

SUBJECT: Gathering Comments on the DRAFT Proposal for Handling Old/Previous Permit Conditions in Operating Permits *and* How to Handle Information from Permit Applications in Permits

## BACKGROUND

The Clean Air Act (CAA) requires all major sources to apply for Title V permits and operate consistent with the specifications in the permit. Further the CAA requires Title V permits to contain all applicable requirements for each emission source. The permit is meant to consolidate all applicable requirements into a single document, establishing detailed requirements on emissions and related compliance activities such as monitoring, recordkeeping, and reporting.

The goal is to have every Title V operating permit be a single place to go that is simple, understandable, and trustworthy in that it contains all relevant information, tells the complete story of the source and is available to the public.

As Title V operating permits are required to contain all applicable requirements, the issue of making sure that all legal requirements; Title I (PSD/NSR/minor source) permits, Orders, existing regulations, and new/revised regulations are brought into the Title V permit is a concern. Additional, several of the petitions filed with USEPA contend that descriptions of emission units are legally enforceable applicable requirements because the capacity of an emission unit is directly related to the amount of pollution the unit can emit. The size, maximum production rate, heat input capacity, fuel usage and date of installation/modification may define the capacity of the unit to emit pollution. Therefore, the issue has been raised whether permit application descriptions for processes are required to be specific permit conditions (construction and operation permits), whether the process unit description in various areas of the permit such as preamble or Part I table headings are enforceable conditions, or whether the fact that the facility was required to construct as described in their plans and specifications (i.e. permit application) is the enforceable condition.

Therefore, it was determined that guidance was needed on the following two issues:

**Issue 1:** Adequately incorporating conditions from old permits, legal documents and changes to requirements into the Title V permit.

**Issue 2:** Information from Permit Applications as Enforceable Conditions - Capacity and throughputs as enforceable limitations. Is it necessary for capacity and throughputs to be enforceable limitations? Would capacity and throughputs need to be enforceable for all types of emissions units? When capacity and throughputs are included in descriptions of emission units are they applicable requirements?

## PROPOSAL

**A. Issue 1:** Adequately incorporating conditions from old permits, legal documents and changes to requirements into the Title V permit.

When incorporating construction permit conditions into the Title V permit any changes to the construction permit conditions must be noted and evaluated in the preliminary determination. The evaluation must include an assessment of not just the applicable emission limitations/requirements

under state and federal code but also an assessment of how the change is handled under the permitting sections, NR 405 (if applicable), NR 406, NR 407, NR 408 (if applicable) and NR 409 (if applicable), of the Wisconsin Administrative Code. This assessment will determine whether the change is exempt from permitting, requires a construction permit as a modification, requires a revision to a construction permit, or can be done within the operation permit as an administrative, minor, or significant revision (NR 407.11, NR 407.12, and NR 407.13). Changes to operation permit conditions for processes not covered by an underlying construction permit would be evaluated in the same manner except there is no concern for a revision to a construction permit since there was no construction permit required for the process originally; although certain changes to operation permit conditions may trigger a construction permit as a modification to the process and that would be evaluated.

Conditions from legal documents such as consent decrees, court orders, etc. should be incorporated into the operation permit. In situations where a condition is not carried over into the permit (for example, more recent regulations are more restrictive, the process no longer exists at the source, etc.), the reason not to include the conditions must be clearly documented in the Preliminary Determination for the operation permit.

#### Example Situations -

1. Emission Unit no longer exists
2. New Applicable Requirements because of changes to the emission unit(s)
3. New or changed applicable requirements because of changes in regulations
4. Conditions for general limitations which are now contained in Part II of the permit
5. Changes to applicable requirements based on Air Management Policy (examples, limits previously set for allocation of air resource; what constitutes Good Combustion, changes resulting from use of new air dispersion modeling (AERMOD), etc.)

**Situation 1.** Conditions in previous permits for emission units which no longer exist. This situation can include emission units to which PSD requirements applied or may have been used in netting, removal of older emission units such as coal fired boiler and replacement with different technology where specific pollutants are no longer emitted, changes to source status because of removal of emission units.

These types of conditions must be carried over into the operation permit.

**Situation 2.** Changes to conditions because of changes to the emission unit(s) or source.

Any changes to the emission unit or source must be evaluated under the permitting sections, NR 405 (if applicable), NR 406, NR 407, NR 408 (if applicable) and NR 409 (if applicable), Wis. Adm. Code. This evaluation will determine whether the change is exempt from construction permitting, requires a Title I construction permit as a modification, requires a revision to a construction permit, or can be done within the operation permit renewal or as an operation permit revision. Title I actions (construction permits) will need to have a Construction permit number and can be done concurrent or integrated with the operation permit renewal.

**Situation 3.** Changes to conditions because of changes to regulations. Examples of changes to regulations include corrections to New Source Performance Standards (NSPS), new National Emission Standards for Hazardous Air Pollutants (NESHAPS) for existing sources, changes to regulated pollutants – compounds added or deleted from list of HAPs or VOC, and changes to federal code that have not been incorporated into Wisconsin’s State Implementation Plan (SIP) or NR 400 series.

These types of changes and/or additions can be done within the operation permit renewal since they are administrative changes required under the code to either correct out-dated code language or add new standards that have been promulgated since the last operation permit was issued.

**Situation 4.** Conditions for general limitations which are now contained in Part II of the permit.

These types of changes can be done within the operation permit renewal because there is no change to the applicable conditions. Rather the change is in the location of the condition within the permit. The preliminary determination would note the change to location. Example – general limitations which apply to a specific emission unit

**Situation 5.** Changes to applicable requirements based on Air Management Policy changes (examples, limits previously set for allocation of air resource; what constitutes Good Combustion, etc.)

Changes that are made to permit conditions that could result in an increase in emissions would have to be evaluated under the permitting sections, NR 405 (if applicable), NR 406, NR 407, NR 408 (if applicable) and NR 409 (if applicable), of the Wisconsin Administrative Code. This assessment will determine whether the change is exempt from construction permitting, requires a construction permit as a modification, requires a revision to a construction permit. If there is no increase in emissions, the change can be done within the operation permit renewal or as an operation permit revision. Any Title I construction permit action needed for the change to the emission unit’s applicable requirements will need to have a permit number however the permit action can be done concurrent or integrated with the operation permit renewal.

**B. Issue 2:** Information from Permit Applications such as Capacity and throughputs as enforceable limitations.