

**CORRESPONDENCE/MEMORANDUM**

DATE: July 21, 2015

TO: Air Program managers, Permit and Compliance Staff, Legal (Kendra Fisher/Mike Szabo)

FROM: Kristin Hart – chief, Permits and Stationary Source Modeling Section

SUBJECT: Program Guidance – Changes to Air Pollution Control Permitting for Ethanol Plants in Wisconsin

**Background**

The federal definition of chemical process plants, as it applies to the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NSR) and Title V regulations of the Clean Air Act, changed in 2007 through the “Major Emitting Facility” Definition, 40 CFR Parts 51, 52, 70 and 71 rule effective July 2, 2007<sup>1</sup>. In this rule, EPA specifically excludes ethanol production facilities from the definition of “chemical process plants” in the list known as the “PSD source categories.”

The change to the Federal rule results in an increase in the threshold for permitting ethanol production facilities under PSD from 100 tons per year of a criteria pollutant to 250 tons per year. In addition, fugitive emissions do not need to be included in determining the emissions thresholds for PSD or Title V.

DNR implemented EPA’s 2007 rule by amending the definitions in ss. NR 405.02(22), NR 405.07(4), NR 407.02 and NR 408.02, Wis. Adm. Code. The amended state codes became effective August 1, 2008 and were submitted to EPA as an amendment to Wisconsin’s State Implementation Plan (SIP) on September 30, 2008. To date, WDNR has postponed implementation of the change to the definition pending EPA’s approval of the amendment to the SIP.

**Regional Consistency:**

To be consistent with the surrounding states, which follow EPA’s 2007 definition excluding ethanol production facilities from the PSD source categories, WDNR will begin implementing the approved rule as published in state code. Moving ahead with excluding ethanol production facilities from the PSD source category list is supported by a recent court decision<sup>2</sup> and language in EPA’s original rule giving states discretion to include the clarification in their SIPs.

Based on the factors previously identified, and because surrounding states now exclude ethanol production from the PSD source categories, the Department has concluded that it is appropriate to implement the approved rule in Wisconsin.

**Transition:**

Emission limits and other requirements established in permits are legally binding and remain in effect and enforceable until the permit holder applies for and obtains a modified or revised permit.

Emission limits established after August 1, 2008, which at the time were taken to avoid review under PSD, may be removed through appropriate construction permit actions.

Ethanol production facilities may apply for changes to production processes and increases in emission rates less than 250 tons per year as minor modifications under ch. NR 406, Wis. Adm. Code. Any increases to emission rates must be shown not to cause or exacerbate to a violation of national ambient air quality standards (NAAQS) and meet all applicable requirements under New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and state codes.

The WDNR will work with the ethanol production facilities to address permit transition issues/concerns as specific to each circumstance.

<sup>1</sup> Ethanol Production Facilities – “Major Emitting Facility Definition” Rule: [http://www.epa.gov/NSR/fr/20070501\\_24060.pdf](http://www.epa.gov/NSR/fr/20070501_24060.pdf)

<sup>2</sup> Natural Res. Def. Council v. Poet Biorefining-N. Manchester, LLC, 49S02-1405-MI-313, 2014 WL 4331639 (Ind. Sept. 2, 2014)

