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TITLE V WORKGROUP – MEETING NO. 3 – February 24, 2010

ISSUE: How to Handle Information from Permit Applications and Old/Previous Permit Conditions in Title V Operating 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.

For purposes of discussion the issue is split into two (2) sub issues:

Sub issue 1: 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?

Sub-issue 2: Are conditions from old permits, legal documents and changes to requirements adequately incorporated into the Title V permit? Do all older permit conditions need to be included in the Title V permit?

PRESENT PRACTICES:

In Wisconsin, the descriptions of sources, including the maximum production capacity, heat input rates, dates of initial operation and modifications may be found in several places in a Title V operating permit:

1. Front Page/Preamble of the Permit:
2. Header of the tables containing the applicable requirements
3. Within the body of the permit as specific conditions
4. Finding of Fact document referring to application submittal dates

or sometimes the information is found outside the Title V operating permit:

5. Preliminary Determination review documents
6. In the application materials

Present practices are not always consistent with the goal of Title V operation permits being a single place to go that is simple, understandable and trustworthy to contain all relevant information.

Sub issue 1: 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?

CONCERNS: In several of the Petitions the petitioner contends 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 define the capacity of the unit to emit pollution. Omitting the capacity of an emission unit does not allow the reader to know the complete story of the unit.

For example are the limitations correct, can compliance be assured, or what are the potential emissions to expect. An accurate description also becomes important if an emission unit is modified to determine if additional review/requirements are applicable.

Another perspective contends the description of emission units is an explanatory statement intended to provide clarification and not intended to restrict or limit the operation of the unit.

Why or why not make capacity and throughputs enforceable limitations?

PROS	CONS
▪ When the allowable emission limitation is in terms of throughput (examples: lb PM/ton stone fed; lb N0x/MMBTU, etc.) making the capacity and throughputs enforceable also caps the allowable emissions from the emission unit. ▪ When applicability of code requirements depend on size, having the capacity and throughputs enforceable clearly shows whether an emission unit must meet an applicable code (or conversely what limits have been taken to avoid a particular code … for example NSPS or NESHAP requirement) ▪ Capacity and throughputs can be used to cap potential to emit when taking synthetic minor limitations to avoid requirements such as PSD, MACT requirements.	▪ Reduced operational flexibility. Could restrict or limit the operation of the unit even when the emission limitations are not necessarily impacted (Ex. Paint booth. Gallons/hour does not necessarily translate to meeting a VOC/hr or PM/hr limitation since the coating characteristics, spray application method, etc. have a large impact). ▪ Requires the creation of additional permit conditions to determine compliance with the capacity and throughput limitations. ▪ Requires different method of compliance demonstration based on output, CEMs, other…

QUESTIONS FOR DISCUSSION:

1. What information needs to be enforceable?

2. Should capacity and throughputs be enforceable for all types of emissions units? For all types of sources?

3. How should capacity and throughputs be made enforceable?

4. When capacity and throughputs are included in descriptions of emission units do you view them as applicable requirements?

5. Do you view capacity and throughputs included in the permit application as an eforceable applicable requirement on what the permit issued will allow? Is this different to you for a construction permit application compared to an operation permit application?

Sub-issue 2: Are conditions from old permits, legal documents and changes to requirements adequately incorporated into the Title V permit?

Do all older permit conditions need to be included in the Title V permit?

When and how requirements from legal documents should be incorporated

Note: Ch. NR 405, Wis. Adm. Code, Prevention of Significant Deterioration (PSD) "look-back" issues which come up when reviewing Title V operating permits will be deferred to our 4th Session topic – PSD Related Issues lead by Steve Dunn.

Concerns: As Title V operating permits are required to contain all applicable requirements, the issue often arises that all legal requirements; Title I (PSD/NSR/minor source) permits, Orders, new Regulations need to be brought into the Title V permit.

This issue is raised here for discussion to gather input to use to provide guidance to review staff, better communicate with the public and to improve consistency across permits rather than to directly respond to EPA or a petition issue.

Several situations where this may be of concern are highlighted below:

1. Conditions in previous permits for emission units which no longer exist
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.)

For each Situation consider the questions:

Why might this be important?

Approaches the Air Program could take when incorporating changes to emission units into Title V permits Maintain within permit, outside of permit?, other approaches?

Relative importance of the issue

Approaches and Practices

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.

Approaches and Practices	Concerns
• Remove emission unit from the Preamble and Body of permit. • Removal of permit conditions specific to a fuel no longer capable of being fired • Removal of permit conditions specific to a pollutant no longer capable of being emitted.	• The PSD avoidance limitations/netting analysis for the project that reviewed these units remains as an applicable requirement. • How to account for historical record of emission units

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

Approaches and Practices	Concerns
• Review change to emission unit to determine if it constitutes a modification (defn/ NR 405/ s. NR 406.04, Wis. Adm. Code) and proceed with review as appropriate • PSD – requires separate PSD/NSR permit action concurrent with Title V, but outside of Title V • Minor source under ch. NR 406, Wis. Adm. Code – requires separate construction permit action and can be concurrent with Title V • Revision to Title V – review within context of Title V	• PSD avoidance to limitations which may be applicable and enforcement action for modifications subject to PSD • For changes which are exempt from construction permitting, revision to Title V brings in all applicable requirements. • Changes triggering construction permit actions can involve a fee

Situation 3. Changes to conditions because of changes to regulations. Examples of changes to regulations include newly promulgated Standards -New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAPS), 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)

Options / Practices	Concerns
• Changes to applicable requirements are reviewed at the time of renewal of the Title V operating permit. Source is obligated to comply with requirements outside of the permit document	• For the period of time between promulgation of a standard and renewal of operation permit, all applicable requirements are not included in the Title V permit; therefore the goal of one document containing the complete story is not met. • For changes to pollutants (i.e. pollutant is no longer considered a VOC or HAP, etc.), the source is legally required to control a pollutant that may no longer be required to control by an outside regulatory requirement but instead controls only because of the permit thus creating a more restrictive operating environment • For changes to Federal regulations not part of Wis. SIP, creates dual and perhaps conflicting obligations for source. Timing of renewal or revision to operating permit can put sources at risk of non-compliance

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

Options / Practices	Concerns
• If general limitation is identical in Part II of the permit as the specific condition of the previous construction permit note the change in location in the preliminary determination and remove the language from Part I of the permit	• Some previously permitted processes may only have general limitations which once removed from the Part I table section makes it appear that there are no applicable requirements.

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.)

Options / Practices	Concerns
• Review change to emission requirement to determine if removal/change would trigger a construction permit action. If a construction permit action is necessary the source proceeds with that action or chooses to keep the previous limit (if it is more restrictive). • If a construction permit action is not required, review the change to emission requirement to determine whether an operation permit revision is necessary and proceed with that action • All changes and reasons for changes noted in the preliminary determination for each permit action	▪ Changes triggering construction permit actions can involve a fee