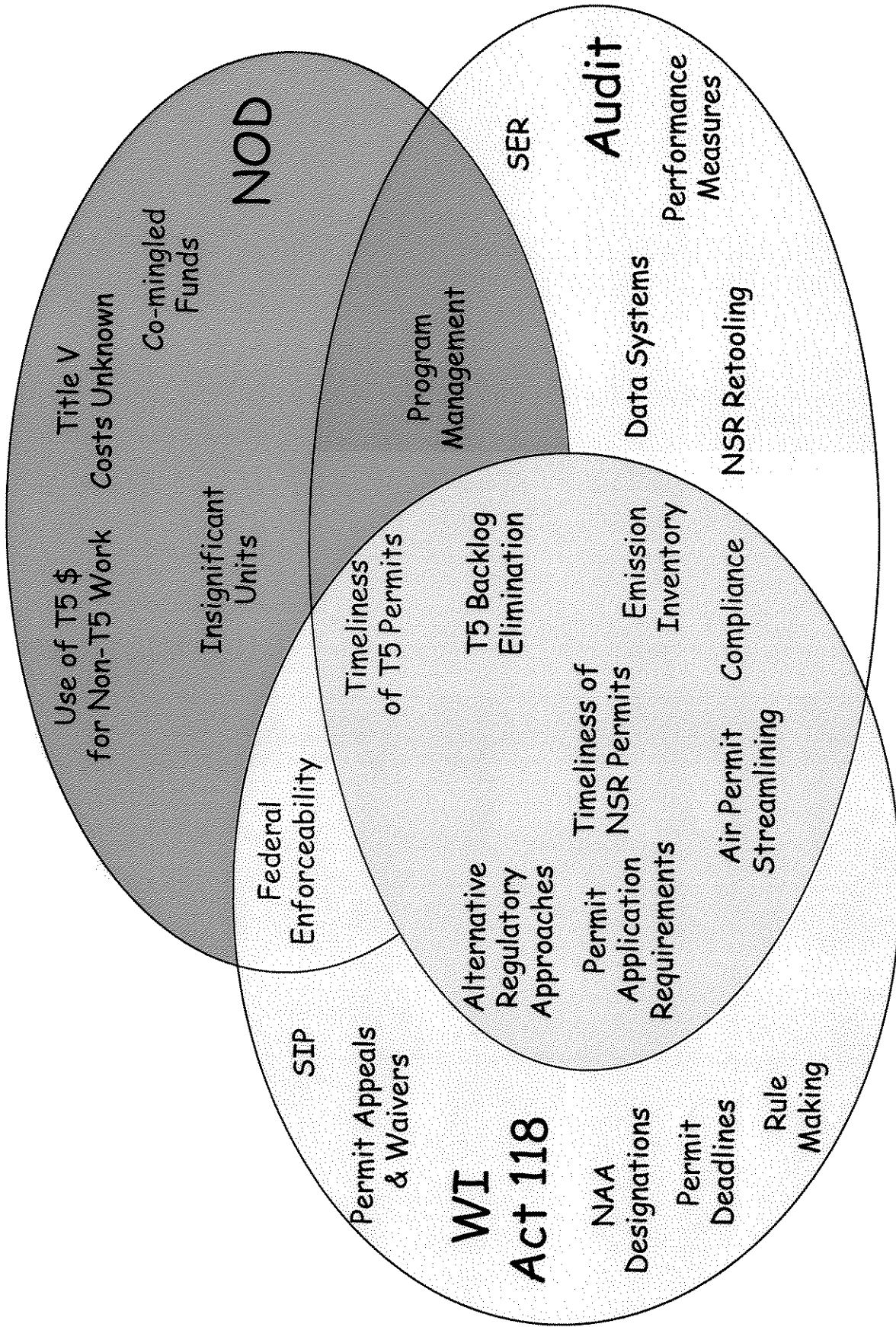
Published February 2004



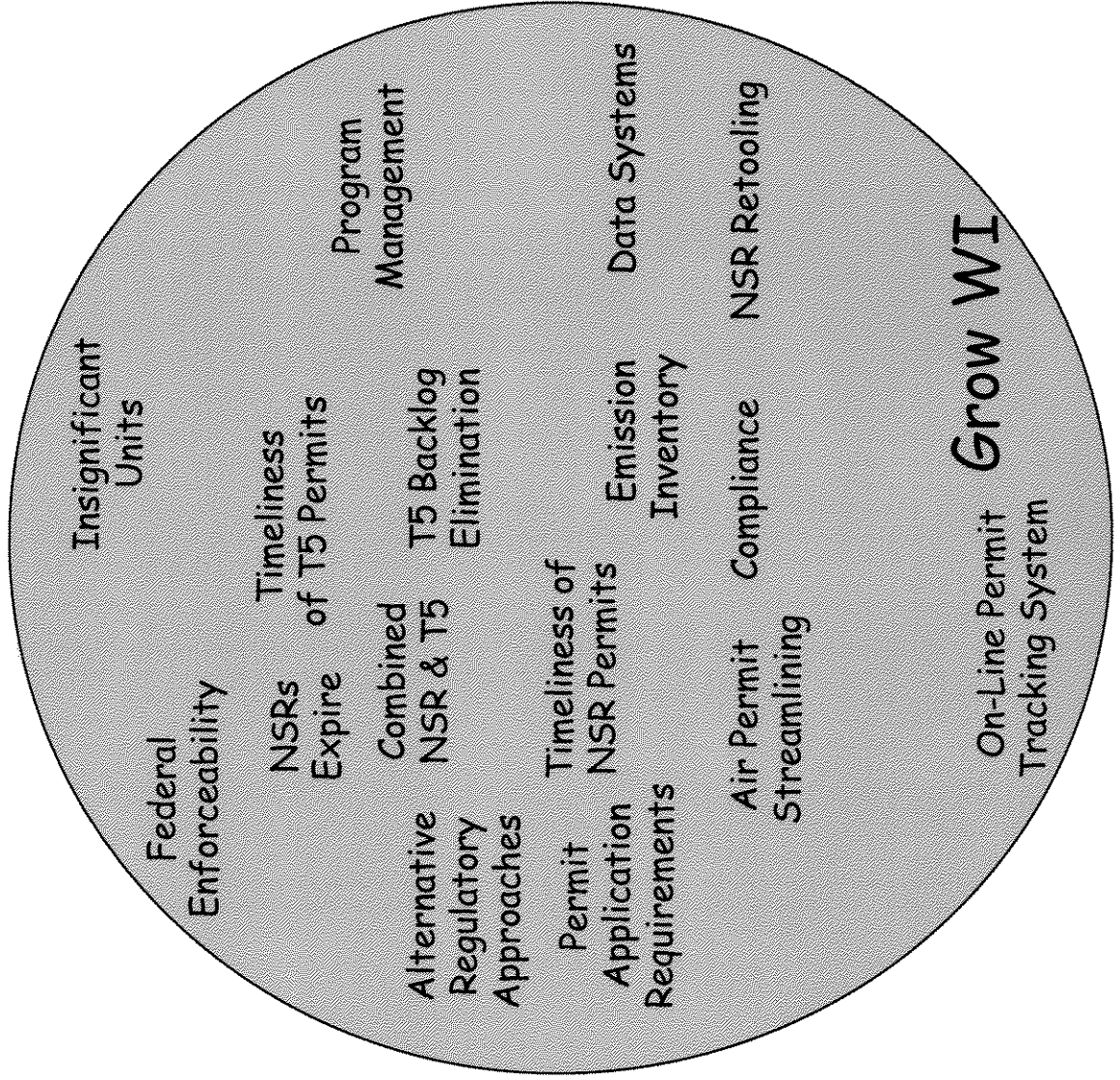


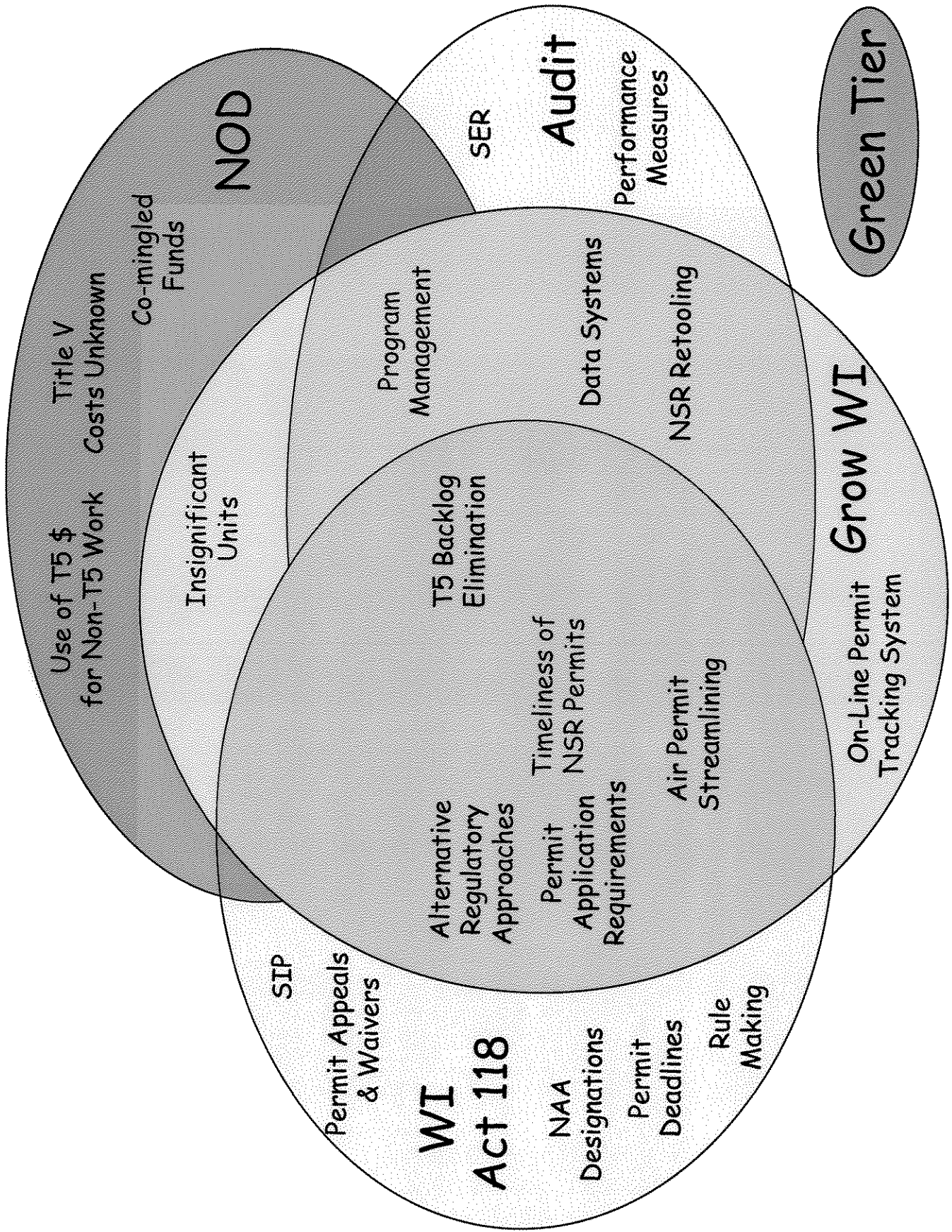
Wisconsin Act 118 Effective February 6, 2004





Governor Doyle's Grow Wisconsin Plan September 2003





Use of T5 \$
for Non-T5 Work

Title V
Costs Unknown

Co-mingled
Funds

NOD

Insignificant
Units

**WI
Act 118**

SIP
Permit Appeals
& Waivers

Alternative
Regulatory
Approaches

Permit
Application
Requirements

Timeliness of
NSR Permits

Air Permit
Streamlining

On-Line Permit
Tracking System

Grow WI

Program
Management

Data Systems

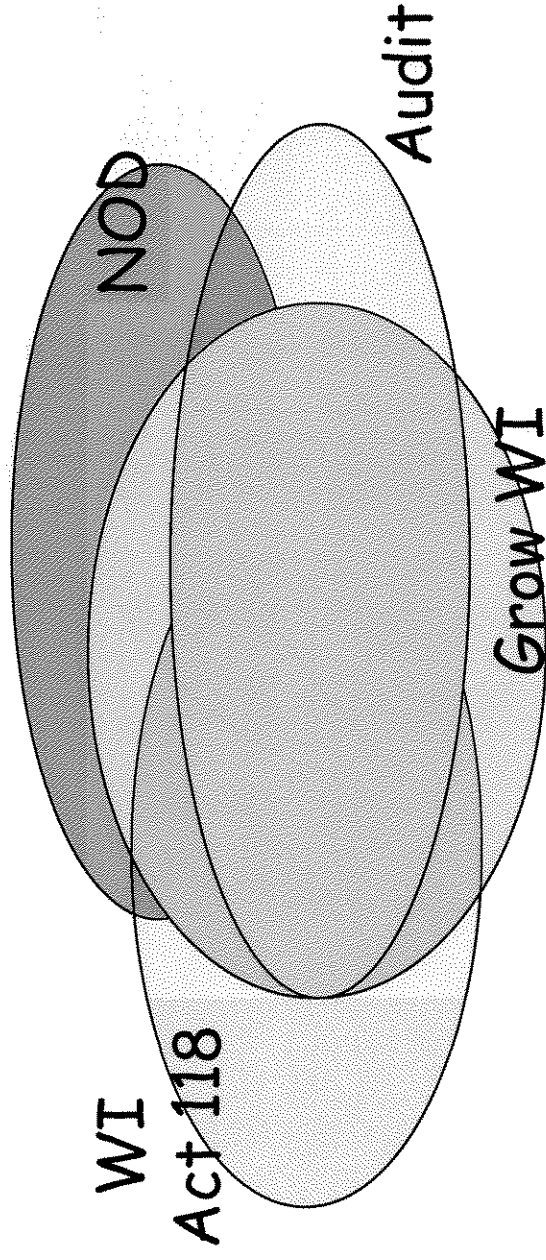
NSR Retooling

Audit

Performance
Measures

SER

Green Tier

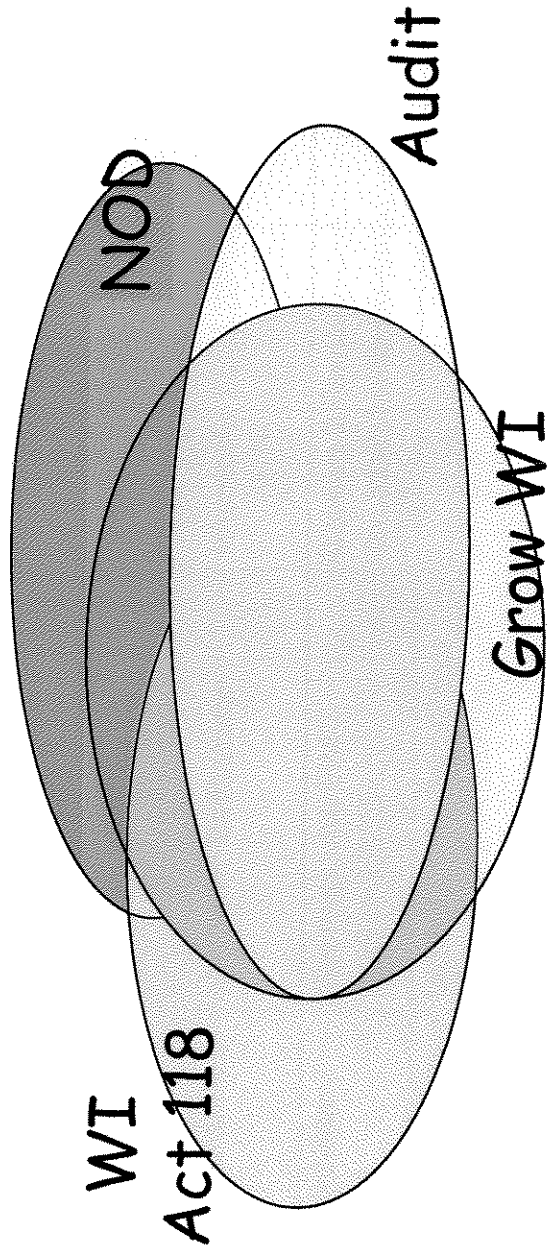


All of the "drivers" are pointing in the same direction

- Process permits and inspections in a timely manner
- Simplify regulations by exploring alternative tools
- Manage the program proactively
- Change culture/attitude toward stakeholders
- Create processes for case-by-case consideration
- Align activities with funding

Calendar of Events

Month & Year	Notice of Deficiency	Wisconsin Act 118	Legislative Audit	Grow Wisconsin
March/April 2004	Meetings with EPA 3/29 and 4/15	Develop & Finalize Implementation Guidance	Audit Committee Hearing	Air Permit Streamlining Project Plan Due
June 2004	Day 90. Take "significant action" or EPA withdraws approval			NSR Retooling to NRB - Major NSR Final, Minor NSR Hearing Auth.
September 2004		Report & Proposed Rules to Legislature. APS, Alternative Regulatory Approaches.	Report to Audit Committee	NSR Retooling to NRB - Minor NSR Final
December 2004				Initial Title V Backlog Eliminated
March 2005		Report to Legislature. SIPs, Emission Monitoring, Application Requirements		
September 2005	Month 18. NOD Corrections Complete or Sanctions			
December 2005				Air Permit Streamlining Fully Implemented
March 2006	Month 24. If deficiencies remain, EPA takes over all or part of program			



The work that lies ahead may be organized into 4 buckets:

- Financial Management
- Policy Development
- Process Development
- Program Management Improvement

	A	B	C	D	E	F	G	H	I	J
	Context	What	What	Driven By	Lead	Coordination	Stakeholder	Comments, Trends, Questions		
1										
2		Program Management Improvement								
3		Short-Term								
4	Need to manage	Tracking systems and procedures:								
5	immediate Act 118	-- track construction and operation permit for discharge	Grow WI, Act 118	K. Pierce	Jeff Hanson, Ziege, Eagan, AAT members	None	Need to do NOW -- AAT is developing systems			
6	requirements until	-- track progress toward eliminating Title V backlog	Grow WI, NOD, LAB	K. Pierce	Jeff Hanson, Ziege, Eagan, AAT members	none	These systems may later be revised through the Permit Process Redesign effort			
7	permitting system in	-- On-line Permit Tracking Web Page	Grow WI	K. Pierce	Jeff Hanson, Ziege, Eagan, AAT members	Governor				
8	place.	-- legislative reports on delayed permits	Act 118	K. Pierce	Jeff Hanson, Ziege, Eagan, AAT members					
9										
10	Need to show	Report to Legislative Audit Committee								
11	progress in program	-- emission inventory reporting	LAB	Eagan	Shea, Kopecky, AAT		These are the items LAB report directly AAT to report on in Sept			
12	report and	-- billing procedures					We have the discretion to report on other progress			
13	accountability	-- failure to apply for initial or renewal permits								
14	Sept 2004 for LAB	-- permits not assigned for review								
15		-- enforcement for failure to submit application								
16		-- staff reallocation to eliminate permit backlog								
17		-- permit streamlining								
18		-- procedures to ensure meet inspection goals								
19										
20		Integrated data management system								
21		-- streamline permit issuance and renewal process	LAB	Eagan & Stewart	ENTIRE PROGRAM!		Are we looking at major redesign or tweaks?			
22		-- improve accuracy of billing system	LAB (NOD?)	Workgroups 5,7	Coordinate w/ AAT regulatory policy dev. activities, permit process redesign, ambient monitoring, PERMS Section, EAO Section, Emissions Inventory and Work Groups 6 & 7 or API for permit improvement and administration related items		Estimate 18 months to do once permit process and types, etc are defined			
23		-- improve compliance tracking system	LAB	Paterson						
24		-- improve compliance w/ admin requirements	LAB	Battarini						
25				Shan						
26	Clear message from all	Outcomes-based performance measures								
27	directives: Improve the	-- improve accountability	LAB		coordinate w/ other AAT, AV and DNR measures	????	What is their purpose? Internal management, accountability to leg and gov, public info??			
28	management of the									
29	stationary source									
30	program	Improve mgmt of stationary source prog.	LAB, Grow WI, 118, NAWT	AP-ST Workgroup 5			Above items are tools. Mgmt system that uses these tools need to be defined			
31										
32										
33										
34										
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A	B	C	D	E	F	G	H	I	J
ROW	ISSUE	DATE	DRIVEN BY	LEAD	COORDINATION	STAKEHOLDER	COMMENTS, TRENDS, QUESTIONS		
91									
92	NSR issues Sept 2005								
93	Short Term / NSR Rule Revision		Grow Wt. EPA						
94	Clear Message from all								
95	drivers:								
96	Re-examine HOW we								
97	regulate major and non-								
98	major sources.								
99	There are some major policy								
100	decisions here.								
101	Report to Legislature on WA 118 231		118, Grow Wt, LAB	Hanson/Eagan					
102	general permits		NOD						
103	deciding which regulatory		231(1)	Dunn	Eagan, McDermid & CEA, Shea & AIT	Advisory Group	This is an opportunity to re-think the what and how of our stationary source program. Need for extensive stakeholder involvement. Lots of stakeholder interest. Can we use this to reduce SCP, renewal and other permit backlog. Legislative/Governor intent is clear, discretion on how to accomplish intent. Be clear about what we are trying to achieve. This work needed before bits of process redesign work can proceed.		
104	alternatives to implement		231(2)		APST				
105	Consolidated permit								
106									
107									
108	Assess need for stationary,								
109	regulatory or administrative		NOD						
110									
111									
112									
113									
114	Once the		118, Grow Wt, LAB	Garber Kopecky					
115	decision is made,			Workgroup 3	Coordinate Policy with process development				
116	need to develop			Workgroup 11	Fees, Compliance, APil, AEMS, Op Permits				
117	rules or			Workgroup 3					
118	guidance.			Workgroup 8					
119				Workgroup 4					
120				Workgroup 8	Cooperative Environmental Assistance				
121				Workgroup 4					
122									
123	Begin statutory or rule								
124	development process.		NOD						
125	needs to be completed by								
126	Sept. 2005								
127									
128									
129									
130									
131			Grow Wt, EPA			APST			
132									
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entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d)/129 negative declarations, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 3, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Pennsylvania negative declaration for small MWC units may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administration practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Carbon monoxide, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste Treatment and disposal.

Dated: February 25, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. Subpart NN is amended by adding § 62.9647 to read as follows:

Emissions from Existing Small Municipal Waste Combustion Units

§ 62.9647 Identification of plan—negative declaration.

October 30, 2003 letter from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, certifying that there are no existing small municipal waste combustion units within Pennsylvania, excluding Allegheny and Philadelphia counties, that are subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 04-4818 Filed 3-3-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[WI118-1; FRL-7632-2]

Notice of Deficiency for Clean Air Act Operating Permit Program in Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and 40 CFR 70.10(b), EPA is publishing this Notice of Deficiency (NOD) for the State of Wisconsin's Clean Air Act title V operating permit program. EPA has examined the facts and circumstances associated with the State's title V operating permit program and based on the totality of those facts and circumstances before the Agency, hereby issues this NOD. As explained more fully below, EPA has determined that the State's title V program does not comply with the requirements of the Clean Air Act (Act) or with the implementing regulations at 40 CFR part 70, in the following respects: (1) Wisconsin has failed to demonstrate that its title V program requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin is not adequately ensuring that its title V program funds are used solely for title V permit program costs and, thus, is not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin has not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin has failed to implement properly its title V program in several respects, including its

issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements Federally enforceable. Publication of this notice is a prerequisite for withdrawal of the State's title V program approval, but EPA is not withdrawing this program through this action.

EFFECTIVE DATE: February 22, 2004.

Because this NOD is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT:

Susan Siepkowski, EPA Region 5 (AR-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, siepkowski.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Description of Action
- III. Federal Oversight and Sanctions
- IV. Administrative Requirements

I. Background

On January 27, 1994, the Wisconsin Department of Natural Resources (WDNR) submitted to the Administrator for approval its proposed title V program. EPA granted interim approval of Wisconsin's program on April 5, 1995. WDNR submitted corrections on March 28, 2001, September 5, 2001, and September 17, 2001 to address the issues identified in the interim approval. EPA approved the corrections submitted by WDNR, finding that they adequately addressed the conditions of the April 1995 interim approval. EPA gave Wisconsin final full approval of its title V program effective on November 30, 2001.

In addition to submitting corrections to EPA in 2001 in accordance with EPA's interim approval, Wisconsin submitted certain other proposed revisions to its title V program. One of Wisconsin's proposed program revisions concerns its fee schedule. Although EPA has not taken action on this proposed program revision, Wisconsin has nonetheless implemented the change, which includes elimination of the inflation adjustment factor from its title V fee schedule. In a December 6, 2002 letter, EPA informed WDNR that EPA was reviewing the permit fee component of Wisconsin's title V permit program, and requested that Wisconsin provide information regarding its fees. Specifically, EPA requested that WDNR submit a description of the State's title V fee structure, a demonstration that

Wisconsin's fee schedule resulted in the collection of revenues sufficient to cover the title V permit program costs, a description of the title V permit program activities and costs, and a description of the activities funded by part 70 fees, including personnel. Wisconsin provided some, but not all, of the requested information in a series of three written submissions to EPA dated March 3, 2003, April 18, 2003, and June 5, 2003.

On or about December 16, 2002, Sierra Club and a coalition of Wisconsin environmental groups submitted to EPA their "Petition Seeking The U.S. EPA To Protect Wisconsin Families From Air Pollution By Issuing The State A Notice Of Deficiency For Failing To Adequately Administer Its Title V Permit Program" (Sierra Club Petition). The Sierra Club Petition raised fee issues similar to those identified by EPA in its December 6, 2002 letter to WDNR, including, for example, WDNR's failure to charge title V fees sufficient to cover permit program costs, and WDNR's illegal use of title V monies to fund portions of non-title V program and staff. The Sierra Club Petition also raised WDNR's failure to act timely on applications for title V permits.

EPA has enforcement discretion under the Act to determine whether to issue a NOD under section 502(i) of the Act. *See Public Citizen, Inc. v. EPA*, 343 F.3d 449, 463-65 (5th Cir. 2003). In this case, EPA has fully examined the facts and circumstances associated with Wisconsin's title V operating permit program and based on the totality of those facts and circumstances determined that issuance of a NOD is appropriate. The deficiencies associated with Wisconsin's title V permit program are described below.

II. Description of Action

EPA is publishing this NOD to notify the State of Wisconsin and the public that, based on the totality of facts and circumstances, EPA has found deficiencies in the Wisconsin title V operating permit program. Publication of this document in the **Federal Register** satisfies 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a state's title V permitting program no longer complies with the requirements of 40 CFR part 70 and the Act. The deficiencies being noticed today are described more fully below, but include Wisconsin's failure to demonstrate that it requires owners or operators of part 70 sources to pay fees that are sufficient to cover the costs of the State's title V permit program; Wisconsin's failure to ensure that its

title V program funds are used solely for title V permit program costs; Wisconsin's failure to issue initial title V permits to all of its part 70 sources within the time allowed by the Act; and Wisconsin's failure to implement properly several aspects of its title V permit program, including its issuance of title V permits that contain terms that do not have certain underlying applicable requirements, that do not contain all applicable requirements, and that do not make certain requirements federally enforceable.

A. Title V Fee Schedule

1. Inadequate Fee Schedule Demonstration

Pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a state title V program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, and the State must ensure that any fee collected be used solely for title V permit program costs. Although 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) require that a state's title V permit program include a fee schedule that results in the collection of sufficient fees to cover all title V permit program costs, states have flexibility in developing the components of that fee schedule. *See* 40 CFR 70.9(b)(3).

In one of its 2001 title V proposed program revisions, Wisconsin disclosed that it had removed the inflation adjustment factor from its title V fee schedule. Although EPA has not yet taken action on this proposed program revision, Wisconsin has implemented the change. Based on this information and consistent with 40 CFR 70.9(b)(5), EPA in December 2002 requested from Wisconsin a detailed fee demonstration, showing that the State's collection of fees is sufficient to cover the title V permit program costs. As discussed more fully below, the information subsequently provided by Wisconsin in response to EPA's request does not demonstrate that the revised fee schedule results in the collection of fees in an amount sufficient to cover its actual permit program costs, as required by 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b)(1).

a. The Costs of Wisconsin's Title V Program Are Unknown

In response to EPA's December 2002 request, WDNR specifically declined to provide information regarding the actual costs of implementing its title V program and, thus, Wisconsin has not shown that the fees it is collecting are adequate to cover its actual title V

permit program costs. WDNR's response does assert, however, that the State is collecting the presumptive minimum fee amount as described at 40 CFR 70.9(b)(2). As explained further below, EPA disagrees with Wisconsin's characterization that it is meeting the presumptive minimum fee requirements of 40 CFR 70.9(b)(2), and finds that Wisconsin has failed to demonstrate that its title V fees are sufficient to cover actual permit program costs.

b. Wisconsin Has Not Demonstrated That It Collects Fees Sufficient To Fund Its Permit Program

1. Commingled Funds

EPA will presume that a state's fee schedule satisfies the requirements of 40 CFR 70.9(b)(1), if the fee schedule meets the requirements of 40 CFR 70.9(b)(2) (the presumptive minimum fee requirements). 40 CFR 70.9(b)(2) provides, in pertinent part, that a fee schedule is presumed to be sufficient to cover title V permit program costs if it would result in the collection and retention of an amount not less than \$25 per ton, adjusted for inflation, times the total tons of actual emissions of each regulated pollutant emitted from each part 70 source. The regulations allow the state to exclude from this calculation the amount per source that exceeds 4,000 tons per year. 40 CFR 70.9(b)(2)(ii). EPA finds that WDNR has not demonstrated that it is using a fee schedule that results in the collection of the presumptive minimum fee amount, as required by 40 CFR 70.9(b)(2).

Specifically, the fee revenue information Wisconsin provided on March 3, 2003, shows that the State is not distinguishing between fees collected from sources operating under different Clean Air Act programs. The information provided shows that Wisconsin does not account separately for or maintain separate accounts for fees collected under title V and other non-title V fee-based programs. Thus, the State cannot provide an accurate picture of its title V fee collections. By including non-title V fee revenues in its calculation of "Emission Fee Revenue 1992-2001," WDNR has overstated the amount of fees it is collecting as part of the title V permit program. The degree of the overstatement cannot be determined from the information provided by Wisconsin. Accordingly, Wisconsin has not demonstrated that it is collecting an amount equal to or in excess of the presumptive minimum fee, as required by 40 CFR 70.9(b)(2).

2. No Adjustment for Inflation

As explained above, 40 CFR 70.9(b)(2) sets forth specific requirements for calculating the presumptive minimum amount of fees that must be collected to cover title V permit program costs. One of those requirements is that states must adjust annually for inflation the \$25 figure used in the presumptive fee calculation. 40 CFR 70.9(b)(2)(i) and (b)(2)(iv).

Wisconsin's fee schedule, as currently being implemented by the state, does not allow for adjustments to reflect inflation; it relies instead on billing for emissions in excess of the 4,000 ton per year amount that states may exclude from the presumptive fee calculation. See 40 CFR 70.9(b)(2)(ii)(B). In particular, Wisconsin's fee schedule requires the state to bill sources for each 1,000 tons of emissions beyond the 4,000 ton per year amount provided by 40 CFR 70.9(b)(2)(ii)(B). Wisconsin claims, without appropriate record support, that, by billing for emissions in excess of the tons to be billed under the presumptive fee schedule, it is collecting more revenue than it would by merely adjusting for inflation.

Wisconsin's original fee structure approved in 1995 followed the presumptive minimum fee schedule formula described in 40 CFR 70.9(b)(2). However, the Wisconsin legislature removed the provision for annual adjustments for inflation for fees billed after 2002. The State bills for emission fees in arrears; its fee bills are for the prior year's emissions. The effect of freezing the fees in 2001 is that the amounts billed in 2001 for the year 2000 also are calculated at the rate established in 2001. Wisconsin has not adjusted its emission fee rates to reflect the effects of inflation since 2000. By effectively freezing its fees at the 2000 level, Wisconsin has departed from the presumptive fee formula set forth in 40 CFR 70.9(b)(2). EPA cannot evaluate Wisconsin's claim that it is still collecting an amount greater than the amount it would collect using the presumptive minimum rate formula based on the information provided by the State, because Wisconsin has provided no actual fee billing or collection information for years after 2001.

Because Wisconsin has not demonstrated that it collects fees that cover the actual permit program costs, the State's program does not comply with the requirements of the Act and 40 CFR 70.9.

B. Wisconsin Has Not Demonstrated That It Is Adequately Administering Its Fees and Resources

40 CFR 70.10(b) provides that states must conduct approved state title V programs in accordance with the requirements of 40 CFR part 70 and any agreement between the state and EPA concerning operation of the program. Information provided to EPA by Wisconsin in its 2001 title V proposed program revision submissions and its responses to EPA's December 6, 2002 fee demonstration request disclose significant internal fee management deficiencies that demonstrate that WDNR is not conducting its title V program in accordance with the requirements of Act and 40 CFR part 70 and, therefore, is not adequately administering its title V program.

1. Use of Title V Funds for Non-Title V Purposes

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a) provide that state title V programs must ensure that all title V fees are used solely for permit program costs. The information provided by WDNR in response to EPA's December 6, 2002 fee demonstration request discloses that Wisconsin is not using all title V fees for permit program costs.

a. Use of Title V Funds for Subsidization of Employees Performing Non-Title V Work

Wisconsin is diverting title V fees to complete non-title V work. According to information submitted to EPA by Wisconsin, only 66 of 99 title V funded employees attributed activities on their timesheets in fiscal year 2002 to title V. In addition, many of those 99 employees work in areas such as mobile sources, which typically are not associated with title V. Furthermore, title V funded 13 positions located outside of Wisconsin's Air Division. WDNR did not provide EPA with any information regarding the activities of these positions. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

b. Use of Title V Funds for Non-Title V Grant Matching

Information provided by Wisconsin establishes that when it applied for Federal non-title V grant monies, WDNR satisfied the "matching funds" requirement by using the total balance of funds in the account that holds fees collected under title V and fees collected from non-title V sources. Thus, Wisconsin is using title V money

for non-title V purposes. Accordingly, WDNR is not ensuring that all title V fees that it collects are used solely for title V permit program costs, contrary to 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

2. Insufficient Staffing

Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4 provide that a state must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. EPA has determined that Wisconsin is not adequately staffing its title V program.

In Wisconsin's January 27, 1994, initial program submittal, Wisconsin estimated that it would need 300 agency staff to carry out its title V program. Wisconsin has never revised that estimate. As discussed above, Wisconsin currently has 99 title V funded positions in the Air Division. Further, of that number, only 66 of those employees reported working on title V activities on their time sheets in fiscal year 2002, and many of those 99 positions work in areas not typically associated with title V. Finally, Wisconsin's 2004-2005 budget includes a \$1.1 million reduction in fee spending authority (not a reduction in fees collected) and a reduction of 11.5 title V positions. Accordingly, because it is not employing staff sufficient, by its own estimate, to carry out its program, Wisconsin is not complying with the requirements of the Act and 40 CFR 70.4.

C. Failure To Timely Issue Title V Permits

Section 503(c) of the Act, 42 U.S.C. 7661b(c), and 40 CFR 70.4 require that a permitting authority must act on all initial title V permit applications within three years of the effective date of the program.

EPA granted interim approval to Wisconsin's title V program on April 5, 1995. Pursuant to section 503 of the Act, Wisconsin was to have completed issuance of initial title V operating permits to all of its part 70 sources by April 5, 1998. 42 U.S.C. 7661b(c). WDNR failed to meet this deadline and originally projected it would issue all operating permits by December 2005. In response to EPA's December 2002 fee demonstration request, WDNR stated that, due to the new budget reductions, it may not complete issuance of title V operating permits to all of its part 70 sources until 2009, eleven years after they were due. WDNR has operated its program for over eight years, but has issued only 73% of its permits. As of January 26, 2004, Wisconsin has issued 426 of 578 title V permits.

Recently, Wisconsin indicated that it is undertaking steps to complete issuance of title V operating permits to all of its part 70 sources by December 31, 2004. While EPA finds this intention encouraging, EPA is issuing this notice based on the totality of facts and circumstances currently associated with the State's title V program.

D. Additional Program Issues

1. Expiration of NSR Permits

Each source subject to title V must have a permit to operate that assures compliance with all applicable requirements. 42 U.S.C. 7661c(a), 40 CFR 70.1. The regulations define "applicable requirement" to include, among other things, any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. 40 CFR 70.2. Generally, title V does not impose new substantive air quality control requirements. 40 CFR 70.1(b). Therefore, to be included in a title V permit, applicable requirements, such as permit conditions in previously issued permits, must exist independent of the title V permit. In addition, a state, through its Attorney General or other applicable counsel, must provide a legal opinion demonstrating that the state has adequate authority to carry out all aspects of the title V program, including authority to incorporate all applicable requirements into title V permits. 40 CFR 70.4(b)(3)(v).

Title I of the Act authorizes permitting authorities to establish in preconstruction permits source specific terms and conditions necessary for sources to comply with the requirements of the Prevention of Significant Deterioration and New Source Review programs. Wisconsin interprets its statutes, Wis. Stat 285.66(1), and regulations Wis. Admin code NR 405.12, to provide that its preconstruction permits expire after 18 months. Because Wisconsin's rules do not ensure these source specific permit terms remain in effect and exist independently of a title V permit, it allows the basis for these conditions to expire and could cause Wisconsin to lose the authority to include such conditions in a renewed title V permit.

Title V does not provide the authority for the establishment and maintenance of State Implementation Plan (SIP) approved permit requirements. Therefore, Wisconsin's interpretation that its title V program, Wis. Stat. 285.63, provides authority to create source-specific limitations, such as Best Available Control Technology

requirements, in title V permits, is inconsistent with EPA's regulations. Because Wisconsin's rules do not assure that construction permit conditions exist independently of title V permits and because its interpretation that its title V program provides the authority to create source specific limitations, the State's program does not meet the program approval requirements of title V and part 70. See 66 FR 64039, 64040 (12/11/01).

2. Combined NSR and Title V Permits

States have the option of integrating their pre-construction and title V programs. See 57 FR 32250, 32259 (July 21, 1992). 40 CFR part 70 requires that to implement an integrated permit program, the state permitting authority must: (1) Have in place procedures that substantially comply with all procedural requirements of part 70, 40 CFR 70.7(d)(1)(v); (2) comply with the permit content requirements in 40 CFR 70.6, including the requirement to specify the origin of and authority for each term or condition in a title V permit, 40 CFR 70.7(d)(1)(v); and (3) ensure that the NSR conditions do not expire to assure compliance with applicable requirements. 42 U.S.C. 7661c(a) and 40 CFR 70.1(b).

Wisconsin has been issuing combined pre-construction and title V permits for several years. Wisconsin does not identify NSR conditions or specify the origin and authority of the NSR conditions in combined permits. Furthermore, Wisconsin does not have any provisions to ensure that the NSR conditions are permanent. Wisconsin's integrated title V/pre-construction program does not meet the requirements of 40 CFR part 70.

3. Federal Enforceability

40 CFR 70.6(b) provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2) and 40 CFR 70.2 (definition of applicable requirement).

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.

4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels which need not be included in the permit application. An application may not omit, however, information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA approved schedule. Moreover, nothing in part 70 authorizes a state to exempt insignificant emission units (IEUs) from the permit content requirements of 40 CFR 70.6. Furthermore, the July 21, 1992 preamble to the part 70 regulations provides that the IEU exemption does not apply to permit content. 57 FR 32273 (July 21, 1992).

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.

III. Federal Oversight and Sanctions

40 CFR 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70. EPA has notified the state of the noncompliance, and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1) lists a number of potential bases for program withdrawal, including inadequate fee collection, failure to comply with the requirements of part 70 in administering the program, and failure to timely issue permits.

40 CFR 70.10(b), which sets forth the procedures for program withdrawal, requires as a prerequisite to withdrawal that the EPA Administrator notify the permitting authority of any finding of

deficiency by publishing a notice in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of program deficiency. If Wisconsin has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after issuance of this notice of deficiency, EPA may, among other things, withdraw approval of the program using procedures consistent with 40 CFR 70.4(e) and/or promulgate, administer, and enforce a Federal title V program. See 40 CFR 70.10(b)(2). Additionally, 40 CFR 70.10(b)(3) provides that if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency and issuance of the NOD, then the state would be subject to the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act, 18 months after that notice. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this notice within 18 months after signature of this notice.¹ These sanctions would be applied in the same manner, and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a) of the Act.

In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Wisconsin's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will assess whether the state has taken significant action to correct the deficiencies outlined in this notice. See 40 CFR 70.10(b)(2) (providing that 90 days after issuance of NOD, EPA may take certain actions).

IV. Administrative Requirements

Under section 307(b)(1) of the Act, petitions for judicial review of today's action may be filed with the United States Court of Appeals for the appropriate circuit within 60 days of March 4, 2004.

¹ Section 179(a) provides that unless such deficiency has been corrected within 18 months after the finding, one of the sanctions in section 179(b) of the Act shall apply as selected by the Administrator. If the Administrator has selected one of the sanctions and the deficiency has not been corrected within 6 months thereafter, then sanctions under both sections 179(b)(1) and 179(b)(2) shall apply until the Administrator determines that the state has come into compliance.

(Authority: 42 U.S.C. 7401 *et seq.*)

Dated: February 22, 2004.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 04-4822 Filed 3-3-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-7631-4]

Delaware: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Delaware's changes through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Delaware's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the revisions to Delaware's program that were the subject of adverse comment.

DATES: This final authorization will become effective on May 3, 2004, unless EPA receives adverse written comments by April 5, 2004. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814-5454. Comments may also be submitted

Memo

TO: Joint Committee on Audit
FROM: James Buchen, Vice President, Government Affairs
DATE: May 4, 2004
RE: LAB Report on DNR Air Management Programs

Thank you for the opportunity to offer the comments on this important Legislative Audit Bureau report on state air management programs.

The manufacturing community has long been concerned about management of the DNR Air Bureau, its inability to issue timely permits, and the importance of permitting activities to economic growth of our Manufacturing economy. While this concern has existed for some time, a 2003 survey of Wisconsin CEOs showed regulatory climate, for the first time ever, surpassing tax climate as the top issue for Wisconsin business.

In particular, air construction permits have an important link to job creation. Because companies must secure construction permits before proceeding with project construction, before they can install a piece of equipment or even put a shovel in the ground, delays can and do cost jobs. Long delays encourage investment in facilities outside of Wisconsin. Simply put, timely air permits rank amongst the top public policy concerns for Wisconsin manufacturers.

A little more than a year ago WMC wrote the Joint Audit Committee Co-chairs recommending this audit. At that time, industry expressed a concern about Air Bureau priorities and policies, and recommended the non-partisan Legislative Audit Bureau (LAB) conduct an objective third-party review. Unfortunately, the audit confirms many of the concerns Wisconsin industry has expressed for the better part of a decade:

- Wisconsin is the slowest state in the region at issuing permits and one of the slowest in the country.
- Construction permits, in particular, have not been issued in a timely manner; the audit sample shows 29.2 percent of permits were not issued after 2 years.
- Past Air Bureau priorities have been new, state-only rules and regulations instead of issuing permits.
- DNR resources are not the basis for lack of timely permits- Wisconsin emission fees are on par with, even if calculated differently than, emission fees in surrounding states.

- Lack of reasonable financial accounting lead to misapplied fees, commingled funds lack of an ability to adequately track funds.
- Lack of past program accountability lead to lost permits, completed permits not being issued and inappropriate permit requirements.

In the same week this audit was released, the U.S. Environmental Protection Agency (EPA) issued a Notice of Deficiency (NOD) for Wisconsin's title V federal operating permit program. The conclusions in the NOD mirrored those of the LAB in several ways. That is, EPA's concerns over operating permits are similar to industry's concerns about the construction program—lack of timely permits and title V fees going towards non-title V activities. While construction permits are more important from an economic development perspective, the NOD still raised significant concerns for industry. EPA indicates DNR has not yet answered EPA questions about funding levels. Given Wisconsin's comparable fee levels, DNR must better answer the question of how it manages resources before the question of additional funds should even be broached.

The Legislature and the Governor have shown leadership in their passage and signature of 2003 Wisconsin Act 118, also known as the Job Creation Act. This new law modifies Chapter 235 to help assure timely permits, and otherwise streamline and consolidate administrative hurdles impeding business expansion. None of these components lower environmental standards – business must still meet all applicable emission standards – but they do reduce unnecessary red tape and related delay and costs companies face when trying to expand or locate in Wisconsin. WMC agrees with the conclusion of LAB that Act 118 will help address concerns raised in the audit report. Implementation of Act 118 is critical to the success of the air management program.

DNR Secretary Scott Hassett has also made streamlining the permitting process a top priority for his agency. We commend him for launching the DNR's Air Permit Improvement Initiative. While a workplan has yet to be made public, WMC has reviewed an early draft of the initiative's targets and they appear to be appropriate. WMC will participate in the implementation of DNR's workplan and will plug manufacturers into the key workgroups set up to address concerns and implement the streamlining objectives.

At Business Day in Madison this year, Governor Jim Doyle noted that the state needed a culture change that recognizes that "issuing a permit is a good thing". Industry agrees. Unfortunately, members who work with the DNR at a facility level indicate that despite the efforts of DNR leadership, that view is not shared by all within the

agency. While we believe there is a commitment at the top of the agency to make this program work, results must be seen sooner rather than later.

To improve the permitting program, WMC recommends several important courses of action:

I. Act 118 must be implemented quickly and in the spirit with which it was written.

- The DNR should use the new tools of registration and general permits contained in Act 118 and develop these "off the shelf" permits quickly. The more companies that utilize these new permits the fewer the resources DNR must spend on negotiating permit minutiae.
- DNR should immediately act to implement Act 118 requirements exempting small emission sources from permitting altogether.
- DNR should utilize the construction ban waiver process provided for in Act 118 to avoid delays in employing capital that creates jobs. DNR has already established a process of waiver review that results in denial of nearly every request.
- DNR should show the committee and the public how it is meeting new deadlines for permit completeness determinations and major source operating permits.

II. Wisconsin needs to adopt sensible New Source Review (NSR) reforms.

These reforms should be consistent with the new federal program and allow companies to avoid cumbersome "paper permits" that cost companies time and resources but do nothing to improve air quality. Despite negotiations continuing for the better part of a year, there is no agreement yet between the DNR and industry on key components of NSR.

III. Wisconsin should develop a "facility-wide" permit program.

Under this permitting model, currently being implemented in Minnesota and other states, construction permits are issued as modifications to operating permits rather than separate permits altogether. This system cuts down on paperwork and administrative requirements. While there may be a Legislative

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Despite stated leadership at the top within DNR, the agency must show success, at the local, facility level in its attempts to streamline. DNR must not only send the message that permitting is a priority it must also expect staff to produce results.

V. DNR should respond to the EPA Notice of Deficiency in a manner that clarifies it has adequate resources to run the title V program.

The NOD clearly indicates DNR has not provided EPA with appropriate documentation to conclude it has adequate funding levels to fund the program. Because Wisconsin currently meets the federal presumptive minimum fee level, the question of adequacy should be answered easily.

VI. Implement Audit Report Recommendations

We believe that the recommendations contained with the audit are generally sound, and should be implemented by the department.

Further, WMC has several recommendations for the legislature to assist in its oversight responsibilities for this program

A. The Audit Committee should adopt an Audit recommendation requiring DNR report to this committee in September on program progress.

The audit recommends DNR answer a series of nine questions in that September report. In addition, the committee should ask additional questions to be answered at that time:

- What is the status of the title V program, and how is the DNR meeting its goal of issuing title V permits by January 2005? How is the DNR assuring quality permits are being issued under this tight timeframe?
- How is the DNR implementing Ch. 285 provisions of Wisconsin Act 118? How many registration permits, new general permits and exemptions has it issued? How is it issuing construction ban waivers and is the DNR meeting



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new deadlines for completeness determinations and issuing major source permits?

- What is the status of implementing New Source Review reforms and a facility-wide permit program?

B. The committee should require the DNR to provide it with an advance copy of the agency's expected June 4 response to the EPA NOD.

The questions raised in the NOD include policy questions for the Legislature in addition to technical questions for the department. In particular, the question of the adequacy of fee levels should be answered in coordination with the Legislature. In addition to the written response, the committee should ask DNR to submit all of the supporting documentation DNR intends to provide at EPA in that submittal.

C. The Legislature should engage the DNR in a discussion of its Information Technology needs.

DNR is expected to request nearly \$2 million in expenditure authority from the construction permit account for a new electronic permitting system. The audit points out the need for DNR to improve its information systems. While WMC agrees that IT could be an important piece of the Air Bureau puzzle, significant questions need to be answered before these funds—paid by manufacturers—should be spent in this way.

A particular concern is that the permitting program might not be "fixed" before the IT system is in place. Laying a good IT system over a bad permitting process is akin to putting a Rolls Royce engine in a Yugo frame. Before industry can support this expenditure, DNR will need to demonstrate clear progress in its streamlining efforts.

Thank you again to the Joint Audit Committee for directing this audit. We believe the findings will help the DNR and the Legislature develop strategies to improve Wisconsin's air management programs and therefore improve our economy.

**Air Management Program Legislative Audit Report Recommendations
Status Report
May 4, 2004**

1. Correct annual emission fees billing errors.

- Determine which of the 232 facilities are required to report emissions and ensure that these facilities pay the appropriate fees.
- Refund emission fees to the 11 facilities that should not have been billed.
- Establish procedures to ensure that all facilities are billed appropriately in the future.

The Department plans to review the 232 facilities that applied for operation permits but had not reported or paid emission fees to verify they are exempt from reporting. When 2003 emission fee statements are prepared this spring we will verify which facilities need to report and pay fees.

Refund checks have been issued. A system has been developed to ensure the permits database and emission inventory database is cross-checked before sending out statements. As a result, all permit holders will receive correct billing information and we will not send bills to those whom don't need them.

2. Assign additional permit engineers to issue operation permits in the Southeast Region.

- Assign additional permit engineers from other regions to work on issuing permits in the Southeast Region to help eliminate the backlog.

The Department has assigned approximately half of the remaining operation permit reviews to staff that are located outside the Southeast Region to ensure that we eliminate the backlog by the end of 2004.

3. Further streamline the operation permit program.

- Streamline permitting requirements for those minor air pollution sources that will continue to be required to obtain permits under recent revisions to state law.
- Assess options that would reduce the amount of staff time spent on modeling, including allowing facilities to perform their own modeling, or eliminate requirements for minor permits.
- Evaluate the amount of information contained in permits and preliminary determinations, with the goal of eliminating duplicate calculations, reducing the repetition of administrative code language, and simplifying descriptive language that duplicates information found in the permit application.
- Encourage facilities to submit electronic permit applications to facilitate accurate data entry into DNR's information system.

The Department launched the Air Permit Improvement Initiative (APII) in June 2003 to simplify and streamline both the operation and construction permit programs including exploring alternatives to traditional permit approaches. This work is underway with a final completion date of December 2005 for implementation of all improvements. APII will include the following key elements:

- a. Clarification of when, where and who should do air quality modeling.***
- b. Simplifying the language and detail required in preliminary determinations and permits.***
- c. Development of an IT system that will support (pending funding approval):***
 - 1. Electronic submittal of permit applications***
 - 2. More accurate and timely tracking of who submits or should submit applications and the progress of each review.***

3. **Determination of which facilities and projects should be exempt from permits.**
4. **Timely notification and follow through of permit renewals.**

4. Ensure facilities have properly applied for permits.

- Verify which facilities have failed to submit permit applications as required and take appropriate action.
- Determine which facilities have appropriately submitted applications but were not placed into the permitting process or assigned to a permit engineer.
- Document which facilities are exempt from permitting requirements and the specific reasons for an exemption.

Using approaches developed in consultation with the Legislative Audit Bureau; the Air Management Program can now consolidate data from its separate and distinct databases to verify whether facilities that submit application fees have applied for operation permits. These new approaches will also exclude from the Department's billing procedures those facilities that are exempt from operation permit requirements. The Department plans to integrate the data in these systems in the future, making it even more automated and more efficient.

The Department is already in the process of verifying the application status of each of the 71 facilities that the Legislative Audit Bureau identified as needing to apply for an operation permit. Responding to another audit finding, the Department is verifying the application status for additional 175 facilities that the Department had identified as exempt from operation permit requirements but had not documented. The Department will fully document its findings.

5. Issue completed permits.

- Review the 113 facilities whose permits have been through the public comment process, to determine whether the permits can be issued or whether additional work is needed because of the delay in issuing the final permit.
- Develop a procedure to track permits throughout the process to ensure that permit engineers are held accountable for finalizing permits.

For federal operation permits that have previously gone through a public comment process we have made staff assignments to get these permits issued by December 2004. We will establish a priority for completing those that remain.

6. Ensure facilities apply for renewal operation permits.

- Review the facilities that have not applied for renewal permits to determine whether they are required to submit renewal applications.
- Implement a procedure to ensure permit engineers notify facilities whose permits are due to expire so facilities can submit appropriate renewal permit applications in a timely manner.

Correspondence will be going out to each delinquent permit holder in May 2004. This will allow us to develop an up-to-date list of renewals needed that includes sources that the Legislative Audit Bureau identified and those that may have become delinquent since the close of the audit period. We will also have a notification system in place in June 2004 that will inform permit holders that have a permit expiring in the near future and that a timely renewal application is needed.

7. Revise the expedited review process for construction permits.

- We recommend that the Department of Natural Resources revise its expedited review process in order to avoid situations where delays caused by the applicant hinder DNR's ability to meet expedited review deadlines.

The Department plans to promulgate a rule revision to provide that the time taken for an applicant to publish the notice of the Department's determination is not included in the review time for an expedited permit. In the interim, we will be notifying sources that have requested expedited review that the clock is considered to stop while we wait for them to have the noticed published.

8. Further streamline the construction permit program.

- We recommend, as part of the current air permit improvement initiative, the Department of Natural Resources re-evaluate the potential of implementing streamlining recommendations made by its 1998 workgroup.

The Air Permit Improvement Initiation (APII) will evaluate both the operation and construction permit programs. This effort has completed its data gathering activities and is now engaged in developing process improvement approaches. The Department is looking at the entire construction permit program, in light of the changes made by 2003 Wisconsin Act 118, and will implement changes to be more efficient and effective.

9. Improve the facility inspection process.

- Develop a plan to ensure all facilities that have never been inspected are given a higher priority in future years.
- Require changes in the list of facilities to be inspected in each region to be reviewed and approved by central office personnel, to better ensure that statewide priority facilities are inspected in a timely fashion.
- Regularly monitor and report progress of each regional office in completing its specific facility inspection goals throughout the fiscal year.

We have an effort under way (and nearly complete) to reconcile all air management program databases to improve our list of facilities subject to the EPA inspection policy, and to identify facilities that have closed. This list will then be used as the basis for targeting those facilities that need inspection. Work plans for regions in the coming fiscal year will be established based on this updated list. We have improved our inspection tracking system to assist in monitoring progress and changes to the agreed inspection list. Quarterly review by managers will be conducted to allow us to meet inspection goals.

10. Improve compliance with federal policy for high-priority violations.

- We recommend the Department of Natural Resources comply with federal policy and develop procedures to track, on a case-by-case basis, compliance with the 60-day notice of violation and 270-day resolution standards.

We have begun investigating how to track conformance with the EPA 60-day NOV and 270-day case resolution standards. This requires interaction with an EPA database and will require further work. We anticipate being able to improve tracking beginning in July 2004.

11. Improve the compliance certification process.

- We recommend the Department of Natural Resources implement procedures to more accurately track compliance certification submission dates and that it consistently follows its enforcement policy regarding timeliness of compliance certification reports.

In July 2003, Air Management compliance staff in the regions began entering compliance certification data directly into the central compliance database to improve the timeliness of data entry. A policy for dealing with portable sources (which may move from region to region) is currently under development. We have identified structural problems within the database that are causing problems in tracking delinquent compliance certifications, but we will likely not be able to correct this until sometime in FY '05. We have implemented a temporary "work around" until the database can be modified, and have begun providing data on delinquent certifications to regional supervisors on a quarterly basis. The need to track and respond to compliance certification submittals has been highlighted via e-mail to regional supervisors and compliance staff, and the existing program guidance on enforcing delinquent compliance certifications was redistributed to reinforce its importance.

12. Identify after-the-fact permits and take appropriate enforcement action.

- We recommend the Department of Natural Resources develop procedures to accurately identify all after-the-fact permits issued, determine if regional permitting staff are informing compliance staff of these permits, and determine if compliance and enforcement personnel are following DNR's guidelines for enforcement of after-the-fact permits.

We have added a provision to our tracking system to identify after-the-fact construction permits so now they can be easily identified for compliance follow-up.

13. Establish additional performance measures.

- We recommend the Department of Natural Resources establish additional performance measures that facilitate the assessment of program outcomes, such as improvements in air quality, program efficiency, and timeliness of permit issuance, including measures of the extent to which:
 - ✓ Statutorily mandated construction permit time lines have been met;
 - ✓ The 20-day and 15-day deadlines for information requests for construction permits have been met;
 - ✓ DNR refunds application fees when it fails to meet construction permit timeliness deadlines;
 - ✓ The proper facilities have been billed for emission fees annually;
 - ✓ Construction permit expedited review deadlines have been met;
 - ✓ The amount of pollution emitted into the air has been reduced;
 - ✓ Wisconsin's air quality has improved;
 - ✓ Compliance inspections have been completed with appropriate frequency;
 - ✓ Appropriate enforcement actions have been taken against facilities that fail to meet compliance certification deadlines; and
 - ✓ High-priority violation timeliness standards have been met.

For the majority of these measures we have systems in place to capture the information requested and will incorporate these measures into a quarterly review. We will take steps to have all the recommended measures in place by September 1, 2004.

14. Improve its data system.

- Develop a manual for its database that clearly explains staff responsibilities for entering and maintaining database information.
- Provide training to staff who are responsible for entering information.
- Implement procedures to improve data quality, including limiting the number of staff who have authority to enter and modify information and implementing procedures to ensure consistent data entry.
- Develop procedures for regularly reviewing information contained in the database to identify data problems.

Lloyd
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- Work toward eliminating duplicate and unnecessary fields to simplify database use.
- Improve integration of existing data systems.

An effort is currently underway to develop plans and cost estimates for integrating the various Air Management Program data systems. Assuming funding is approved, the data integration project in the APII will provide staff and supervisors with the tools needed to better manage compliance and enforcement responsibilities.

We wholeheartedly concur with the audit report's recommendation to improve our data systems. Our data systems were designed over a decade ago as stand-alone systems. They have been incrementally modified over time, as funding has allowed to meet Department hardware and software standards. Recent budget reductions will impact information technology staff Department-wide. This may impact our ability to implement the audit report data systems recommendation.

15. Report to the Joint Audit Committee by September 1, 2004, for follow-up.

- The number and type of facilities that should have been reporting emissions data to DNR but were not.
- The procedures it has developed to ensure that all facilities will be billed appropriately in the future.
- The number and location of facilities that have not applied for initial or renewal operation permits, as required.
- The number of applications for operation permits that were not properly recorded or assigned for review, as well as the reasons for these oversights.
- The status of permits that completed the public comment period that were never issued.
- The number and type of enforcement actions it plans to take against regulated facilities it finds have failed to submit required applications or emissions data.
- Its plans to reallocate staffing resources to address backlogged permits, as well as the anticipated effects of these changes.
- The extent to which it plans to implement the permit streamlining recommendations made by its 1998 workgroup.
- How it will ensure that inspection frequency goals are met, and all facilities inspected.

Data collection and tracking systems are in place to capture this information to include in our September 1, 2004 report.

Emergency Rule

②

①

letter
delay
Staff.

KA QUESTION PG. 15:

Background: Other Region 5 states with state programs employ toxicologists who determine, on a case-by-case basis, whether facilities are required to implement controls for specific hazardous air pollutants. In addition, these states require only certain facilities to comply with state-mandated hazardous air pollutant regulations, whereas Wisconsin requires compliance from all permitted facilities that have hazardous air pollutant emissions above a threshold that varies by pollutant.

Question: Should Wisconsin have toxicologists to determine on a case-by-case basis whether facilities are required to implement controls?

- In 2003, the Natural Resources Board recommended modifications to Wisconsin's hazardous air pollutant regulations that would have increased the number of pollutants regulated exclusively under state law by 138, and a separate rule that would have regulated mercury emissions. The Legislature sent both proposed rules back to DNR for revision, where they are currently pending.
- In response to budget constraints, DNR plans to eliminate 17 monitoring sites.
- Unhealthy air was measured in Door, Kenosha, and Manitowoc counties in over 3.0 percent of the days monitored.

Emission fee funding source:

1. **Emission fees assessed on facilities that are required to obtain operation permits**
2. **federal grants**
3. **construction permit fees**

- Emission fees are established by statute and are currently set at \$35.71 per ton of
- pollutants emitted. Expenditures have increased from \$14.9 million in FY 1996-97 to
- \$17.8 million in FY 2002-03.
- Beginning in 2001, emissions fees no longer increased with the consumer price index.
- Environmental organizations allege emission fees are insufficient to meet program needs.

DEFICIENCY: The EPA may enact sanctions, including increased emission offset requirements in non-attainment areas, the loss of federal highway funds, or the loss of program approval. If the EPA withdraws approval of the State's operation permit program, it has the authority to impose a federally administered program in Wisconsin.

- Air emission fees vary significantly among midwestern states.
- Since 1996, DNR failed to bill 13 facilities and to collect approximately \$27,000 in fees.

- DNR cannot explain why 232 facilities have not reported emissions or paid emission fees.
- Program staffing levels from FY 1996-97 to FY 2002-03.

OPERATIONS PERMITS:

- DNR anticipates completion of the remaining major operation permits by January 2005,
- An operation permit program is required by federal law.
- Wisconsin's operation permit program includes federal and state requirements.
- "Major" facilities have the largest emissions potential and must obtain federal permits from DNR.
- "Synthetic minor" facilities voluntarily reduce emissions to become eligible for State permits.
- "Minor" facilities are regulated only under state law because their potential emissions are below federal thresholds.
- As of June 30, 2003, 2,219 facilities were required to obtain operation permits.
- More than one-quarter of regulated facilities are located in DNR's Southeast Region.
- For calendar year 2002, a total of 1,950 facilities reported air pollution emissions to DNR.
- Survey respondents were slightly more satisfied than dissatisfied with DNR's operation permit program.
- Regulated facilities were most concerned with record-keeping, monitoring, and reporting requirements.
- As of June 2003, DNR had issued permits to just over one-half of facilities that applied.
- In total backlog was 1,091.
- In 2002, facilities subject to state minor permits reported only 1.2 percent of total statewide pollutant
- emissions.
- DNR's Southeast Region has issued a smaller percentage of permits than other regions.
- More time is spent on each permit in the Southeast Region than in other DNR regions.

- Backlogs may hamper efforts to reduce emissions and achieve compliance with federal
- air quality standards.
- Wisconsin is among the slowest states in the nation to issue major operation permits.
- Public hearings can increase the time needed for permit issuance, but few permits require a hearing.

Several factors that influence the amount of time DNR takes to issue operation permits in WI:

1. request additional information from facilities because information in the application is outdated.
 2. public hearings—which may be requested by anyone—increase the time required to issue an operation permit.
 3. DNR and the regulated facilities often spend considerable time negotiating modeling results.
 4. Several DNR permit engineers believe that DNR requires too much information in preliminary determinations and repeats much of the information found in a permit.
- We identified 71 facilities that DNR records indicate did not apply for required permits.
 - DNR failed to issue 113 operation permits even though they had already gone through public comment.
 - As of June 30, 2003, 193 permit renewal applications were pending.

CONSTRUCTION PERMITS (PG 49)

- Facilities planning new, modified, reconstructed, relocated, or replaced air pollution sources are required to obtain construction permits.
- Regulated facilities were slightly dissatisfied with DNR's construction permitting program.
- DNR's construction permit workload varies from year to year. As of June 30, 2003, 29.2 percent of pending permits had been backlogged for at least two years.
- 36.6 percent of survey respondents reported their projects were delayed as a result of
- DNR actions.
- 2003 Wisconsin Act 118 shortened major construction permit processing deadlines by 30 days.
- Wisconsin's timeliness standards are generally consistent with other midwestern states.' The amount of time allowed for processing construction permits varies among states.'

- Wisconsin's timeliness standards are generally consistent with other midwestern states.' The amount of time allowed for processing construction permits varies among states.'
- DNR met the statutory deadline for 86.4 percent of the construction permits we tested.
- DNR has substantial control over the starting point for measuring statutory timeline compliance.
- DNR's median processing time was 103.5 days from the date an application was received.
- For an additional fee, DNR will expedite construction permit processing.
- **KA QUESTION: PG 62 DNR has not implemented permit streamlining recommendations developed by its own workgroup.**

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Questions for DNR Regarding Audit of Air Management Programs

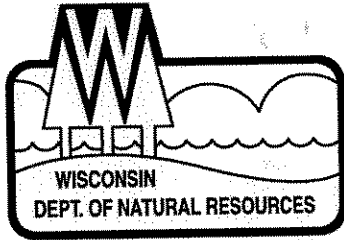
- 1) The permit backlog is especially large in the Southeast Region. What are you doing to address this issue?
- 2) Will you be prepared to report back to the Audit Committee by September 1st, as the Audit Bureau has recommended?
- 3) What progress have you made in implementing the requirements of the Job Creation Act (2003 Wisconsin Act 118)?
- 4) What changes are you making to ensure that revenues and expenditures for the federal and the state operation permit programs can be separately accounted for, as required by the EPA?
- 5) Why does Wisconsin regulate almost 300 more hazardous pollutants than are regulated under federal law?

AM (to date)

More

Over

ISSUES of Concern



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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May 5, 2004

Senator Carol Roessler
Co-Chair, Joint Legislative Audit Committee
8 South, State Capitol
Madison, WI 53702

Representative Suzanne Jeskewitz
Co-Chair, Joint Legislative Audit Committee
314 North, State Capitol
Madison, WI 53702

Dear Senator Roessler and Representative Jeskewitz:

Thank you for the opportunity to discuss the Legislative Audit Bureau's audit of the Air Management program yesterday. There were several materials requested by the committee that we were to provide:

- DNR outline on EPA Notice of Deficiency
- Report: Understanding the work that lies ahead
- List of NR 445 Chemicals and health effects
- Report: Construction Permitting in Wisconsin, Focus Group Findings

I look forward to meeting with you again in September to discuss our progress. If you have further questions, please contact Lloyd Eagan, Air Management Bureau Director, at (608) 266-0603.

Sincerely,

Scott Hassett,
Secretary

DNR/EPA Region V Meeting -- Notice of Deficiency
March 29, 2004

A. Overview of How We Plan to Respond to the NOD

We believe we have met Title V presumptive minimum and funding in the past and plan to pursue future funding stabilization in Wisconsin's FY05-07 biennial budget process. It is our expectation we will achieve some improvements and efficiencies by our streamlining efforts but will conduct a full fee analysis and workload analysis to determine additional funding and staffing needs. Our analyses would be enhanced if EPA shared with us their idea of what they consider sufficient staffing or meeting presumptive minimum. This analysis will be submitted to EPA Region V by June 1, 2004 and we will provide an update on our budget status by September 1, 2005. It is too early in the biennial budget process to predict an outcome.

Although we were not able to demonstrate that our past allocation of Title V resources was in alignment with Title V program obligations, we have taken significant action to ensure that it is in alignment and that we can demonstrate that it is. Effective October 6, 2003 we implemented a redeployment of 21 staff, a reorganization of our program and changes to our funding sources for grant match. We plan to provide documentation of this success ... workplan, timesheet data, expenditure data, position descriptions. We will provide this documentation to EPA Region V by June 1, 2004.

Although our past focus on full FESOPs and renewals may have slowed our progress on initial Title V permits, we have refocused our efforts to ensure all initial Title V permits are issued by December 31, 2004. Wisconsin Act 118, promulgated February 6, 2003, sets timelines for future permits. Our Air Permit Improvement Initiative will streamline the permit issuance process by December 2005. Timeliness will no longer be an issue in Wisconsin's air permits program. We will provide a progress report to EPA Region V by June 1, 2004. We will report our success in eliminating the initial Title V backlog to EPA Region V by January 15, 2005.

We plan to address the four programmatic issues (expiring construction permits, federal enforceability, nsr/op interface issues, and insignificant units) with statute and rule changes. These changes will be integrated into our Air Permit Improvement Initiative. The items that require statute changes will not be completed by September 1, 2005 but will be in play by then. The items requiring only rule changes will at least be out for public hearing by September 1, 2005. The items requiring only procedural changes or guidance will be fully implemented by September 1, 2005. In addition, we will provide a summary of the impact of Wisconsin Act 118 on our Title V program to EPA Region V by June 1, 2004.

B. EPA Feedback on Approach and Schedule

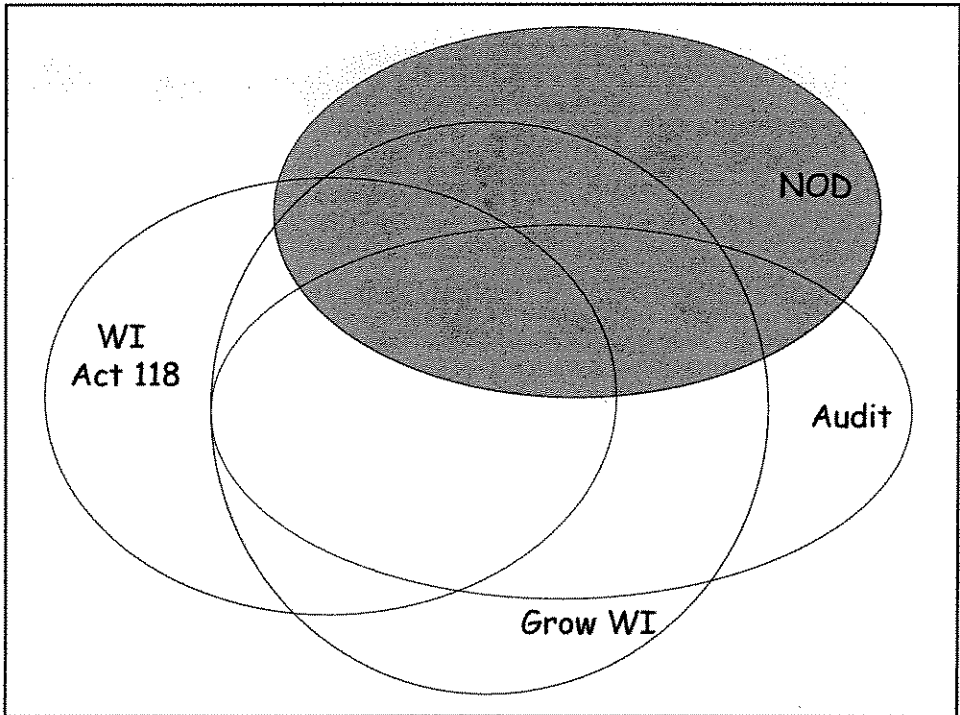
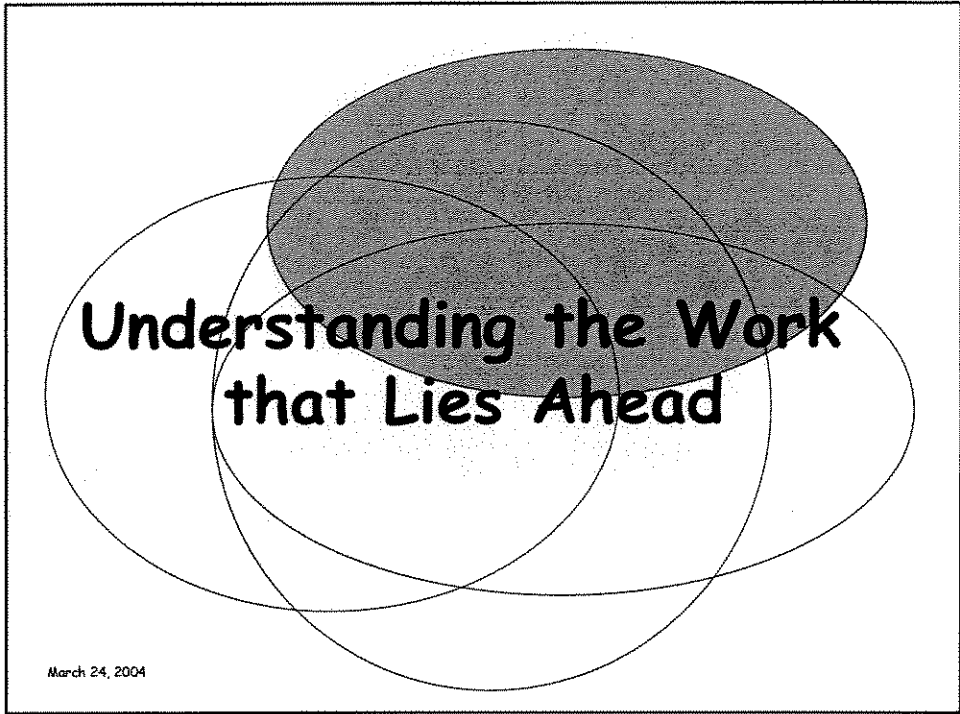
- Let EPA react. Listen carefully.

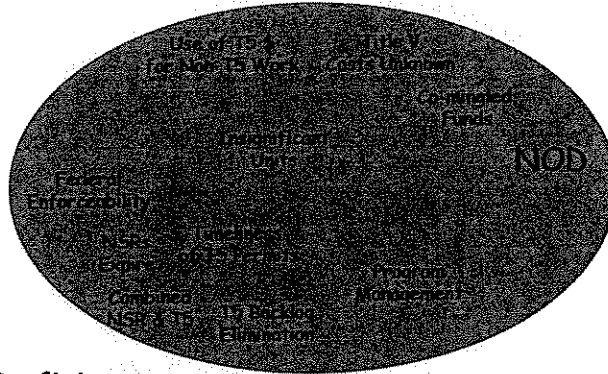
C. Follow-Up Funding Related Questions for EPA

1. Who is the primary EPA contact for us on the NOD?
2. What does a successful outcome to this process look like to you?
3. In addition to what we've described, what else do you need by day 90?
4. You've had experience with other state's NODs. What have other states done to completely resolve the issues? What constitutes "address the deficiencies" by Month 18 (September 4, 2005)?
5. To what extent may permit/compliance activities associated with FESOP sources be funded with Title V funds?
6. From EPA's perspective, what would it take from an accounting or legislative perspective to resolve the co-mingled funds? Separate accounts will require a new appropriation be created through the legislative process.
7. How would EPA like to see us report in this area in the future?
8. It is our understanding of the Clean Air Act that administrative costs to run the Title 5 program (e.g., IT programming, legal services, clerical support, small business assistance) are appropriate expenditures under Title 5 moneys. If our understanding is not correct, what does EPA need to resolve this?

D. Follow-Up Programmatic Questions for EPA

- See Jeff Hanson





EPA Notice of Deficiency

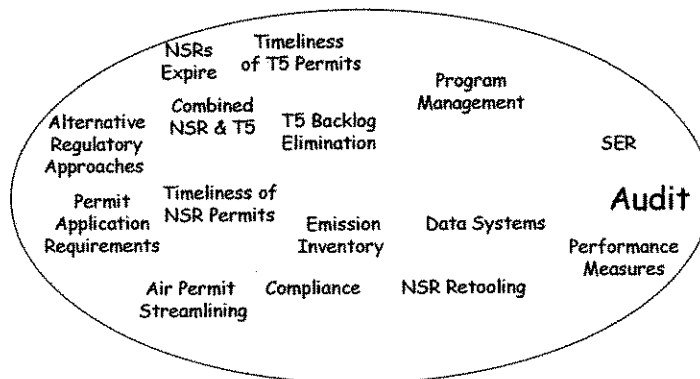
Published in Federal Register on March 4, 2004

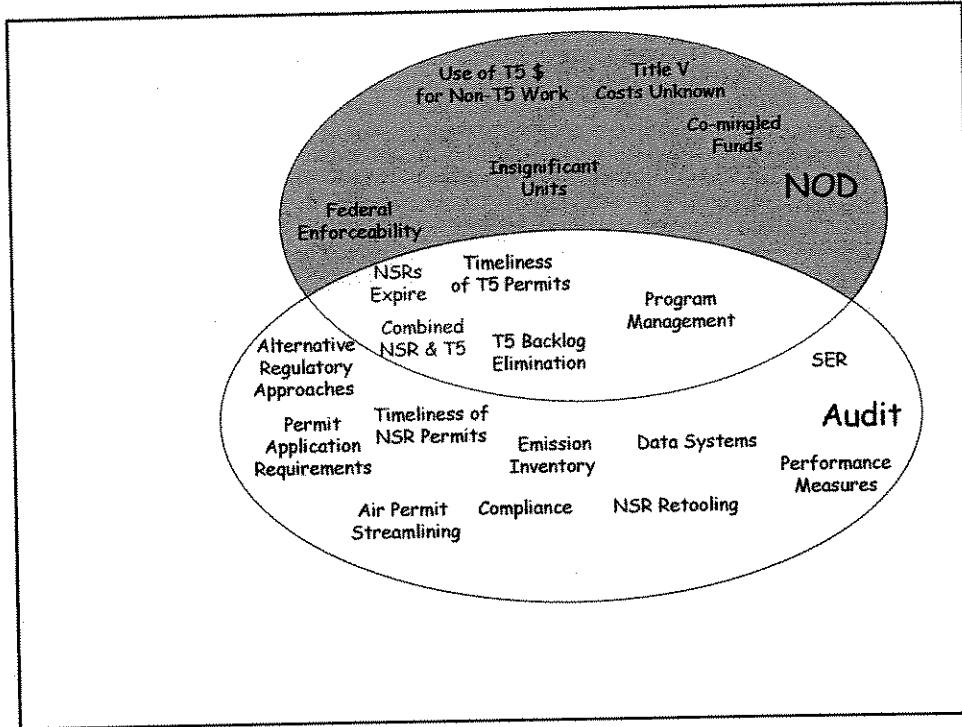
- Title V Fee Schedule
- Administration of Fees & Resources
- Timely Issuance of Title V Permits
- 4 Programmatic Issues

- Significant Action by June 4, 2004
- Address Deficiencies by September 4, 2005

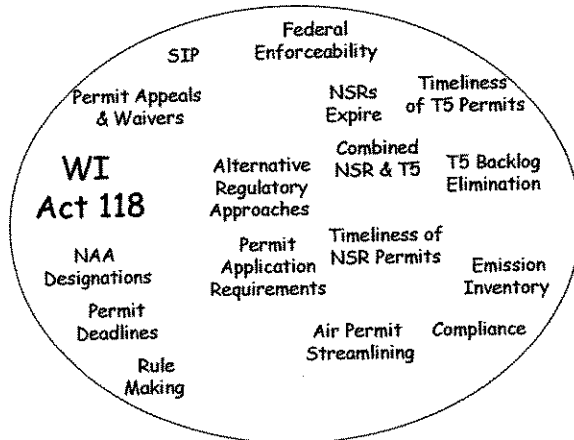
Legislative Audit Report

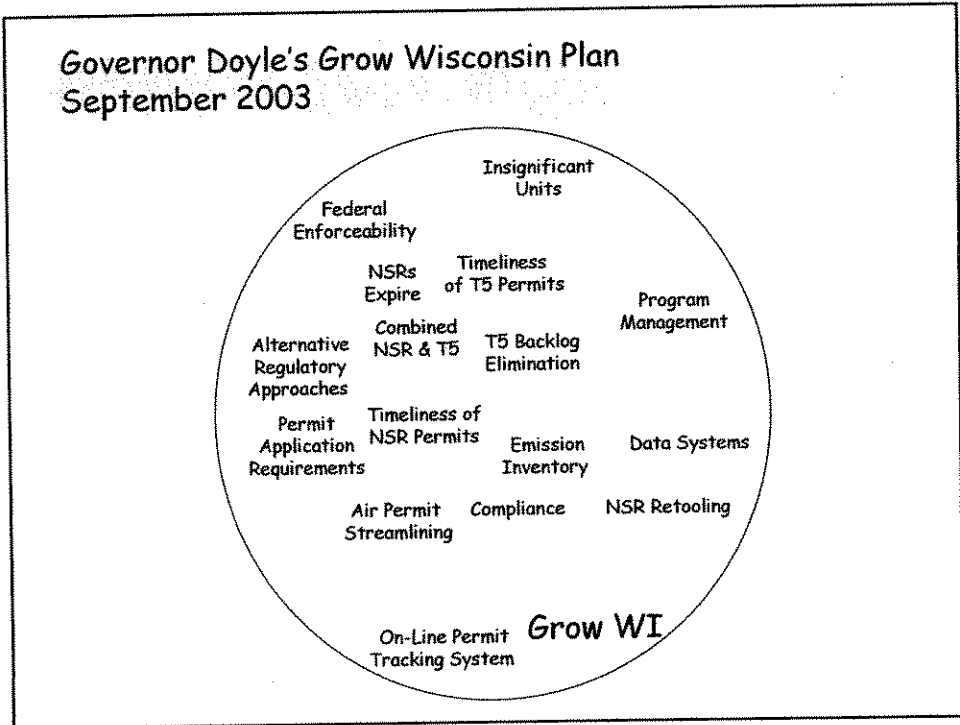
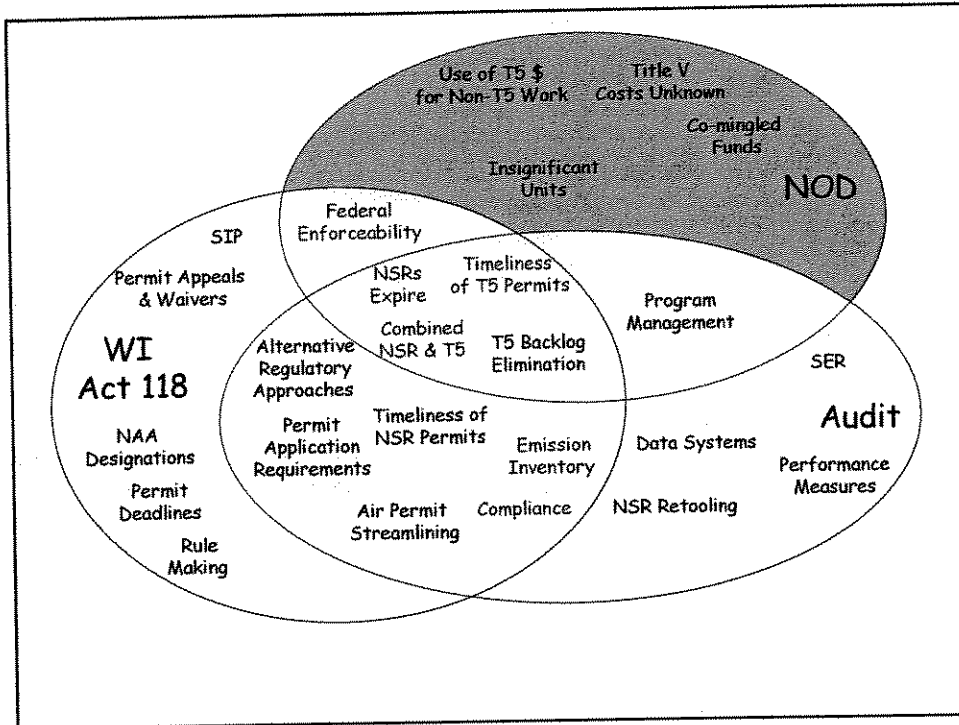
Published February 2004

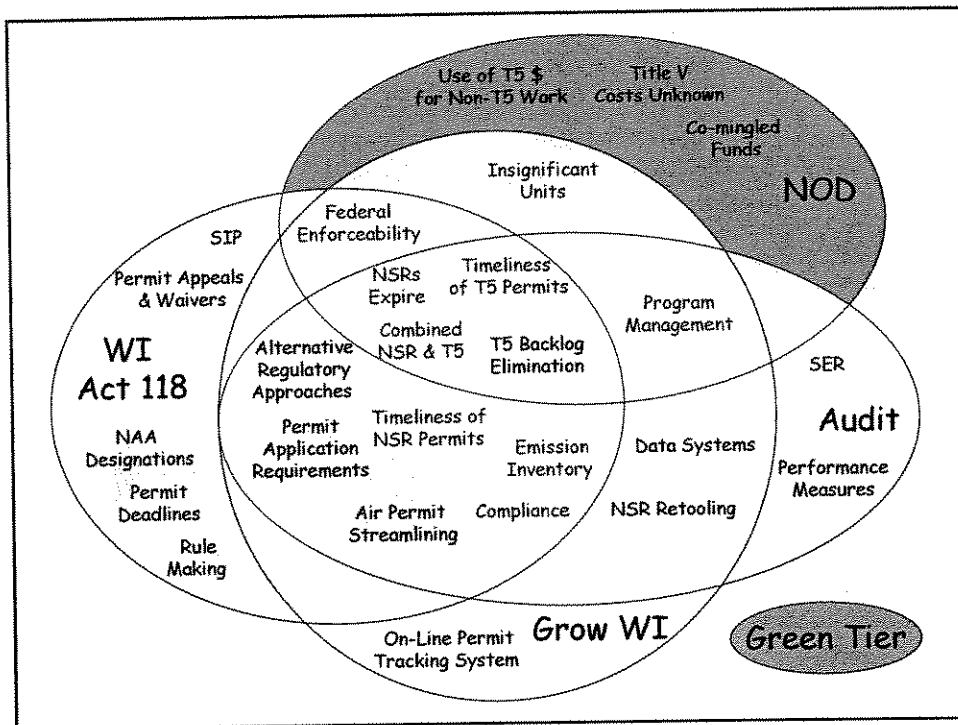




Wisconsin Act 118
 Effective February 6, 2004





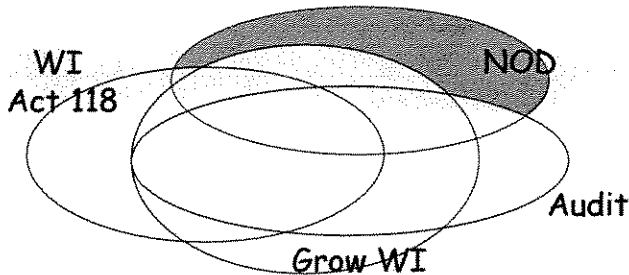


All of the "drivers" are pointing in the same direction

- Process permits and inspections in a timely manner
- Simplify regulations by exploring alternative tools
- Manage the program proactively
- Change culture/attitude toward stakeholders
- Create processes for case-by-case consideration
- Align activities with funding

Calendar of Events

Month & Year	Notice of Deficiency	Wisconsin Act 118	Legislative Audit	Grow Wisconsin
March/April 2004	Meetings with EPA 3/29 and 4/15	Develop & Finalize Implementation Guidance	Audit Committee Hearing	Air Permit Streamlining Project Plan Due
June 2004	Day 90. Take "significant action" or EPA withdraws approval			NSR Retooling to NRB - Major NSR Final, Minor NSR Hearing Auth.
September 2004		Report & Proposed Rules to Legislature. APS, Alternative Regulatory Approaches.	Report to Audit Committee	NSR Retooling to NRB - Minor NSR Final
December 2004				Initial Title V Backlog Eliminated
March 2005		Report to Legislature. SIPs, Emission Monitoring, Application Requirements		
September 2005	Month 18. NOD Corrections Complete or Sanctions			
December 2005				Air Permit Streamlining Fully Implemented
March 2006	Month 24. If deficiencies remain, EPA takes over all or part of program			



The work that lies ahead may be organized into 4 buckets:

- Financial Management
- Policy Development
- Process Development
- Program Management Improvement

NR 445 Chemicals and the category of health effects associated with them

Chemical Name	CAS #	Acute Non-Carcinogen	Chronic Non-Carcinogen	Carcinogen
Acetaldehyde	75-07-0	Acute Non-Carcinogen		Carcinogen
Acetic acid	64-19-7	Acute Non-Carcinogen		
Acetic anhydride	108-24-7	Acute Non-Carcinogen		
Acetonitrile	75-05-8	Acute Non-Carcinogen		
Acetophenone	98-86-2	Acute Non-Carcinogen		
Acrolein	107-02-8	Acute Non-Carcinogen		
Acrylamide	79-06-1	Acute Non-Carcinogen		Carcinogen
Acrylic acid	79-10-7	Acute Non-Carcinogen	Chronic Non-Carcinogen	
Acrylonitrile	107-13-1			Carcinogen
Adipic Acid	124-04-9	Acute Non-Carcinogen		
Adiponitrile	111-69-3	Acute Non-Carcinogen		
Adriamycin	23214-92-8			Carcinogen
Aflatoxins	1402-68-2			Carcinogen
Aldrin	309-00-2	Acute Non-Carcinogen		
Allyl alcohol	107-18-6	Acute Non-Carcinogen		
Allyl chloride	107-05-1	Acute Non-Carcinogen		
Allyl glycidyl ether	106-92-3	Acute Non-Carcinogen		
Aluminum alkyls and soluble salts, as Al	7429-90-5	Acute Non-Carcinogen		
Aluminum pyro powders, as Al	7429-90-5	Acute Non-Carcinogen		
o-Aminoazotoluene (2-Aminoazotoluene)	97-56-3			Carcinogen
4-Aminobiphenyl	92-67-1			Carcinogen
Amitrole	61-82-5	Acute Non-Carcinogen		Carcinogen
Ammonia	7664-41-7	Acute Non-Carcinogen	Chronic Non-Carcinogen	
Ammonium perfluorooctanoate	3825-26-1	Acute Non-Carcinogen		
Aniline	62-53-3	Acute Non-Carcinogen		
o-Anisidine and o-anisidine hydrochloride (mixtures and isomers)	29191-52-4	Acute Non-Carcinogen		Carcinogen
Antimony and compounds, as Sb	7440-36-0	Acute Non-Carcinogen		
Antimony hydride (Stibine)	7803-52-3	Acute Non-Carcinogen		
Antimony trioxide	1309-64-4		Chronic Non-	

* Note: Synonyms for some common chemicals are included in this list, so there may be more than one listing for a chemical in this table

NR 445 Chemicals and the category of health effects associated with them

Chemical Name	CAS #	Acute Non-Carcinogen	Chronic Non-Carcinogen	Carcinogen
Boron tribromide	10294-33-4	Acute Non-Carcinogen		
Boron trifluoride	7637-07-2	Acute Non-Carcinogen		
Bromacil	314-40-9	Acute Non-Carcinogen		
Bromine	7726-95-6	Acute Non-Carcinogen		
Bromine pentafluoride	7789-30-2	Acute Non-Carcinogen		
Bromodichloromethane	75-27-4			Carcinogen
Bromodiphenyls (Polybrominated biphenyls; PBBs)	59536-65-1			Carcinogen
Bromoform	75-25-2	Acute Non-Carcinogen		
Bromomethane (Methyl bromide)	74-83-9	Acute Non-Carcinogen	Chronic Non-Carcinogen	
1,3-Butadiene	106-99-0			Carcinogen
1,4-Butanediol dimethanesulphonate (Myleran; busulphan)	55-98-1			Carcinogen
2-Butoxyethanol (Ethylene glycol monobutyl ether; EGBE; butyl cellosolve)	111-76-2	Acute Non-Carcinogen		
n-Butyl alcohol (n-Butanol)	71-36-3	Acute Non-Carcinogen		
Butyl Cellosolve (2-Butoxyethanol; ethylene glycol monobutyl ether; EGBE)	111-76-2	Acute Non-Carcinogen		
n-Butyl acrylate	141-32-2	Acute Non-Carcinogen		
n-Butylamine	109-73-9	Acute Non-Carcinogen		
Butylated hydroxyanisole (BHA)	25013-16-5			Carcinogen
tert-Butyl chromate, as Cr	1189-85-1	Acute Non-Carcinogen		Carcinogen
n-Butyl glycidyl ether (BGE)	2426-08-6	Acute Non-Carcinogen		
n-Butyl lactate	138-22-7	Acute Non-Carcinogen		
o-sec-Butylphenol	89-72-5	Acute Non-Carcinogen		
p-tert-Butyltoluene	98-51-1	Acute Non-Carcinogen		
C.I. Basic Red 9 monohydrochloride	569-61-9			Carcinogen
Cadmium and cadmium compounds, as Cd	7440-43-9			Carcinogen
Calcium cyanamide	156-62-7	Acute Non-Carcinogen		
Calcium hydroxide	1305-62-0	Acute Non-Carcinogen		
Calcium oxide	1305-78-8	Acute Non-Carcinogen		
Camphor (synthetic)	76-22-2	Acute Non-Carcinogen		
Caprolactam (aerosol and vapor)	105-60-2	Acute Non-Carcinogen		
Captafol	2425-06-1	Acute Non-Carcinogen		

* Note: Synonyms for some common chemicals are included in this list, so there may be more than one listing for a chemical in this table