

An Evaluation:

Air Management Programs*Department of Natural Resources*

February 2004

Report Highlights ■

Wisconsin is among the slowest states in the nation to issue major operation permits.

The process for issuing construction permits could be further streamlined.

DNR does not consistently follow federal and state enforcement guidelines.

Program management needs improvement.

The Department of Natural Resources (DNR) administers state and federal air management programs that regulate the emission of pollutants that have been linked to health problems in humans, as well as to smog and acid rain. As part of this responsibility, DNR is required to ensure that the 2,219 utilities, factories, and other stationary facilities it regulates are complying with the terms of their permits, and to monitor air quality throughout Wisconsin.

Representatives of regulated facilities contend that complying with Wisconsin's air pollution regulations is onerous and expensive, while representatives of environmental groups believe too little is being done to ensure compliance with state and federal air pollution laws. In response to concerns about the time DNR takes to issue permits, the fees regulated facilities are charged, the extent to which the State regulates air pollution beyond federal requirements, and DNR's approach to regulating sources of air pollution—and at the request of the Joint Legislative Audit Committee—we analyzed:

- permit backlogs, including the amount of time taken to issue operation and construction permits;
- the amount of time other states require to issue operation and construction permits;
- the equitableness of fees assessed to regulated facilities emitting varying amounts of pollutants;
- the extent to which Wisconsin has expanded upon regulatory requirements prescribed by federal law;
- air quality monitoring efforts by DNR staff; and
- compliance and enforcement efforts.

Key Facts and Findings

Wisconsin regulates more hazardous air pollutants than federal law requires.

Air quality has improved in 17 former non-attainment areas.

Expenditures have increased from \$14.9 million in FY 1996-97 to \$17.9 million in FY 2002-03.

As of June 30, 2003, DNR had issued 1,128 operation permits; 1,091 were backlogged.

As of June 30, 2003, 29.2 percent of pending construction permits had been backlogged for at least two years.

DNR's median processing time for construction permits was 103.5 days from the date an application was received.

Records indicate that DNR has never inspected 10.0 percent of major facilities and 19.7 percent of synthetic minor facilities.

DNR does not have the basic, accurate data needed for effective program management.

Operation Permits

As of June 30, 2003, DNR had issued operation permits to 50.8 percent of the 2,219 facilities that had applied for them, including:

- 64.4 percent of federally required "major" permits, which have the highest potential air pollution emissions;
- 73.5 percent of federally required "synthetic minor" permits, which have lower potential air pollution emissions; and
- 8.2 percent of state-required "minor" permits, which have the lowest potential air pollution emissions.

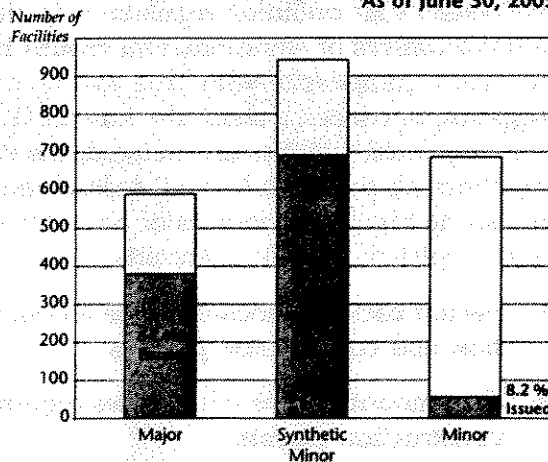
In total, 1,128 permits were issued but 1,091 were backlogged.

Wisconsin issued only 64.4 percent of its major operation permits by June 30, 2003, the lowest percentage in the Midwest. By comparison, 80.9 percent of major permits had been issued nationally.

2003 Wisconsin Act 118, which took effect February 6, 2004, streamlines DNR's operation permit program and may help to address the permit backlog. DNR has also made several revisions to its plan for issuing operation permits and now anticipates issuing all federally required major permits by January 2005.

No deadlines have been established for issuing either synthetic minor operation permits or minor operation permits. We make several recommendations to further streamline the operation permitting process.

Operation Permits Issued
As of June 30, 2003



Under the federal Clean Air Act, Wisconsin was required to issue operation permits to all major facilities by March 1998. However,

Construction Permits

Wisconsin statutes and administrative rules require DNR to issue permits for new construction and facility modifications within specified time limits.

DNR does not adequately track the time it takes to issue permits, but we found that, based on a random sample of 88 construction permit applications, DNR met statutory deadlines for 86.4 percent of construction permits issued. However, 29.2 percent of all construction permits pending as of June 30, 2003, had been backlogged for at least two years.

DNR officials indicate that construction permits can become backlogged because some projects will be undertaken in the future, and permits for electrical generating facilities require approval from other regulatory bodies.

Because DNR has substantial flexibility in determining when an application is deemed complete and the statutory clock begins, we analyzed the time taken to issue permits from the dates applications were received. For the 88 permits in our sample, the median time was 103.5 days, including 52 permits issued within 120 days and 9 that took longer than one year.

2003 Wisconsin Act 118 reduces the time DNR is allowed for issuing construction permits. We make several recommendations to further streamline the construction permitting process.

Additional State Requirements

Wisconsin has expanded on federal air management requirements in two primary areas. First, Wisconsin regulates 293 more hazardous air pollutants than required by federal law. Of these, 94 were reported emitted by Wisconsin facilities in 2002. Three of five other midwestern states also exceed federal requirements for regulating hazardous air pollutants.

Second, Wisconsin facilities with potential emissions below federal requirements are generally

required to obtain state-mandated minor operation permits. As of June 30, 2003, 687 facilities had applied for minor operation permits, but only 56 of these permits had been issued.

Enforcement Efforts

The number of facilities DNR inspects annually has generally declined over time, from 470 in fiscal year (FY) 1994-95 to 276 in FY 2002-03. DNR's records indicate that 15.0 percent of facilities have never been inspected.

In addition, DNR has failed to follow its own policies regarding enforcement against facilities that apply for construction permits after work is already complete, or against facilities that do not submit timely compliance certifications. We also found that DNR does not consistently follow federal policy in taking enforcement actions for high-priority violations. We make several recommendations to improve DNR's enforcement efforts.

Program Management

We identified a pattern of significant deficiencies in DNR program management, including:

- failing to identify 71 facilities that were required to apply for operation permits although DNR records indicate they did not, and failing to have documentation for why an additional 175 facilities may be exempt from permitting;

- failing to issue 113 operation permits even though they had already completed a public comment period and could have been issued, including 106 that could have been issued before June 30, 2002;
- failing to ensure that 49 facilities applied for renewal operation permits when required; and
- having no explanation for why 232 facilities have not reported emissions or paid emission fees, billing 11 facilities approximately \$21,000 when they should not have been billed, and failing to bill 13 other facilities approximately \$27,000.

In addition to the program and policy changes that recently took effect under 2003 Wisconsin Act 118, a number of proposed changes in federal law could also significantly affect the State's air management programs. Regardless of changes already enacted at the state level and additional changes that may result from efforts to modify federal requirements, DNR program management will need to be improved if Wisconsin's air management goals are to be accomplished.

Recommendations

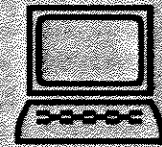
Our recommendations address the need for DNR to:

- correct annual emission fees billing errors (p. 25);

- ☑ assign additional permit engineers to issue operation permits in the Southeast Region (p. 41);
- ☑ further streamline the operation permit program (pp. 41 and 44);
- ☑ ensure facilities have properly applied for permits (p. 46);
- ☑ issue completed permits (p. 46);
- ☑ ensure facilities apply for renewal operation permits (p. 48);
- ☑ revise the expedited review process for construction permits (p. 61);
- ☑ further streamline the construction permit program (p. 63);
- ☑ improve the facility inspection process (p. 70);
- ☑ improve compliance with federal policy for high-priority violations (p. 72);
- ☑ improve the compliance certification process (p. 73);
- ☑ identify after-the-fact permits and take appropriate enforcement action (p. 74);
- ☑ establish additional performance measures (p. 79);
- ☑ improve its data systems (p. 80); and
- ☑ report to the Joint Audit Committee by September 1, 2004, for follow-up (p. 81).

Additional Information

For a copy of report 04-1, which includes a response from the Department of Natural Resources, call (608) 266-2818 or visit our Web site:



www.legis.state.wi.us/lab

Address questions regarding this report to:

Paul Stuiber
(608) 266-2818

The Legislative Audit Bureau is a nonpartisan legislative service agency that assists the Wisconsin Legislature in maintaining effective oversight of state operations. We audit the accounts and records of state agencies to ensure that financial transactions and management decisions are made effectively, efficiently, and in compliance with state law, and we review and evaluate the performance of state and local agencies and programs. The results of our audits, evaluations, and reviews are submitted to the Joint Legislative Audit Committee.

Legislative Audit Bureau

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Janice Mueller
State Auditor

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: June 1, 2004

FILE REF:

TO: Legislative Audit Committee

FROM: Lloyd Eagan, Director, Bureau of Air Management *LE*

SUBJECT: Bureau of Air Management Testimony

JUN 08 2004

On May 4, 2004, the Wisconsin Department of Natural Resources participated in the Legislative Audit Committee's hearing on the findings of the Air Program audit.

During the hearing, the Notice of Deficiency (NOD) my program received from U.S. EPA was discussed. One of EPA's concerns is the co-mingling of funds. I indicated the DNR would be requesting a separate appropriation that we could separate the emission fees collected on Part 70 sources (major) vs. Non-Part 70 sources (minor).

The audit committee asked me how quickly this separate account would be set up. I indicated we would have it in place by July 1, 2004, or the start of the next state fiscal year. I would like to take this opportunity to modify that response.

The separate appropriation must be approved through a 13.10, 16.515 or biennial budget request. All three are agreed to by the Legislature or a committee thereof. This alternative would delay implementation until after the FY05-07 biennial budget was approved by the Legislature and signed by the Governor.

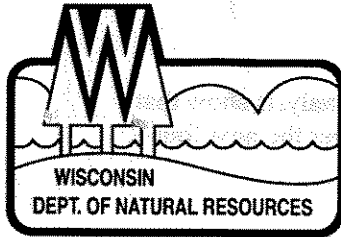
On May 25, 2004, I received additional information from U.S. EPA Region 5 that the Title V and non-Title V fees do not need to be in separate accounts as long as we can determine what those fees are and manage them accordingly. The air emission inventory database contains detailed facility information and related fees. From this database, we are able to annually discern what emission fees were paid by the Title V and non-Title V facilities. For example, the 2002 emission inventory billing of \$9,739,081 included \$143,128 from State Operation Permit (non-Title V) emission fee revenues and \$9,595,953 from Federal Operation Permit and Federally Enforceable State Operation Permit (Title V) emission fee revenues. The Air Program will be creating new activity codes for the non-Title V activities to allow better management of Title V vs. non-Title V revenues to expenditures. Since this methodology would allow us to implement at the start of fiscal year 2005 compared to the delay for development of a separate appropriation, we will be indicating this method in our 90-day Notice of Deficiency response to U.S. EPA.

Thank you for considering this clarification. Please contact me (266-0603), or Sheralynn Stach (264-6292) of my staff, if you have questions on this matter.

Sincerely,

Lloyd Eagan





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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Mr. Bharat Mathur
Acting Region V Administrator – R-19J
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

JUN 08 2004

Subject: Wisconsin DNR 90-Day Response to USEPA Notice of Deficiency Related to the
"Title V Program", dated March 4, 2004

Dear Mr. Mathur:

The Wisconsin Department of Natural Resources (WDNR) takes its commitment to implement the 1990 Amendments to the Clean Air Act very seriously. Therefore, the Department is taking prompt and effective action to respond to the Notice of Deficiency EPA issued on March 4, 2004, related to Wisconsin's Title V program. The response presented below provides our initial written communication related to the Notice of Deficiency (NOD). It fulfills our formal obligation to respond to USEPA within 90 days. In addition to this written response, WDNR Air Management staff have met with USEPA Region V staff and management regarding the NOD as well as our Air Permit Improvement Initiative. We will continue to work closely with Region V staff until all questions related to the NOD are adequately addressed within the 18 months specified in the notice.

This response includes three main sections:

1. Updated Workload Analysis covering all Title V related elements of the program.
2. Fee Information including projected emission fee revenues and results of recent redeployment efforts.
3. Outline of actions planned to address programmatic issues raised in the NOD.

In addition to these items, please note that the State of Wisconsin has committed to completion of the Title V permit backlog by the end of calendar year 2005. This target was firmly established by Governor Jim Doyle in the Grow Wisconsin Initiative launched in fall of 2003. Wisconsin is well on its way to accomplishing this goal with 82 of the original 148 permit backlog either issued or in public notice as of June 1, 2004.

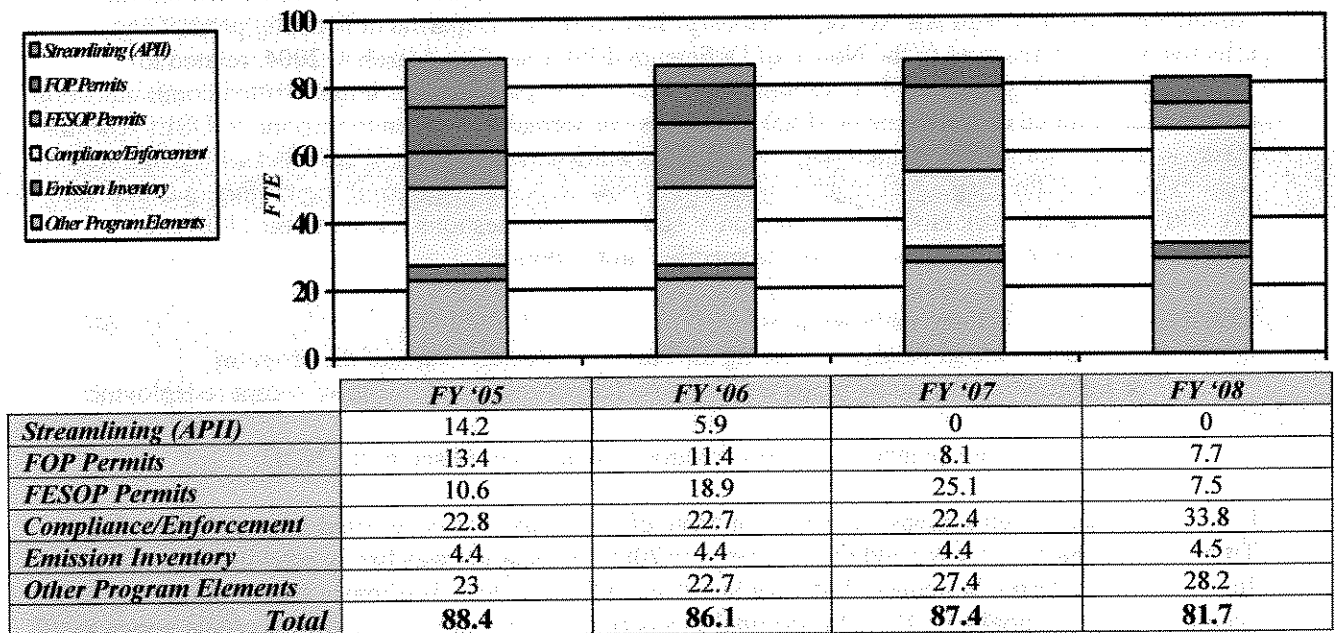
1. WORKLOAD ANALYSIS

WDNR Air Management staff conducted a workload analysis to determine the staff resources that will be required for Wisconsin's Air Management Program Title V activities over the next four state fiscal years (FY '05 – '08). The resources required for the Air Permit Improvement Initiative (APII), as well as the efficiencies anticipated to be gained from that initiative, are included in the analysis. The analysis includes a planning aspect, since the workload must be "balanced" – distributed relatively evenly across

the four years to avoid significant swings in required staff levels. The results of the analysis show that current staffing levels (87.5 FTE) will be adequate to accomplish Title V activities over the next four fiscal years. The following premises are included in the workload analysis:

- Efforts expended in APII permit process and IT improvements near term will be more than recouped through efficiencies gained in subsequent years.
- All first-issuance Title V major permits will be completed by December 31, 2004
- All first-issuance synthetic minor permits will be completed, and any backlog of major or synthetic minor permit renewals will be eliminated by the end of state fiscal year '08.
- The WDNR Ranking Strategy (approved by Region 5 for FY '04) will be used in FY '05 - '07 to establish CMS (Compliance Monitoring Strategy) plan alternative evaluation frequencies and develop source-specific FCE (Full Compliance Evaluation) lists. In fiscal year '08 and thereafter, FCE lists will be developed based on standard CMS evaluation frequencies for major and synthetic minor sources.

The following chart summarizes the results of the workload analysis, and gives a sense of the distribution of major portions of program effort. It should be noted that "Other Program Elements" combines a number of smaller elements, including direct first-line supervision, policy development, IT and legal support, program assistance, and others. They are shown combined in this chart for simplicity. Finally, while an evaluation of the work anticipated at state-only (minor) sources was included in our workload analysis, it is not shown in the table or chart below, as that work is not Title V eligible. The chart and table do include all permitting, compliance, and enforcement work at major (FOP) and synthetic minor (FESOP) sources.



2. FEE INFORMATION

A. Presumptive Minimum

The WDNR collects emission fees from Title V and non-Title V facilities. Detailed facility information and related fees is captured in our air emissions inventory database. From this database, we are able to annually discern what emission fees were paid by the Title V and non-Title V facilities. For example, the 2002 emission inventory billing of \$9,739,081 included \$143,128 from State Operation Permit (non-Title

V) emission fee revenues and \$9,595,953 from Federal Operation Permit and Federally Enforceable State Operation Permit (Title V) emission fee revenues.

Each funding source, or appropriation, at the WDNR has its own spending limits and constraints. The WiSMART (Wisconsin State Management Accounting and Reporting Tool) accounting system utilizes "activity codes" to determine the funding source of expenditures whether it is from a purchase or personnel time report. Since an activity code may be associated with only one funding source, the system allows us to appropriately manage the use of fees for the activities for which they were collected. The Air Program will be creating new activity codes for the non-Title V activities to allow better management of Title V vs. non-Title V revenues and expenditures.

Based on the following comparison of the revenue Wisconsin collects in emission fees, as compared to that which is prescribed under 40 CFR 70.9 as the "presumptive minimum", we believe our current fee structure met the "presumptive minimum" in past fiscal years and will meet it again in FY05.

Emission Fee Revenue 1996-2001							
Year	Billable Tons per WI Regulations			Billable Tons per 40 CFR 70.9			Difference
	Billable Tons	Dollars Per Ton	Revenue	Billable Tons	Dollars Per Ton	Revenue	
1996	273,506	\$31.77	\$8,689,285.62	257,569	\$31.77	\$8,182,967.13	\$506,318.49
1997	291,184	\$32.65	\$9,507,157.60	274,210	\$32.65	\$8,952,956.50	\$554,201.10
1998	280,959	\$33.19	\$9,325,029.21	265,850	\$33.19	\$8,823,561.50	\$501,467.71
1999	289,154	\$33.80	\$9,773,409.91	274,292	\$33.80	\$9,271,069.60	\$502,340.31
2000	285,628	\$35.71	\$10,199,775.88	244,790	\$34.85	\$8,530,931.50	\$1,668,844.38
2001	276,354	\$35.71	\$9,868,601.34	237,689	\$36.00	\$8,556,804.00	\$1,311,797.34
2002	275,000	\$35.71	\$9,820,250.00	250,000	\$36.57	\$9,142,500.00	\$677,750.00
2003	275,000	\$35.71	\$9,820,250.00	250,000	\$37.07	\$9,267,500.00	\$552,750.00
2004	275,000	\$35.71	\$9,820,250.00	250,000	\$37.81	\$9,452,850.00	\$367,400.00
2005	275,000	\$35.71	\$9,820,250.00	250,000	\$38.57	\$9,641,907.00	\$178,343.00

In the future, if we determine our Title V costs will exceed the fees collected, or if our fees fall below the presumptive minimum, we will pursue solutions to funding stabilization through the state budget process. This could include a variety of methods to meet the presumptive minimum, including the restoration of the Consumer Price Index, increasing the tonnage cap, and/ or a facility fee. Finally, on May 13, 2004, we received additional questions on the Title V funding structure. Since they were posed outside of the Notice of Deficiency, we will respond to them in a separate response.

B. Redeployment

In October 2003, the WDNR Air Program implemented an extensive "redeployment" plan to align all our resources with our funding. We redeployed 21 FTE of work. In cases where the current employee's position descriptions allowed, we were able to shift the focus of work assignments for staff. But in some cases, where we eliminated whole functions, staff were required to compete openly for new positions due to human resource classification issues. We successfully placed 13 of our staff in the new positions.

There were several activities we considered very valuable, but we did not have funding to support them. In the process described above, we shifted resources to activities that were mission critical and had funding. The programs we needed to eliminate were:

- ⇒ Biomonitoring
- ⇒ 18 Ambient air monitoring sites
- ⇒ Smoke School
- ⇒ Climate Change Policy Analysis
- ⇒ Forecasting for particle pollution levels.

In addition to completely eliminating functions, we have streamlined others and focused on our most important work. We will still do inspections, but they will be focused on sources that are bigger or likely to have significant environmental problems. We have also prioritized our permit work. The program reductions include:

- ⇒ Small source compliance and enforcement
- ⇒ Non-title V complaint follow-up
- ⇒ Mercury modeling and policy analysis
- ⇒ Ozone policy analysis
- ⇒ Air Toxics policy analysis
- ⇒ Stack Testing
- ⇒ Asbestos

Part of the redeployment plan included a reorganization of the Central Office and the elimination of one regional supervisor position. The Central Office was reorganized from eight "industrial process" sections to seven "function based" sections. The new sections are:

- ⇒ Monitoring
- ⇒ Emission Inventory and Small Source
- ⇒ Permits and Stationary Source Modeling
- ⇒ Compliance and Enforcement
- ⇒ Environmental Analysis and Outreach
- ⇒ Regional Pollutants and Mobile Sources
- ⇒ Management

C. Grant Match

Since we began the Title V program in Wisconsin, we communicated openly with Region 5 on our emission fee program and the use of emission fees in excess of the presumptive minimum for grant match. As needed changes became apparent, we implemented improvements to our systems to accommodate the changes. In the Spring of 2003, we renegotiated with EPA Region 5 how we match our Section 105 Air Pollution Control grant. It was agreed by Region 5 that the program activities and costs we incur implementing the following programs are eligible for match on our 105 Air Pollution Control grant:

- ⇒ New Source Permits
- ⇒ Mobile Sources
- ⇒ Asbestos Abatement
- ⇒ CFCs
- ⇒ Motor Vehicle Emission & Maintenance
- ⇒ Vapor Recovery Administration
- ⇒ Non-Part 70 stationary source programs

As of this federal fiscal year, which began September 30, 2003, we are no longer utilizing any Part 70 fees to match the 105 grant.

3. PROGRAMMATIC ISSUES

US EPA has identified four deficient programmatic issues within Wisconsin's Title V operation permit program. Three of the issues identified involve the interface between Wisconsin's SIP approved Title I new source review program and its Title V operation permit program. The fourth issue concerns Wisconsin's lack of inclusion of insignificant emissions units in Title V permits. The Department has reviewed US EPA's concerns in detail and determined which issues will require statutory and/or administrative rule changes to correct and those that can be addressed by change in procedure or policy. The following addresses each of US EPA's concerns and the Department's response and plan for addressing the concerns.

A. Expiration Of New Source Review Permits

EPA asserts that the New Source Review (NSR) permits issued by DNR expire and, therefore, DNR does not have authority to include conditions from an expired NSR permit in a Title V operation permit. EPA states that permit conditions from previously issued permits must exist independently of the Title V permit. Because the expired permit conditions do not remain in effect, EPA states that DNR could lose its authority to include such conditions in a renewed Title V permit. EPA disagrees with Wisconsin's interpretation of its statutes and rules which, the state asserts, gives it authority to put the disputed permit conditions into Title V operation permits.

RESPONSE: Statutory Change and SIP and Title V Program Change

DNR agrees that the New Source Review Permits expire, but we maintain that we have authority to place those NSR conditions in a Title V permit, even if the NSR permit has expired.

In order to address this concern to EPA's satisfaction, DNR would need to request changes to state statutes. One option is to change the statutes to specify that while authorization to construct or modify a source expires, the conditions in a NSR permit are permanent. We believe this sort of change would address EPA's concerns about this issue. WDNR will pursue statutory change to address this concern in the next session of the Wisconsin Legislature.

B. Combined NSR And Title V Permits

EPA asserts that DNR has issued combined NSR/Title V permits, but that the permits do not identify or specify the origin of NSR conditions. In addition, as noted above, EPA states that Wisconsin does not have provisions to ensure that NSR conditions are permanent (see Issue 1 above). EPA states that since all terms and conditions of SIP-approved NSR permits must be federally enforceable, those conditions must be identified as NSR conditions and remain federally enforceable when they are included in a Title V permit.

RESPONSE: Procedural Change Initially, followed by Possible Statutory and Administrative Rule Change and SIP and Title V Program Change

DNR does not issue combined NSR/Title V permits, but we agree that our Title V permits do not identify or specify the origin of NSR conditions. DNR agrees that federal law requires that all terms and conditions of a SIP approved NSR permit be federally enforceable. In order to address this concern, DNR is now identifying in Title V permits those conditions that are from NSR permits by referencing the NSR permit number in the authority for the permit condition. DNR is currently evaluating the merits of a merged permit system, which will require statutory and administrative rule changes to implement.

C. Federal Enforceability

EPA asserts that all conditions of a permit issued pursuant to a SIP-approved permit program, such as Wisconsin's NSR program, are federally enforceable under 40 CFR 52.23. EPA states that DNR does not identify such NSR conditions as federally enforceable when they are placed into Title V permits.

RESPONSE: Procedural Change Initially, followed by Possible Administrative Rule and SIP Change and Title V Program Change

DNR agrees that federal law states that all permit conditions in a permit issued pursuant to a SIP-approved permit program are federally enforceable. DNR is now identifying conditions from its SIP-approved NSR permits in the Title V permit and DNR has discontinued marking these conditions as "state-only" enforceable conditions. In the future, DNR may revise its SIP to establish a "state-only" portion in NSR permits that would allow DNR to mark conditions in NSR and Title V operation permits as "state-only" enforceable conditions.

D. Insignificant Emission Unit Requirements

EPA asserts that nothing in 40 CFR Part 70 (the basis for the state's operation permit rules) allows a state to exempt insignificant emission units from the permit content requirements of the operation permit program. EPA indicates that the Preamble to the Part 70 rules provides that the insignificant emission units exemption does not apply to permit content.

RESPONSE: Administrative Rule Change and SIP and Title V Program Change

DNR disagrees that the Part 70 rules require insignificant emission units to be included in a Title V permit. Early in DNR's administration of its Title V program, a permittee appealed their permit stating that DNR did not have authority to place insignificant emission units in the permit. DNR agreed that our rules were not explicit on this issue, similar to the Part 70 rules. In order to address this issue, DNR will have to revise its operation permit rules to indicate that insignificant emission units must be included in Title V operation permits.

WDNR will immediately implement two programmatic changes. Communication with WDNR air permitting staff has already occurred to note construction permit reference numbers in operation permits as they are issued and to discontinue the practice of flagging conditions from NSR permits as "state-only" requirements in Operation Permits.

As can be seen by the information provided in the workload analysis, the Department is relying significantly on permit streamlining. The WDNR has and will continue to provide USEPA Region V staff opportunity for input in our Air Permit Improvement Initiative (APII). With the input of staff and multiple stakeholders, APII has established significant yet achievable targets to improve and streamline the operation permit program. Both process improvements and information technology advancements will be key elements of this effort. Staging efforts for establishing the work on the second major phase of the Air Permit Streamlining Initiative is underway. Active work will begin within the next month. Region V staff may expect more frequent updates and opportunities to provide input at that juncture.

WDNR will continue to work expeditiously on outstanding issues described in this response. WDNR appreciates the professionalism of USEPA Region V staff. Please direct questions related to this response to Lloyd Eagan, Director of the Bureau of Air Management, 608-266-0603.

Sincerely,

/s/ *Scott Hassett* MWS
Scott Hassett
Secretary

cc: Pat Henderson – Governor's Office
Joint Legislative Audit Committee
Al Shea – AD/5
Lloyd Eagan – AM/7
Steve Rothblatt – EPA, Region
Cheryl Newton – EPA, Region 5

Jeff Hanson – AM/7
Bill Baumann – AM/7
Sheralynn Stach – AM/7
Marcia Penner – LS/5
Air Management Team
Bruce Nilles – Sierra Club

Appendix

Presentation to Permits and Fees Committee— May 27, 2004

The attached PowerPoint presentation was given to the Permits and Fees Committee of the Wisconsin Clean Air Act Task Force. It was part of the WDNR effort to engage external stakeholders in the ongoing improvement efforts underway within the agency. It provides some additional supporting documentation to the response to USEPA's NOD for Wisconsin.

Permits and Fees Committee

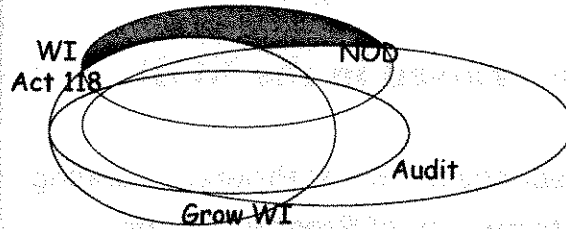
Wisconsin Clean Air Act Task Force
Thursday, May 27, 2004

Agenda

- Update on Response to WA 118
- Update on Notice of Deficiency

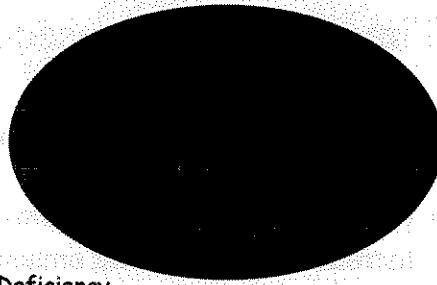
Update on Wisconsin Act 118

- Permit Streamlining
- Registration Permits and General Permits
- Permit Application Completeness
- Start of Construction Waiver
- Appeal of Operation Permit Emission Monitoring Requirements
- Permit Challenge by Applicant



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



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

Calendar of Events

Month & Year	Notice of Deficiency
March/April 2004	Meetings with EPA 3/29 and 4/15
June 2004	Day 90. Take "significant action" or EPA withdraws approval
September 2004	
December 2004	
March 2005	
September 2005	Month 18. NOD Corrections Complete or Sanctions
December 2005	
March 2006	Month 24. If deficiencies remain, EPA takes over all or part of program

Issues raised in the NOD

- Adequacy of Title V Program Funding
- Management of Program Funds
- Issuance Rate of Operation Permits
- Legal issues related to construction permits and operation permits

Timelines and Consequences

- If issues unresolved within 18 months, EPA **must** invoke sanctions. :
- Restrictions in federal highway funds
- Increase nonattainment emission offsets
- If unable to resolve issues within 24 months, EPA **must** take over Wisconsin's Title V Program and charge federal fees.
- EPA **may** impose sanctions earlier than 18 months after issuance of the NOD.

Response to NOD

- Revised Workload Analysis
- Fee Information
- Proposed response to other issues

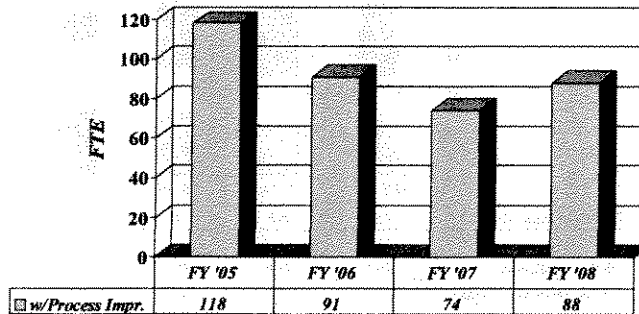
Workload Analysis

- Invest in process & IT improvements up front to gain efficiencies later
- Adjust timing of some activities to accommodate streamlining
- Recognize economic realities & constraints

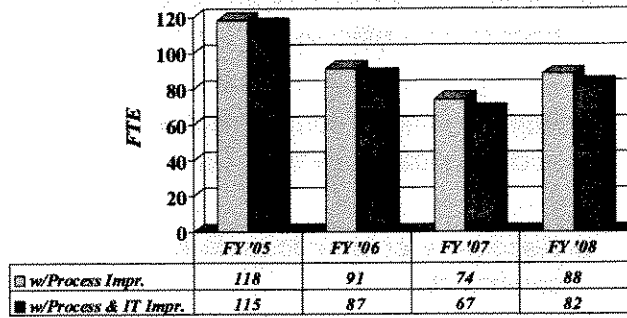
Workload Analysis (Con't)

- Workload Analysis includes estimates of numbers of sources over time
 - Type of source (FOP, FESOP, SOP)
 - Type of "primary compliance document" (permit)
- Workload estimates based on 5 years of time sheet data
- Workload estimates vary by source, permit type
- Workload estimates coordinated with APII targets and timelines.

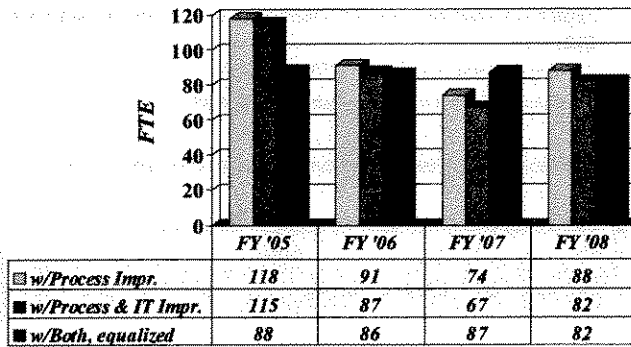
Workload Analysis (Con't)



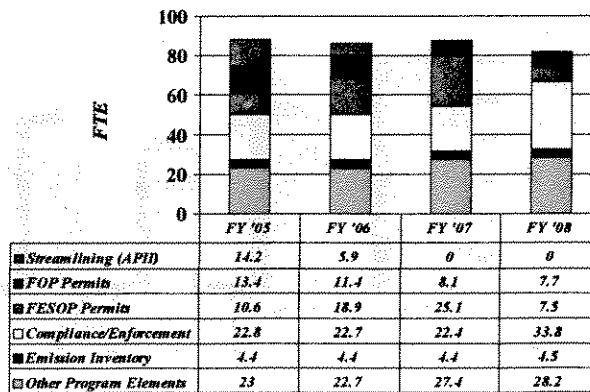
Workload Analysis (Con't)



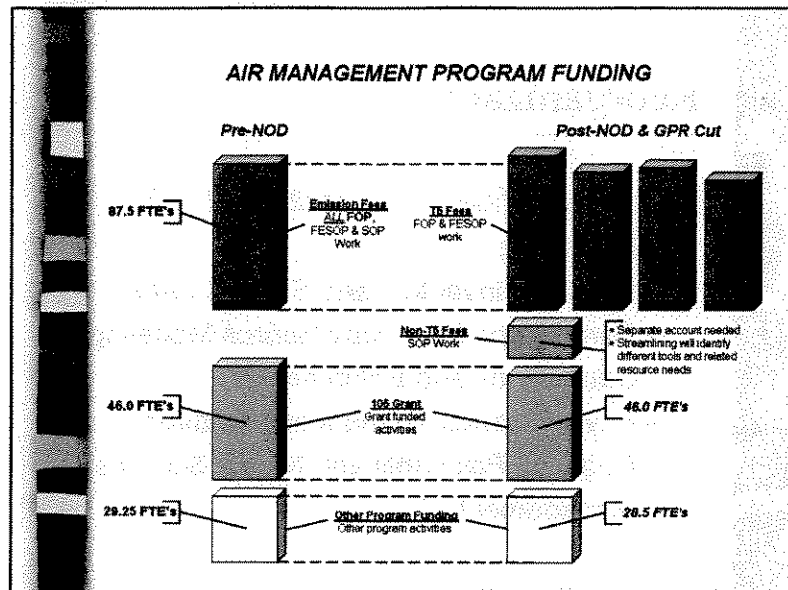
Workload Analysis (Con't)



Workload Analysis (Con't)



AIR MANAGEMENT PROGRAM FUNDING



Redeployment

■ Programs eliminated:

- Biomonitoring
- 18 Ambient air monitoring sites
- Smoke School
- Climate Change Policy Analysis
- Forecasting for particle pollution levels

Redeployment Cont'd

■ Program Reductions

- Small source compliance and enforcement
- Non-title V complaint follow-up
- Mercury modeling and policy analysis
- Ozone policy analysis
- Air Toxics policy analysis
- Stack Testing
- Asbestos

Reorganization

- Central Office has 7 sections (vs 8):
 - Monitoring
 - Emission Inventory and Small Source
 - Permits and Stationary Source Modeling
 - Compliance and Enforcement
 - Environmental Analysis and Outreach
 - Regional Pollutants and Mobile Sources
 - Management

Grant Match

- Renegotiated match Spring 2003
 - New Source permits
 - Mobile Source
 - Asbestos
 - CFC
 - Motor Vehicle Emission & Maintenance
 - Vapor Recovery Administration
 - Non-Part 70 Stationary Source

Fee Information

Year	Emission Fee Revenue 1996-2001						
	Billable Tons per WI Regulations			Billable Tons per 40 CFR 70.9			Difference
	Total	Dollars	Revenue	Total	Dollars	Revenue	
1996	275,300	\$31.77	\$8,689,285.82	257,509	\$31.77	\$8,182,987.13	\$506,318.69
1997	291,184	\$32.85	\$9,507,157.80	274,210	\$32.85	\$9,052,958.50	\$454,201.10
1998	280,950	\$33.19	\$9,325,029.21	285,850	\$33.19	\$9,523,581.50	-\$201,407.71
1999	289,154	\$33.80	\$9,773,409.91	274,282	\$33.80	\$9,271,058.80	\$502,348.31
2000	285,628	\$35.71	\$10,199,775.89	244,790	\$34.85	\$8,530,931.50	\$1,668,844.39
2001	278,354	\$35.71	\$9,968,901.34	237,889	\$36.00	\$8,559,804.00	\$1,311,797.34
2002	275,000	\$35.71	\$9,820,250.00	250,000	\$38.57	\$9,142,500.00	\$677,750.00
2003	275,000	\$35.71	\$9,820,250.00	250,000	\$37.97	\$9,287,500.00	\$552,750.00
2004	275,000	\$35.71	\$9,820,250.00	250,000	\$37.81	\$9,452,850.00	\$367,400.00
2005	275,000	\$35.71	\$9,820,250.00	250,000	\$38.57	\$9,641,907.00	\$178,343.00

Response to Other Program Issues

- EPA identified 4 programmatic issues
- Expiration of NSR Permits
- Combined NSR/T5 Permits
- Federal Enforceability
- Insignificant Emissions Unit Requirements
- Response to identify legal mechanisms for address these

Expiration of NSR Permits

- EPA questioning whether conditions from expired NSR permits remain in effect.
- EPA questioning whether WI Title I conditions exist independently of Title V
- Statutory fix necessary to resolve
- Solution may come from merged permits

Combined NSR and Title V Permits

- Related to expiring NSR issue
- EPA having trouble identifying Title I conditions in Title V permits
- Aside from expiring permit issues, programmatic fix will resolve
- WI will reference the originating permit in Title V (e.g. NR 405.08, 00-POY-109)

Federal Enforceability

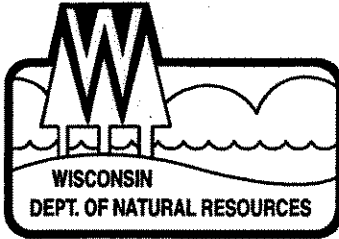
- EPA asserts that conditions included in State SIP permits are federally enforceable
- Currently WI regulations do not allow for "state-only" conditions in NSR
- WI will not identify conditions that are included in NSR permits as "state-only", even if authority originates in non SIP rule - programmatic change
- In future, WI may revise SIP to include "state-only" side to NSR permits - regulatory change

Insignificant Emissions Units

- EPA asserts that Part 70 requires the inclusion of insignificant emissions units in Title V permits
- Was also NOD issue in Ohio
- WI regulations require IEUs to be included in permit applications
- WI regulations currently silent on IEUs to be included in permit content
- Permit content regulation requires change to resolve

Your Input

- Questions?
- Comments?



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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September 1, 2004

CAROL
The Honorable Carol A. Roessler
Co-Chair Joint Committee on Audit
Room 8 South
State Capitol

SUZANNE
The Honorable Suzanne Jeskewitz
Co-Chair Joint Committee on Audit
Room 314 North
State Capitol

Subject: Follow-up Report - Air Management Program Audit Recommendations

Dear Senator Roessler and Representative Jeskewitz:

I'm pleased to provide you with this report on our progress and success at addressing audit report recommendations included in the February 2004 evaluation of the Air Management Program. When I appeared at the May 4th Joint Committee hearing on this audit report I was able to provide testimony that demonstrated the seriousness with which we are addressing these recommendations. At that time I also outlined how the air permit streamlining initiative that we started in June 2003 put us in a favorable position to address many of the report recommendations.

The attached report provides you with an update on our progress at implementing report recommendations. I want to assure you that we are moving as aggressively as we can within our resource constraints to address the concerns that have been identified. As you know we are addressing other important demands as well. On March 4, 2004, USEPA sent a Notice of Deficiency concerning the operation of our Title V permit program. We are working closely with USEPA to address their concerns. Legislators received a copy of our June 4, 2004, response to this notice.

In a separate September 2004 report to the legislature our air permit streamlining efforts are presented. This report, a provision of 2003 Wisconsin Act 118, provides more detail on how we are streamlining the air permit program.

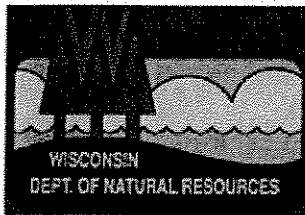
I believe you will be pleased with our progress in meeting audit report recommendations and I am interested in your comments and questions.

Sincerely,

Scott Hassett

Scott Hassett
Secretary

**Report to the Joint Legislative Audit
Committee on Recommendations in the
Air Management Program Audit**
Legislative Audit Bureau Report 04-1



Wisconsin Department of Natural Resources
September 1, 2004

Publication Number – AM 355 - 2004

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BACKGROUND

The Air Management Program has actively addressed the recommendations contained in the February 2004 Legislative Audit Report. The Department initiated important actions in advance of report publication and has completed additional work since the report was published. Significantly, responding to a majority of the fifteen recommendations in the audit report is linked to several other important and related events that are also focusing our attention on permit streamlining, data management and compliance activities in the Air Management Program. We have made progress and this report provides the status of our efforts to address report recommendations and a schedule for the completion of our work.

In addition to the audit recommendations, we are also responding to requirements for program changes in 2003 Wisconsin Act 118, a Notice of Deficiency from the United States Environmental Protection Agency (USEPA) concerning our implementation of the federal permit program and federal regulations that require changes to our construction permit program. A brief summary of each of these responsibilities is included in this section of the report. To effectively address all these interrelated actions we have established a consistent set of Air Management Program priorities.

- Process permits and conduct compliance inspections in a timely manner.
- Simplify program requirements by developing alternative permitting approaches.
- Provide more certainty to applicants in the permit review process.
- Change culture and attitude toward stakeholders.
- Align activities with funding.
- Effectively manage program changes.

Along with these focused program priorities we are implementing the Air Permit Improvement Initiative (APII) established by Secretary Hassett in June 2003 and assigned a Data Integration Team to support these interrelated actions described in more detail below.

2003 WISCONSIN ACT 118

New statutory provisions require changes to streamline the air permit program and provide permit applicants the ability to appeal compliance monitoring requirements and challenge certain permit conditions without delaying the start of construction. Progress has been in implementing these provisions (Appendix A - 2003 Wisconsin Act 2003 Implementation Status Report).

NOTICE OF DEFICIENCY

The USEPA has taken formal action to require Wisconsin to address a number of serious issues they have with our implementation of the federal operation and construction permit programs. The deficiencies include not demonstrating that fees are adequate to cover permit program costs, improper administration of program funds, and not issuing permits to affected facilities in the time allowed by the Clean Air Act. In addition, they have identified program corrections necessary to ensure that all permit conditions are federally enforceable and that all applicable requirements are included in the permits we issue.

The federal Notice of Deficiency, issued in March 2004, required an initial response by June 4, 2004 (Appendix B - Wisconsin DNR 90-Day Response). Wisconsin must fully address deficiencies

by September 4, 2005, or face sanctions with the possibility that USEPA would withdraw approval for Wisconsin to continue operating the federal program and take action to assume responsibility for program operation.

Additionally, if the state has not corrected these deficiencies by September 4, 2005, USEPA could impose sanctions including reductions in federal highway funds and more stringent requirements for industry in our ozone nonattainment counties. On August 5, 2004, USEPA replied to our initial response (*Appendix C - August 5, 2004, USEPA Reply*) with recommendations for additional actions they feel are necessary. As part of their evaluation of our response USEPA also examined air permit provisions of 2003 Wisconsin 118 and provided a list of concerns in a separate letter on August 5, 2004 (*Appendix D - USEPA 118 Concerns*).

FEDERAL NEW SOURCE REVIEW

USEPA has put in place federal regulations that include changes to the permitting process for new and modified sources of air pollution. The Department is modifying Wisconsin's New Source Review regulations to mesh with recent federal rule changes and is working closely with an external stakeholder group in developing rule revisions.

The Department has set one of the most aggressive schedules in the nation for revising its state rules to implement the federal regulations. The goal is to enhance flexibility for industry while maintaining environmental protection. The Natural Resources Board reviewed the draft rules for hearing authorization at its December 2003 meeting. Public hearings have been conducted and final rules for adoption will be presented to the Natural Resources Board in fall 2004.

ONGOING INITIATIVES TO ADDRESS AUDIT RECOMMENDATIONS

AIR PERMIT IMPROVEMENT INITIATIVE

The Department began 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 completion date of December 2005 for identifying and initiating improvements. This effort has completed its data gathering activities and is now engaged in developing process improvement approaches. Through the APII we will be addressing Audit Report Recommendations 3 and 8 that request further streamlining of the operation and construction permit programs, respectively.

Through an extensive internal and external consultative process, targets and measures have been established to guide the process improvement work of the APII (*Appendix E - APII Targets and Measures*). Targets and measures for five distinct areas have been established including process, customer service, environment, finance and innovation and learning. Importantly, the APII targets and measures accommodate the Governor's Grow Wisconsin Initiative, responsibilities in 2003 Wisconsin Act 118, and related recommendations in the Legislative Audit Report. In addition, achieving these targets and measures will also further our ability to address permit program deficiencies identified by the USEPA.

IMPROVED DATA MANAGEMENT

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

and enforcement responsibilities and help streamline the permit review process (*Appendix F - 16.515 Request*). 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.

The data integration project is on a parallel schedule to the APII and will address Audit Report Recommendation 14 requesting improvements in our data system (*Appendix G - Data Integration Action Plan*). Although the data integration effort is on a parallel schedule to APII, implementation of data improvements will take longer to occur.

EMISSION FEES

CORRECT ANNUAL EMISSION FEES BILLING ERRORS (REPORT RECOMMENDATION 1.)

- *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.*

An analysis was completed comparing information in the emission inventory database - Air Emission Management System (AEMS), and the air permits tracking system - APS. We identified 260 facilities that were either permitted and not in AEMS or in AEMS and not permitted. Few if, any, of these companies have emissions significant enough to receive an emission fee charge. Our findings are consistent with the Legislative Audit Bureau findings that the companies that failed to apply for an operation permit appear to be small and not significant sources of air emissions.

Out of this analysis we delivered refunds to ten facilities that we determined should not have been billed for their air emissions. Emission fees can be collected as long as the facility needs a permit and their amount of air pollutants exceeds 5 tons. For the ten facilities, a reassessment showed these companies did not need a permit and consequently should not have been billed. The Air Management Program decided to refund fees collected from 1996-2003 based on air emissions in 1995-2002. The sum of the refunds was \$22,225.79. Each facility was sent a letter with the appropriate refund check on February 17, 2004.

A system has been developed to ensure the AEMS and APS data systems are compared before air emission fee statements are sent. We have constructed an Intranet page that identifies procedures to assist staff in their quarterly data review.

OPERATION PERMITS

ASSIGN ADDITIONAL PERMIT ENGINEERS TO ISSUE OPERATION PERMITS IN THE SOUTHEAST REGION (REPORT RECOMMENDATION 2.)

The Air Management Program has assigned over half of the remaining operation permit reviews to staff that are located outside the Southeast Region to ensure that we eliminate the backlog of 148 federal operation permits by the end of 2004. Of the 88 Southeast Region permits included in this backlog, 57 have been assigned elsewhere. Overtime has been made available to staff working on operation permits as well.

We are on target to eliminate the backlog this year. Currently, 63 permits are completed and 53 are in public comment. Permits in public comment are generally 60 days from being issued. The remaining 32 are actively being reviewed and should enter public comment in time to be issued by the end of December 2004.

FURTHER STREAMLINE THE OPERATION PERMIT PROGRAM (REPORT RECOMMENDATION 3.)

- *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 Air Management Program is implementing these recommendations primarily through the APII. The APII will clarify when, where and who should do air quality modeling, simplify the language and detail required in preliminary determinations and permits, and develop an improved data management 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.

Another recent legislative report contains specifics about the additional operation and permit program streamlining that is being evaluated. Under non-statutory provisions of 2003 Wisconsin Act 118 a report to the legislature on Department efforts to streamline air permits is required by September 1, 2004. This report (*Report on Air Permit Streamlining Efforts*) will address the recommended actions to streamline the operation permit program contained in the audit report. The principal focus of this report is to outline in concept how the permit program will be changed and the schedule for development and implementation of permit program changes.

ENSURE FACILITIES HAVE PROPERLY APPLIED FOR PERMITS (REPORT RECOMMENDATION 4.)

- *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*

The procedure developed to address Audit Report Recommendation 1 will also address this recommendation. Through this procedure a comparison of the emission inventory and permit databases is made to verify whether facilities that submit application fees have applied for operation permits. This comparison will also exclude from the Department's billing procedures those facilities that are exempt from operation permit requirements.

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. We are on schedule to complete this initial comparison by December 2004 with plans to conduct quarterly reviews thereafter.

As part of the data integration project this procedure will be automated to improve efficiency in the future.

ISSUE COMPLETED PERMITS (REPORT RECOMMENDATION 5.)

- *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. The remaining permits that have been previously public noticed but not issued have been examined. In connection with the Notice of Deficiency, a workload analysis was performed that establishes the effort required to address any previously noticed permits that have federal permit implications (*Appendix B - Wisconsin DNR 90-Day Response*). The effort needed to issue final permits for affected facilities has been identified and the work plan process will be used to eliminate the backlog. No future backlog will occur because 2003 Wisconsin Act 118 requires permit issuance within 180 days of permit application.

The permit tracking system has been updated to include all tracking milestones necessary to monitor the requirements of 2003 Wisconsin Act 118. Notifications to permit reviewers and their supervisors when milestones are approaching are included in enhancements to be provided through the data integration project that will further improve management of permit deadlines.

ENSURE FACILITIES APPLY FOR RENEWAL OPERATION PERMITS (REPORT RECOMMENDATION 6.)

- *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 by November 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 at that time that will inform permit holders that have a permit expiring in the near future and that a timely renewal application is needed. The Internet site for air permit information has been updated to include renewal applications and guidance to assist applicants.

CONSTRUCTION PERMITS

REVISE THE EXPEDITED REVIEW PROCESS (REPORT RECOMMENDATION 7.)

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. We have adapted the permit data tracking system to be able to account for the period of time for notice publication.

FURTHER STREAMLINE THE CONSTRUCTION PERMIT PROGRAM AND RE-EVALUATE THE POTENTIAL OF IMPLEMENTING STREAMLINING RECOMMENDATIONS MADE BY ITS 1998 WORKGROUP (REPORT RECOMMENDATION 8.)

The APII is evaluating both the operation permit 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.

The APII has developed a plan to streamline construction permit reviews including general construction permits, registration permits for new sources, increasing exemptions for new sources and streamlining the review process for traditional individually negotiated permits. The work products from the APII should begin to appear in fall 2004.

An important focus of the restructuring of the Department, initiated in 1996, was to have implementation activities, such as construction permit review, decentralized to regional offices to achieve better customer service. A workgroup, comprised of air management staff and managers, consultants and industry was formed to examine issues concerning decentralization of this activity. Identifying what could be done to streamline and improve the way construction permit review is done was an additional task assigned to this group. The group had the following recommendations in their January 1999 *Report on New Source Permit Application Reviews in the Air Management Program*:

Streamlining

- Obtain complete applications from companies.
- Provide permit applicants with appropriate application forms.
- Change the application format to reflect the format in the preliminary determination document.
- Eliminate the backlog of operation permits for newly constructed sources.
- Shorten time spent on environmental assessments.
- Reduce the staff workload and maximize efficiency.

Keeping permit reviewers current on state-of-the-art issues and consistency

- Adequately train staff through the use of internal and external experts, and industrial and environmental organizations.
- Review and improve communications systems through the World Wide Web.
- Ensure consistency by ensuring permit reviewers are familiar with current policy and guidance.

In response to the report the Air Management Program has improved its air permit presence on the World Wide Web and Intranet to address consistency concerns and provide accessible permit program information. Although training opportunities have been limited by lack of funds, air management permit review staff have been able to participate in regional training opportunities sponsored by USEPA. The APII and data integration project will fully address the streamlining recommendations from this workgroup report.

ENFORCEMENT EFFORTS

IMPROVE THE FACILITY INSPECTION PROCESS (REPORT RECOMMENDATION 9.)

- *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.*

To address this recommendation the Air Management Program undertook a significant effort to update our inventory of facilities subject to the federal inspection policy prior to the selection of facilities to meet federal inspection commitments for the current fiscal year, FY '05. We have also improved our inspection tracking system to assist in monitoring progress and changes to the agreed inspection list. In addition, we have initiated quarterly management review of our inspection progress and adherence to the established facility inspection list.

A guidance memo for staff and managers has been distributed that outlines inspection selection priorities to meet our annual federal inspection commitment and the process for making changes to the list during the course of a fiscal year. A database has been established that lists the specific facilities included in the annual inspection commitment and is used to track the date and results of completed inspections.

The Air Management Program needs to have flexibility in making changes to the federal commitment list. Throughout the year changes in facility operating schedules and production cycles and citizen concerns require us to make changes in our federal inspection commitments. The audit report recommended better management of these changes because there is a risk that USEPA may not accept substitutions to the agreed list if certain procedures are not followed. We were able to institute new procedures in time to better manage changes made to our FY '04 commitments with substitution of 43 inspections with proper justification and only 6 inspection substitutions that were not properly justified.

The audit report raised concerns about facilities that had never been inspected. Our recently revised federal inspection list included the date of last inspection as well as an identification of facilities with no record of ever being inspected. This enables length of time since the last inspection (or lack of an inspection) to be considered in the selection process. Only one higher priority facility (2-year inspection cycle) remained at the end of FY'04 that had never been inspected. That facility is on this fiscal year's inspection list.

In FY'04 we completed 273 inspections of facilities on our federal inventory list exceeding our USEPA commitment of 243 inspections.

IMPROVE COMPLIANCE WITH FEDERAL POLICY FOR HIGH-PRIORITY VIOLATIONS (REPORT RECOMMENDATION 10.)

The Audit Report recommended that the Air Management Program track compliance with 60-day notice of violation and 270-day resolution standards established by USEPA in their HPV (high priority violation) policy. Our database for compliance information is not currently structured in a manner that allows us to evaluate conformance with these timelines. Currently, data cannot be entered until after an enforcement document, e.g. Notice of Violation, related to the HPV violation is entered into the database. Our database must be modified to enable entry of data as soon as compliance staff determines that a violation is indeed an HPV. Available programming staff is currently working on modifications to the compliance certification portion of our database (see above). Modifications necessary to allow evaluation of the day-60 and day 270 standards will likely not be able to be completed until early this upcoming winter. Once those modifications are complete, we will begin to assess compliance with the HPV timelines on a quarterly basis.

IMPROVE THE COMPLIANCE CERTIFICATION PROCESS (REPORT RECOMMENDATION 11.)

The Audit Report recommended that procedures be implemented to more accurately track compliance certification submittals and to assure enforcement procedures related to delinquent report submittals are followed. A number of problems have been identified with the database used to track compliance certification information.

There are several ways that duplicate records can inadvertently be created. An effort is currently underway to remove duplicate records. Programming staff are designing improvements to the database that will prevent future duplicate records from being created. The structure of the database will also be changed to allow more accurate tracking certification due dates. We anticipate being able to complete these improvements by fall 2004. The improvements are needed to be able to accurately identify delinquent certifications within the database. That in turn will enable comparison with enforcement records to evaluate how well enforcement guidance on this topic is being followed. Compliance staff statewide have been alerted to the duplicate record problems. This awareness should help alleviate the problem until programming to correct the problem can be completed.

IDENTIFY AFTER-THE-FACT PERMITS AND TAKE APPROPRIATE ENFORCEMENT ACTION (REPORT RECOMMENDATION 12.)

We have added a provision to our tracking system to identify after-the-fact (ATF) construction permits so they can be easily identified for compliance follow-up. The permit system now automatically sends e-mail to the compliance staff responsible for the source receiving an ATF permit. During FY '04, 21 sources received ATF permits. Enforcement actions were taken in relation to 12 of those ATF situations. We anticipate that this will improve now that we have the ability to easily identify ATF permits with our permit software.

PERFORMANCE MEASURES

ESTABLISH ADDITIONAL PERFORMANCE MEASURES (REPORT RECOMMENDATION 13.)

- *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.

The Air Management Program does have a system of performance measures that includes many but not all of the measures in this recommendation. Biennially, the Air Management Program has been establishing performance measures since 1999. In December 2003, the program adopted 12 performance measures for the current biennium that have been reviewed quarterly by the Air Management Program and Air and Waste Division Management Teams (*Appendix H – Air Performance Measures - 4th Quarter Report*). Included are measures to determine federal compliance inspection progress and establish the timeliness of construction permit review. Because of the many changes to the program that have occurred this year, we will be reevaluating our current list of performance measures as well as our approach to setting measures this fall. This will provide the opportunity to consider including additional measures in this recommendation.

In 2001 the Department began establishing performance measures as part of the state biennial process to link use of resources with important results. In the current biennium, 2003 - 2005, the Air Management Program is measuring performance toward achieving the one-hour ozone National Ambient Air Quality Standard in Wisconsin by 2007 (*Appendix I – 2005 – 2007 DNR Biennial Budget Performance Measures*). The measures we are reporting on annually are the emission reductions of pollutants that contribute to ozone formation and the number of permits issued to facilities that are sources of these emissions. This is the current measure the Air Management Program is focusing on related to air quality improvement and air emissions.

DATE SYSTEM IMPROVEMENTS

IMPROVE ITS DATA SYSTEM (REPORT RECOMMENDATION 14.)

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

Our data integration project presented earlier in this report will address this recommendation (*Appendix G – Data Integration Action Plan*). The action plan details how each of the elements of this recommendation will be addressed.

SEPTEMBER 2004 REPORT RECOMMENDATIONS

WE RECOMMEND THE DEPARTMENT OF NATURAL RESOURCES REPORT TO THE JOINT LEGISLATIVE AUDIT COMMITTEE BY SEPTEMBER 1, 2004, ON (REPORT RECOMMENDATION 15.):

- *The number and location of facilities that have not applied for initial or renewal operation permits, as required.*

Procedures have been developed that will allow us to review past records to determine if there are facilities that lack operation permit applications. After an initial review this fall we will continue with quarterly reviews of records to ensure operation permit applications are being received and the accuracy of emission fee bills. A renewal notification system is under development with implementation to occur this fall that will improve the timeliness of renewal applications.

- *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 procedure noted above would identify the number of applications outstanding or unassigned and provides insight into the reasons for oversight. That will help identify gaps in our procedures and desirable corrections to our data systems.

- *The status of permits that completed the public comment period that were never issued.*

The federal operation permits in this situation will be addressed as we eliminate the Title V backlog this year. The effort needed to issue final permits for the remaining affected facilities has been identified and the work plan process will be used to eliminate the backlog. Permit streamlining tools we are developing will also be used to issue the remaining permits in this situation.

- *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.*

Actions are being initiated when violations are detected. Procedures to detect violations are in place now however, data system improvements will improve our timeliness and detection capability.

- *Its plans to reallocate staffing resources to address backlogged permits, as well as the anticipated effects of these changes.*

The majority of the backlog of Title V permits included facilities located in one of five Department regions, the Southeast Region. Reassignments were made to spread the effort throughout the state. By this action we will eliminate the federal operation permit backlog this year. We have made good progress and have been able to redirect resources to focus on permit streamlining activities, the backlog of other operation permits and permit renewals.

- *The extent to which it plans to implement the permit streamlining recommendations made by its 1998 workgroup.*

The Air Permit Improvement Initiative is the focus of our permit streamlining activities. Recommendations from this workgroup report will be fully addressed as part of this effort.

- *How it will ensure that inspection frequency goals are met, and all facilities inspected.*

New guidance has been developed for inspectors and managers to achieve our federal inspection commitments. Improvements to the inspection tracking system have been made and quarterly review of inspection performance by the management team is being done to ensure that goals are being achieved. In FY'04 the Air Management Program surpassed our federal inspection commitment by completing 30 additional inspections of facilities on our federal inspection inventory.

September 1, 2004

Legislative Audit Report Response

List of Appendices

Appendix A - 2003 Wisconsin Act 2003 Implementation Status Report

Appendix B - Wisconsin DNR 90-Day Response to USEPA Notice of Deficiency

Appendix C - August 5, 2004, USEPA Reply

Appendix D - USEPA 118 Concerns

Appendix E- APII Targets and Measures

Appendix F - 16.515 Request

Appendix G - Data Integration Action Plan

Appendix H - Air Performance Measures 4th Quarter Report - August 12, 2004

Appendix I - 2005 - 2007 Biennial Budget Performance Measures

APPENDIX A

Appendix A
2003 Wisconsin Act 2003
Implementation Status Report
September 1, 2004

Permit Streamlining

285.60 (10) – The Department is required to continually assess permit obligations imposed under the statutes and implement measures to “allow timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening these obligation”.

In response to this statutory direction the Department developed an overall framework, with stakeholder input, to streamline and simplify the air permitting system. The framework, provided in a separate report to the Wisconsin Legislature on September 1, 2004, (*Report on Air Permit Streamlining Efforts*) will be used to guide ongoing permit streamlining actions, dialogue with stakeholders and for the development of registration permit and general permit rules. At their August 2004 meeting the Natural Resources Board approved public hearings on draft rules to implement the expanded use of general permits and establish registration permits.

Permit Application Completeness Determination

285.61 and 285.62 – Application completeness determination requirements for construction and operation permits have been revised. As of May 3, 2004, revised procedures for promptly assigning construction permit applications and getting the review process underway as soon as possible were in place. New checklists have also been developed to guide completeness determinations.

Start of Construction Waiver

285.60 (5m) – The Department is required to promulgate rules that allow a person to commence construction of a source prior to issuance of a construction permit upon a showing that commencing construction prior to permit issuance is necessary “to avoid undue hardship”.

The Air Management Program has established guidance to handle case-by-case requests for an “undue hardship” waiver including a working definition of hardship, criteria to grant a waiver and procedures for acting on requests. Our experience with this guidance will be used in the development of rules. Of five waiver requests we have received, three have been granted and one denied. The remaining request was withdrawn.

Appeal of Operation Permit Emission Monitoring Requirements

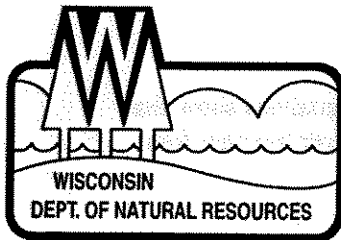
285.17(2)(b) – Provides opportunity to appeal monitoring requirements in an operation permit before it is issued. The Air and Waste Division Administrator and perhaps the Secretary could become involved in the appeal process.

The Air Management Program has established criteria and formal procedures for the appeal process. The procedures include a process that ensures that the permit recipient is aware of their appeal rights when they receive a draft operation permit. It also outlines a set of criteria to evaluate if a monitoring requirement is reasonable. The administrative process outlined would take no longer than 30 days.

Permit Challenge by Applicant

285.81 – Provides a permit applicant or holder the ability to challenge a portion of a permit. The remainder of the permit becomes effective and the permit holder may proceed with the activity for which the application was submitted or for which the permit was issued. An emission limit in a permit that is challenged becomes effective unless the permit holder challenging the emission limit obtains a stay of the emission limit from the hearing examiner of court considering the challenge. The *Notice of Appeal Rights* that is placed in air permits has been revised to reflect this provision.

APPENDIX B



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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Mr. Bharat Mathur
Acting Region V Administrator – R-19J
United States Environmental Protection Agency - Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Subject: Wisconsin DNR 90-Day Response to USEPA Notice of Deficiency Related to the
“Title V Program”, dated March 4, 2004

Dear Mr. Mathur:

The Wisconsin Department of Natural Resources (WDNR) takes its commitment to implement the 1990 Amendments to the Clean Air Act very seriously. Therefore, the Department is taking prompt and effective action to respond to the Notice of Deficiency EPA issued on March 4, 2004, related to Wisconsin's Title V program. The response presented below provides our initial written communication related to the Notice of Deficiency (NOD). It fulfills our formal obligation to respond to USEPA within 90 days. In addition to this written response, WDNR Air Management staff have met with USEPA Region V staff and management regarding the NOD as well as our Air Permit Improvement Initiative. We will continue to work closely with Region V staff until all questions related to the NOD are adequately addressed within the 18 months specified in the notice.

This response includes three main sections:

1. Updated Workload Analysis covering all Title V related elements of the program.
2. Fee Information including projected emission fee revenues and results of recent redeployment efforts.
3. Outline of actions planned to address programmatic issues raised in the NOD.

In addition to these items, please note that the State of Wisconsin has committed to completion of the Title V permit backlog by the end of calendar year 2005. This target was firmly established by Governor Jim Doyle in the Grow Wisconsin Initiative launched in fall of 2003. Wisconsin is well on its way to accomplishing this goal with 82 of the original 148 permit backlog either issued or in public notice as of June 1, 2004.

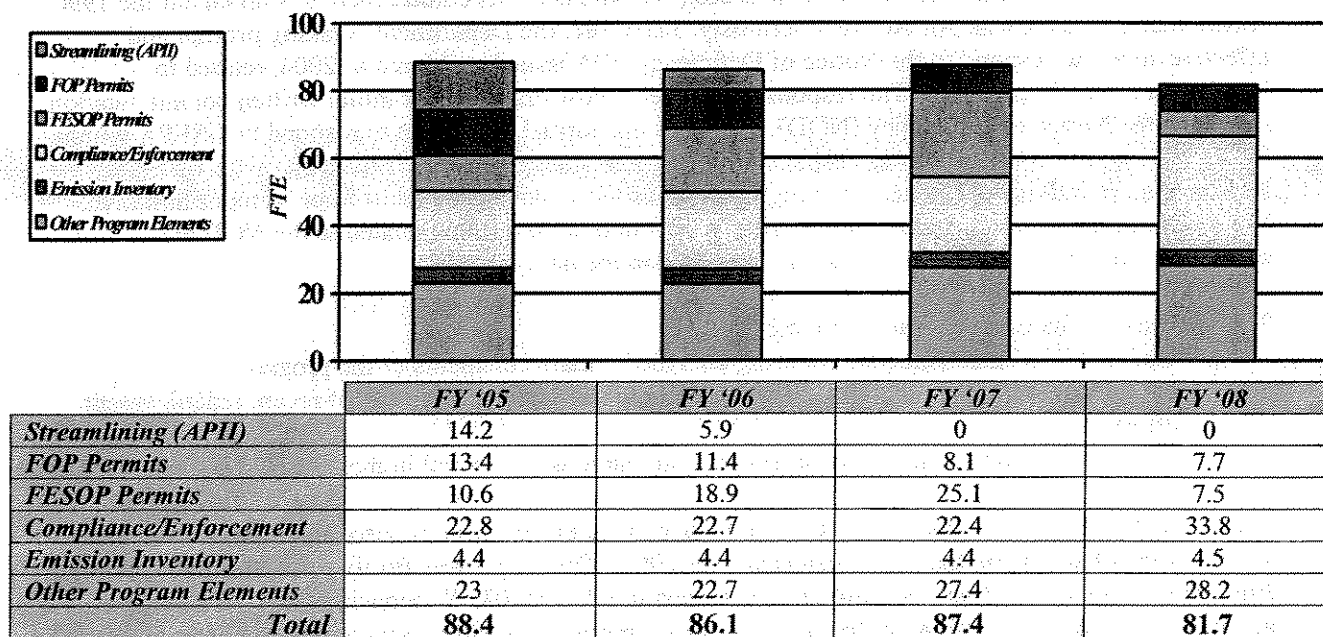
1. WORKLOAD ANALYSIS

WDNR Air Management staff conducted a workload analysis to determine the staff resources that will be required for Wisconsin's Air Management Program Title V activities over the next four state fiscal years (FY '05 – '08). The resources required for the Air Permit Improvement Initiative (APII), as well as the efficiencies anticipated to be gained from that initiative, are included in the analysis. The analysis includes a planning aspect, since the workload must be “balanced” – distributed relatively evenly across

the four years to avoid significant swings in required staff levels. The results of the analysis show that current staffing levels (87.5 FTE) will be adequate to accomplish Title V activities over the next four fiscal years. The following premises are included in the workload analysis:

- Efforts expended in APII permit process and IT improvements near term will be more than recouped through efficiencies gained in subsequent years.
- All first-issuance Title V major permits will be completed by December 31, 2004
- All first-issuance synthetic minor permits will be completed, and any backlog of major or synthetic minor permit renewals will be eliminated by the end of state fiscal year '08.
- The WDNR Ranking Strategy (approved by Region 5 for FY '04) will be used in FY '05 – '07 to establish CMS (Compliance Monitoring Strategy) plan alternative evaluation frequencies and develop source-specific FCE (Full Compliance Evaluation) lists. In fiscal year '08 and thereafter, FCE lists will be developed based on standard CMS evaluation frequencies for major and synthetic minor sources.

The following chart summarizes the results of the workload analysis, and gives a sense of the distribution of major portions of program effort. It should be noted that "Other Program Elements" combines a number of smaller elements, including direct first-line supervision, policy development, IT and legal support, program assistance, and others. They are shown combined in this chart for simplicity. Finally, while an evaluation of the work anticipated at state-only (minor) sources was included in our workload analysis, it is not shown in the table or chart below, as that work is not Title V eligible. The chart and table do include all permitting, compliance, and enforcement work at major (FOP) and synthetic minor (FESOP) sources.



2. FEE INFORMATION

A. Presumptive Minimum

The WDNR collects emission fees from Title V and non-Title V facilities. Detailed facility information and related fees is captured in our air emissions inventory database. From this database, we are able to annually discern what emission fees were paid by the Title V and non-Title V facilities. For example, the 2002 emission inventory billing of \$9,739,081 included \$143,128 from State Operation Permit (non-Title

V) emission fee revenues and \$9,595,953 from Federal Operation Permit and Federally Enforceable State Operation Permit (Title V) emission fee revenues.

Each funding source, or appropriation, at the WDNR has its own spending limits and constraints. The WiSMART (Wisconsin State Management Accounting and Reporting Tool) accounting system utilizes "activity codes" to determine the funding source of expenditures whether it is from a purchase or personnel time report. Since an activity code may be associated with only one funding source, the system allows us to appropriately manage the use of fees for the activities for which they were collected. The Air Program will be creating new activity codes for the non-Title V activities to allow better management of Title V vs. non-Title V revenues and expenditures.

Based on the following comparison of the revenue Wisconsin collects in emission fees, as compared to that which is prescribed under 40 CFR 70.9 as the "presumptive minimum", we believe our current fee structure met the "presumptive minimum" in past fiscal years and will meet it again in FY05.

Emission Fee Revenue 1996-2001							
Year	Billable Tons per WI Regulations			Billable Tons per 40 CFR 70.9			Difference
	Total Billable Tons	Dollars Per Ton	Revenue	Total Billable Tons	Dollars Per Ton	Revenue	
1996	273,506	\$31.77	\$8,689,285.62	257,569	\$31.77	\$8,182,967.13	\$506,318.49
1997	291,184	\$32.65	\$9,507,157.60	274,210	\$32.65	\$8,952,956.50	\$554,201.10
1998	280,959	\$33.19	\$9,325,029.21	265,850	\$33.19	\$8,823,561.50	\$501,467.71
1999	289,154	\$33.80	\$9,773,409.91	274,292	\$33.80	\$9,271,069.60	\$502,340.31
2000	285,628	\$35.71	\$10,199,775.88	244,790	\$34.85	\$8,530,931.50	\$1,668,844.38
2001	276,354	\$35.71	\$9,868,601.34	237,689	\$36.00	\$8,556,804.00	\$1,311,797.34
2002	275,000	\$35.71	\$9,820,250.00	250,000	\$36.57	\$9,142,500.00	\$677,750.00
2003	275,000	\$35.71	\$9,820,250.00	250,000	\$37.07	\$9,267,500.00	\$552,750.00
2004	275,000	\$35.71	\$9,820,250.00	250,000	\$37.81	\$9,452,850.00	\$367,400.00
2005	275,000	\$35.71	\$9,820,250.00	250,000	\$38.57	\$9,641,907.00	\$178,343.00

In the future, if we determine our Title V costs will exceed the fees collected, or if our fees fall below the presumptive minimum, we will pursue solutions to funding stabilization through the state budget process. This could include a variety of methods to meet the presumptive minimum, including the restoration of the Consumer Price Index, increasing the tonnage cap, and/ or a facility fee. Finally, on May 13, 2004, we received additional questions on the Title V funding structure. Since they were posed outside of the Notice of Deficiency, we will respond to them in a separate response.

B. Redeployment

In October 2003, the WDNR Air Program implemented an extensive "redeployment" plan to align all our resources with our funding. We redeployed 21 FTE of work. In cases where the current employee's position descriptions allowed, we were able to shift the focus of work assignments for staff. But in some cases, where we eliminated whole functions, staff were required to compete openly for new positions due to human resource classification issues. We successfully placed 13 of our staff in the new positions.

There were several activities we considered very valuable, but we did not have funding to support them. In the process described above, we shifted resources to activities that were mission critical and had funding. The programs we needed to eliminate were:

- ⇒ Biomonitoring
- ⇒ 18 Ambient air monitoring sites
- ⇒ Smoke School
- ⇒ Climate Change Policy Analysis
- ⇒ Forecasting for particle pollution levels.

In addition to completely eliminating functions, we have streamlined others and focused on our most important work. We will still do inspections, but they will be focused on sources that are bigger or likely to have significant environmental problems. We have also prioritized our permit work. The program reductions include:

- ⇒ Small source compliance and enforcement
- ⇒ Non-title V complaint follow-up
- ⇒ Mercury modeling and policy analysis
- ⇒ Ozone policy analysis
- ⇒ Air Toxics policy analysis
- ⇒ Stack Testing
- ⇒ Asbestos

Part of the redeployment plan included a reorganization of the Central Office and the elimination of one regional supervisor position. The Central Office was reorganized from eight "industrial process" sections to seven "function based" sections. The new sections are:

- ⇒ Monitoring
- ⇒ Emission Inventory and Small Source
- ⇒ Permits and Stationary Source Modeling
- ⇒ Compliance and Enforcement
- ⇒ Environmental Analysis and Outreach
- ⇒ Regional Pollutants and Mobile Sources
- ⇒ Management

C. Grant Match

Since we began the Title V program in Wisconsin, we communicated openly with Region 5 on our emission fee program and the use of emission fees in excess of the presumptive minimum for grant match. As needed changes became apparent, we implemented improvements to our systems to accommodate the changes. In the Spring of 2003, we renegotiated with EPA Region 5 how we match our Section 105 Air Pollution Control grant. It was agreed by Region 5 that the program activities and costs we incur implementing the following programs are eligible for match on our 105 Air Pollution Control grant:

- ⇒ New Source Permits
- ⇒ Mobile Sources
- ⇒ Asbestos Abatement
- ⇒ CFCs
- ⇒ Motor Vehicle Emission & Maintenance
- ⇒ Vapor Recovery Administration
- ⇒ Non-Part 70 stationary source programs

As of this federal fiscal year, which began September 30, 2003, we are no longer utilizing any Part 70 fees to match the 105 grant.

3. PROGRAMMATIC ISSUES

US EPA has identified four deficient programmatic issues within Wisconsin's Title V operation permit program. Three of the issues identified involve the interface between Wisconsin's SIP approved Title I new source review program and its Title V operation permit program. The fourth issue concerns Wisconsin's lack of inclusion of insignificant emissions units in Title V permits. The Department has reviewed US EPA's concerns in detail and determined which issues will require statutory and/or administrative rule changes to correct and those that can be addressed by change in procedure or policy. The following addresses each of US EPA's concerns and the Department's response and plan for addressing the concerns.

A. Expiration Of New Source Review Permits

EPA asserts that the New Source Review (NSR) permits issued by DNR expire and, therefore, DNR does not have authority to include conditions from an expired NSR permit in a Title V operation permit. EPA states that permit conditions from previously issued permits must exist independently of the Title V permit. Because the expired permit conditions do not remain in effect, EPA states that DNR could lose its authority to include such conditions in a renewed Title V permit. EPA disagrees with Wisconsin's interpretation of its statutes and rules which, the state asserts, gives it authority to put the disputed permit conditions into Title V operation permits.

RESPONSE: Statutory Change and SIP and Title V Program Change

DNR agrees that the New Source Review Permits expire, but we maintain that we have authority to place those NSR conditions in a Title V permit, even if the NSR permit has expired.

In order to address this concern to EPA's satisfaction, DNR would need to request changes to state statutes. One option is to change the statutes to specify that while authorization to construct or modify a source expires, the conditions in a NSR permit are permanent. We believe this sort of change would address EPA's concerns about this issue. WDNR will pursue statutory change to address this concern in the next session of the Wisconsin Legislature.

B. Combined NSR And Title V Permits

EPA asserts that DNR has issued combined NSR/Title V permits, but that the permits do not identify or specify the origin of NSR conditions. In addition, as noted above, EPA states that Wisconsin does not have provisions to ensure that NSR conditions are permanent (see Issue 1 above). EPA states that since all terms and conditions of SIP-approved NSR permits must be federally enforceable, those conditions must be identified as NSR conditions and remain federally enforceable when they are included in a Title V permit.

RESPONSE: Procedural Change Initially, followed by Possible Statutory and Administrative Rule Change and SIP and Title V Program Change

DNR does not issue combined NSR/Title V permits, but we agree that our Title V permits do not identify or specify the origin of NSR conditions. DNR agrees that federal law requires that all terms and conditions of a SIP approved NSR permit be federally enforceable. In order to address this concern, DNR is now identifying in Title V permits those conditions that are from NSR permits by referencing the NSR permit number in the authority for the permit condition. DNR is currently evaluating the merits of a merged permit system, which will require statutory and administrative rule changes to implement.

C. Federal Enforceability

EPA asserts that all conditions of a permit issued pursuant to a SIP-approved permit program, such as Wisconsin's NSR program, are federally enforceable under 40 CFR 52.23. EPA states that DNR does not identify such NSR conditions as federally enforceable when they are placed into Title V permits.

RESPONSE: Procedural Change Initially, followed by Possible Administrative Rule and SIP Change and Title V Program Change

DNR agrees that federal law states that all permit conditions in a permit issued pursuant to a SIP-approved permit program are federally enforceable. DNR is now identifying conditions from its SIP-approved NSR permits in the Title V permit and DNR has discontinued marking these conditions as "state-only" enforceable conditions. In the future, DNR may revise its SIP to establish a "state-only" portion in NSR permits that would allow DNR to mark conditions in NSR and Title V operation permits as "state-only" enforceable conditions.

D. Insignificant Emission Unit Requirements

EPA asserts that nothing in 40 CFR Part 70 (the basis for the state's operation permit rules) allows a state to exempt insignificant emission units from the permit content requirements of the operation permit program. EPA indicates that the Preamble to the Part 70 rules provides that the insignificant emission units exemption does not apply to permit content.

RESPONSE: Administrative Rule Change and SIP and Title V Program Change

DNR disagrees that the Part 70 rules require insignificant emission units to be included in a Title V permit. Early in DNR's administration of its Title V program, a permittee appealed their permit stating that DNR did not have authority to place insignificant emission units in the permit. DNR agreed that our rules were not explicit on this issue, similar to the Part 70 rules. In order to address this issue, DNR will have to revise its operation permit rules to indicate that insignificant emission units must be included in Title V operation permits.

WDNR will immediately implement two programmatic changes. Communication with WDNR air permitting staff has already occurred to note construction permit reference numbers in operation permits as they are issued and to discontinue the practice of flagging conditions from NSR permits as "state-only" requirements in Operation Permits.

As can be seen by the information provided in the workload analysis, the Department is relying significantly on permit streamlining. The WDNR has and will continue to provide USEPA Region V staff opportunity for input in our Air Permit Improvement Initiative (APII). With the input of staff and multiple stakeholders, APII has established significant yet achievable targets to improve and streamline the operation permit program. Both process improvements and information technology advancements will be key elements of this effort. Staging efforts for establishing the work on the second major phase of the Air Permit Streamlining Initiative is underway. Active work will begin within the next month. Region V staff may expect more frequent updates and opportunities to provide input at that juncture.

WDNR will continue to work expeditiously on outstanding issues described in this response. WDNR appreciates the professionalism of USEPA Region V staff. Please direct questions related to this response to Lloyd Eagan, Director of the Bureau of Air Management, 608-266-0603.

Sincerely,

/s/

Scott Hassett
Secretary

cc: Pat Henderson – Governor's Office
Joint Legislative Audit Committee
Al Shea – AD/5
Lloyd Eagan – AM/7
Steve Rothblatt – EPA, Region
Cheryl Newton – EPA, Region 5

Jeff Hanson – AM/7
Bill Baumann – AM/7
Sheralynn Stach – AM/7
Marcia Penner – LS/5
Air Management Team
Bruce Nilles – Sierra Club

Appendix

Presentation to Permits and Fees Committee– May 27, 2004

The attached PowerPoint presentation was given to the Permits and Fees Committee of the Wisconsin Clean Air Act Task Force. It was part of the WDNR effort to engage external stakeholders in the ongoing improvement efforts underway within the agency. It provides some additional supporting documentation to the response to USEPA's NOD for Wisconsin.

Permits and Fees Committee

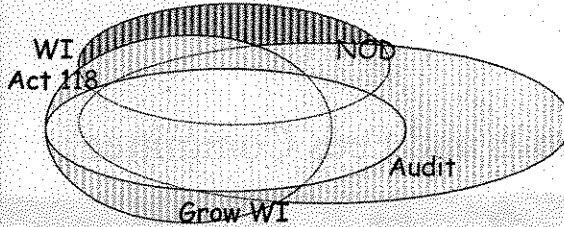
Wisconsin Clean Air Act Task Force
Thursday, May 27, 2004

Agenda

- Update on Response to WA 118
- Update on Notice of Deficiency

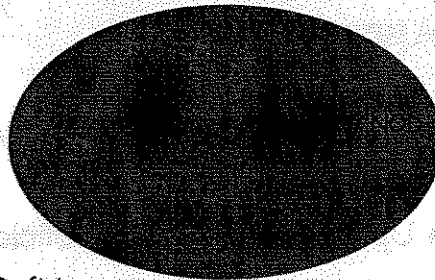
Update on Wisconsin Act 118

- Permit Streamlining
- Registration Permits and General Permits
- Permit Application Completeness
- Start of Construction Waiver
- Appeal of Operation Permit Emission Monitoring Requirements
- Permit Challenge by Applicant



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



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

Calendar of Events

Month & Year	Notice of Deficiency
March/April 2004	Meetings with EPA 3/29 and 4/15
June 2004	Day 90. Take "significant action" or EPA withdraws approval
September 2004	
December 2004	
March 2005	
September 2005	Month 18. NOD Corrections Complete or Sanctions
December 2005	
March 2006	Month 24. If deficiencies remain, EPA takes over all or part of program

Issues raised in the NOD

- Adequacy of Title V Program Funding
- Management of Program Funds
- Issuance Rate of Operation Permits
- Legal issues related to construction permits and operation permits

Timelines and Consequences

- If issues unresolved within 18 months, EPA **must** invoke sanctions. :
- Restrictions in federal highway funds
- Increase nonattainment emission offsets
- If unable to resolve issues within 24 months, EPA **must** take over Wisconsin's Title V Program and charge federal fees.
- EPA **may** impose sanctions earlier than 18 months after issuance of the NOD.

Response to NOD

- Revised Workload Analysis
- Fee Information
- Proposed response to other issues

Workload Analysis

- Invest in process & IT improvements up front to gain efficiencies later
- Adjust timing of some activities to accommodate streamlining
- Recognize economic realities & constraints

Workload Analysis (Con't)

- Workload Analysis includes estimates of numbers of sources over time
 - Type of source (FOP, FESOP, SOP)
 - Type of "primary compliance document" (permit)
- Workload estimates based on 5 years of time sheet data
- Workload estimates vary by source, permit type
- Workload estimates coordinated with APII targets and timelines.

Workload Analysis (Con't)

