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January 24, 2011

Ms. Susan Hedman
Regional Administrator - R19J
USEPA - Region 5
77 W. Jackson Blvd.
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Subject: Wisconsin Infrastructure SIP Components Confirmation

Dear Ms. Hedman:

I am writing to confirm that the State of Wisconsin continues to retain the resources and authorities necessary to evaluate air ambient air quality, develop plans to attain new and existing ambient air quality standards, meet the applicable requirements of the new source review (NSR) program and to effectively enforce all applicable requirements. Specifically, the Wisconsin Department of Natural Resources (WI-DNR) has the authority and resources to implement and satisfactorily complete the requirements listed below as set forth in Section 110 of the Clean Air Act (CAA) for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS), and therefore meets the current applicable requirements of Section 110 of the CAA for 8-hour ozone, PM-2.5, and PM-10.

The State Implementation Plan (SIP) elements listed below are required under Section 110(a). Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists the basic or infrastructure elements that all individual SIPs must contain. Following each element is a discussion of WI-DNR's ability to fulfill the requirement. In regard to the 8-hour ozone Section 110 infrastructure SIP elements, this transmittal confirms those portions of the federally-approved 1-hour air quality state planning provisions noted in 58 FR 34225 - June 24, 1993.

EPA guidance on the Section 110(a) infrastructure affirmations and required components (Oct 2, 2007 and Sep 25, 2009 – William T. Harnett) addresses the following elements at the core of the overall ambient air quality management structure:

1. Emission limits and other control measures
2. Ambient air quality monitoring/data system
3. Program for enforcement of control measures
4. Interstate [pollutant] transport
5. Adequate [authority and] resources
6. Stationary source monitoring system
7. Emergency power
8. Future SIP revisions
9. Consultation with government officials
10. Public notification
11. PSD and visibility protection
12. Air quality modeling/data
13. Permitting fees
14. Consultation/participation by affected local entities

Required Section 110 SIP Elements (per EPA guidance)

EPA Guidance: The SIP elements listed below are required under section 110(a)(1) and (2). Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists the basic or "infrastructure" elements that all SIPs must contain. We note that this list is not intended to constitute an interpretation of these provisions, or a change of past practice with respect to these provisions, merely a brief description of the required elements.

Wisconsin response:

Wisconsin Statute Chapter 285 embodies the primary air pollution regulation requirements and authorities of the state. Subchapter II of 285, Wis. Stats., delineates the general duties and authorities of the WI-DNR as the primary agency for air quality management within the state and as the designated authority to implement the state responsibilities of the federal Clean Air Act and associated State Implementation Plans. Prior Wisconsin Legislative Fiscal Bureau Reports regarding Wisconsin Air Management Programs notes an ongoing commitment of the state within its Air Management Programs to include these fourteen general SIP components. Beyond the general authority noted by Ch. 285 Wis. Stats., the individual responses that follow indicate specific authorities related to the discrete SIP provisions.

1. Emission limits and other control measures

EPA Guidance: Emission limits and other control measures – Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. EPA notes that the specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1), and also that SIPs to meet this section are not covered by the Consent Decree.

Wisconsin response:

WI-DNR continues to monitor, update and implement necessary and required revisions to Wisconsin's SIP in the form of emission limits and other control measures in order to meet federal and state ambient air quality standards including 8-hour ozone, PM-2.5 and PM-10. Authority for this effort is established generally for the Bureau of Air Management under ss. 285.11 through 285.19, Wis. Stats. Authorities related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations and various performance and emissions standards, are contained in ss. 285.21 through 285.29, Wis. Stats.

2. Ambient air quality monitoring/data system

EPA Guidance: Ambient air quality monitoring/data system – Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

Wisconsin response:

WI-DNR continues to operate an extensive air monitoring network. The data is used after full quality assurance to determine compliance with the federal and state NAAQS. Wisconsin's most recently adopted and EPA-approved annual network plan for 2011 was signed and submitted on June 25, 2010. In addition, WI-DNR actively participated in the recent development of a five-year regional network assessment for Region 5 states dated July 1, 2010. Authority for the monitoring efforts exists under the general WI-DNR air pollution duties in s. 285.11, Wis. Stats. Funding for the monitoring network comes from a variety of sources with EPA providing a major share under its Section 103 and 105 grant programs supporting federal monitoring requirements specified in 40 C.F.R Part 58.10.

3. Program for enforcement of control measures

EPA Guidance: Program for enforcement of control measures – Section 110(a)(2)(C) requires States to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified sources to meet prevention of significant deterioration (PSD) and nonattainment NSR requirements.

Wisconsin response:

The WI-DNR Air Management and Environmental Enforcement Programs work together to assure compliance with air program SIP provisions and related administrative code and permit requirements. Authority to enforce violations and to assess penalties is contained in ss. 285.83 and 285.87, Wis. Stats. WDNR follows a stepped enforcement process to address violations in proportion to their seriousness. The enforcement responses range from issuance of a Letter of Inquiry (the state counterpart of an EPA 114 request) where additional information is needed to confirm or assess the significance of a violation, up through referral to the Wisconsin Department of Justice for civil or criminal enforcement as appropriate. The EnPPA (Environmental Performance Partnership Agreement) between the Air Program and EPA Region 5 addresses implementation of the EPA HPV (High Priority Violation) policy. The process for prosecution of violations is also addressed in an Air Program Compliance and Enforcement Memorandum of Understanding between EPA Region 5 and the WDNR Air Management Program. Consistent with the provisions of this MOU, the two agencies conduct monthly compliance and enforcement conference calls to discuss program issues and specific cases. WI-DNR retains the authority to develop enforcement mechanisms and supporting fee structures related to the State's prevention of significant deterioration (PSD) and nonattainment NSR construction and operating permits programs under s. 285.11, s. 285.13, s. 285.17, s. 285.19 and ss. 285.60 through 285.69, Wis. Stats.

4. Interstate [pollutant] transport

EPA Guidance: Interstate Transport – Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another State, or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. EPA has already issued CAIR to assist States in developing SIPs to meet this requirement for purposes of the 8-hour Ozone and PM-2.5 NAAQS, and has issued separate guidance to all states on how to comply with each prong of this statutory provision.

Wisconsin response:

WI-DNR has adopted and implemented the various major programs related to interstate transport of pollution as noted necessary by EPA – most recently in NR 432 for the state portions of the Clean Air Interstate Rule (CAIR). The agency developed CAIR implementation programs after 2005 to address interstate transport of ozone and PM-2.5 precursors. When EPA finalizes the replacement to the second phase of CAIR, in the form of a final CATR regulation, WI-DNR has the authority to develop refined control requirements to address that federal program – either adopting the Federal Implementation Plan (FIP) directly or through development of an approvable substitute regulation embodying a more unique state program. Wisconsin has entered into agreements and working relationships with the surrounding states of Illinois, Indiana, Michigan and Minnesota to address a continuing assessment and control strategy program development to ensure multi-state nonattainment areas meet required clean air timelines. Together these regulations and cooperative agreements address CAA and EPA concerns over the interstate transport of emissions of regulated pollutants. Wisconsin Statutes ss. 285.11, 285.13 and 285.15 address circumstances where interstate transport reduction agreements between states are needed to resolve SIP development of cross-boundary nonattainment areas.

5. Adequate resources

EPA Guidance: Adequate resources – Section 110(a)(2)(E) requires States to provide for adequate personnel, funding, and legal authority under State law to carry out its SIP, and related issues.

Wisconsin response:

The amount of funding and personnel granted to the WI-DNR is handled through the State of Wisconsin's biennial budget process. The WI-DNR Air Program has several funding sources, including program revenue (fees paid by businesses), tax revenue and grants (federal and state). There are separate accounts affiliated with the different funding sources to ensure the funding and related personnel are used for the intended purpose. The primary federal grant the WI-DNR Air Program receives is the Section 105 Air Pollution Control Grant. It is an annual grant that includes extensive review by EPA prior to award. In addition, the WI-DNR and EPA negotiate

priorities and grant commitments under the Environmental Performance Partnership Agreement (EnPPA), which is a two year agreement itemizing performance measure and outcomes across the various funding sources and grants. The current EnPPA remains in effect until September 30, 2011. Wisconsin's basic air management program duties and authorities are ensured under s. 285.11, Wis. Stats.

6. Stationary source monitoring system

EPA Guidance: Stationary source monitoring system – Section 110(a)(2)(F) requires States to establish a system to monitor emissions from stationary sources and to submit periodic emission reports.

Wisconsin response:

WI-DNR requires regulated sources to submit various reports, dependant on applicable requirements and the type of permit issued, to the Bureau of Air Management Compliance Team. Reports are prioritized through the Bureau Air Leaders structure regarding frequency and relative thoroughness of review. Frequency and requirements for review are incorporated as part of Wis. Adm. Codes NR 438 and 439. Emission reports are now submitted following a federally mandated Compliance Assurance Monitoring (CAM) reporting structure. Over the last several years Wisconsin has crafted a strong and integrated set of net-based monitoring, reporting, permits and compliance databases that have substantially strengthened the integrity of each of its component units. Basic authority for this effort is provided in s. 285.65, Wis. Stats.

7. Emergency power

EPA Guidance: Emergency power – Section 110(a)(2)(G) requires States to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

Wisconsin response:

Wisconsin Statute s. 285.85 requires the Agency to act upon a finding that episode or emergency conditions exist. This language authorizes the Department to seek immediate injunctive relief in circumstances of substantial danger to the environment or to the public health of persons. WI-DNR will further revise the PM-2.5 SIP when EPA promulgates Emergency Episode guidance which addresses priority classifications and significant harm levels. A recent review of monitoring to date (since the first federal method monitors started functioning in Wisconsin) for PM-2.5 has yet to exceed the EPA's current functional emergency episode threshold metric of 140 ug/m³ over a 24-hr period.

8. Future SIP revisions

EPA Guidance: Future SIP revisions – Section 110(a)(2)(H) requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.

Wisconsin response:

Wisconsin Statutes s. 285.11(6) provides the agency the authority to develop all rules, limits and regulations necessary to meet ambient air quality standards as they evolve and to respond to any EPA findings of inadequacy with the overall Wisconsin SIP and air management programs.

9. Consultation with government officials

EPA Guidance: Consultation with government officials – Section 110(a)(2)(J) requires States to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relating to consultation.

Wisconsin response:

Wisconsin DNR follows a coordinated administrative process in the authorization, approval for notice and adoption via its Natural Resources Board in order to move forward all SIP revisions involving implementation and control program or control measure adoption. That coordinated development process ensures that other

potentially fiscally impacted public entities are identified and allowed to become engaged in the development process. The agency pursues formal MOA processes in all conformity and transportation system activities that might impact local transportation projects, regional projects and planning, and federal funding sources outside EPA. The Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all major SIP revisions, especially in regard to regional pollutants such as those critical to ozone, haze and PM-2.5. Wisconsin actively engaged Federal Land Managers (FLMs) and states with Class I areas impacted by Wisconsin source area emissions in regard to regional haze reduction planning. WI-DNR is given the authority in s. 285.13(5), Wis. Stats., to “advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or inter-local agencies, and the federal government, and with interested persons or groups” during the entire process of SIP revision development and implementation and for other elements regarding air management for which the agency is the officially-charged agency.

10. Public notification

EPA Guidance: Consultation with government officials – Section 110(a)(2)(J) further requires States to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances.

Wisconsin response:

WI-DNR maintains an active monitoring network for multiple criteria pollutants (those with NAAQS) and routinely forecasts air pollutant concentrations. As provided for under s. 285.11, Wis. Stats., public notice is provided at levels associated with the extent of the monitored problem ranging from a simple advisory to alert levels actively participating in regional air quality forecasts and EPA’s AIRNOW air quality data outreach program. WI-DNR maintains an active multi-media outreach effort through a variety of partners to ensure adequate public notice and to advise the public on simple means to reduce immediate exposure.

11. PSD and Visibility protection

EPA Guidance: PSD and visibility protection – Section 110(a)(2)(J) also requires States to meet applicable requirements of Part C related to prevention of significant deterioration and visibility protection.

Wisconsin response:

WI-DNR is addressing both the ongoing review of new major sources and major modifications under a SIP-approved PSD new source review program and through the development of a visibility improvement (haze reduction) SIP revision that includes the formal adoption of Wisconsin’s BART program into the SIP. PSD is generally authorized under s. 285.11, Wis. Stats., with specific performance, emission standards (including for BART), permitting and fee structure authorities under ss. 285.27 and 285.60-285.69, Wis. Stats.

12. Air quality modeling data

EPA Guidance: Air quality modeling/data – Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Wisconsin response:

WI-DNR maintains a capability to perform modeling of the air quality impacts of emissions of all criteria pollutants including ozone and PM-2.5 among others and including both source-oriented and more regionally directed complex photochemical grid models. WI-DNR works with LADCO, EPA and the other Lake Michigan states to perform regional modeling of ozone and PM-2.5 from consistent emissions inventory and meteorology platforms in order to support coordinated and non-competing SIP development for Wisconsin and nearby nonattainment areas and to address interstate pollutant transport and visibility impact assessments. As required by the Clean Air Act, Wisconsin also requires source-specific modeling for PSD-NSR assessment and permitting for the construction of major and some minor sources. These authorities reside under ss. 285.11, 285.13 and 285.60-285.69, Wis. Stats.

13. Permitting fees

EPA Guidance: Permitting Fees – Section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

Wisconsin response:

Major stationary sources receive permits under the WI-DNR Title 5 and New Source Review (NSR) programs. The Title 5 program is funded by emission fees paid by the sources and the level of funding, or fees assessed, are included in the State of Wisconsin biennial budget process. The NSR program is funded by permitting fees that vary based on the type and complexity of the permit. These fees were revised effective January 1, 2011. Authority is established under s. 285.69, Wis. Stats.

14. Consultation/participation by affected local entities

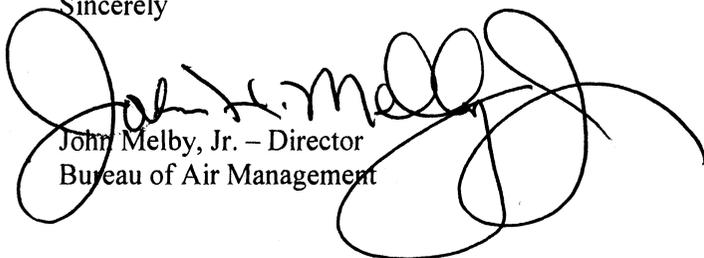
EPA Guidance: Consultation/participation by affected local entities – Section 110(a)(2)(M) requires States to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Wisconsin response:

In addition to the consultative authorities and responsibilities noted in response to element 9 addressing Section (a)(2)(J) regarding intergovernmental consultation, WI-DNR follows formal public hearing processes in the development and adoption of all formal SIP revisions that entail new or revised control programs or strategies/targets. As part of its program development approach, the agency actively engages potentially impacted stakeholders and other interested parties including local governmental entities. To ensure this process is active and inclusive, the agency is required to adopt all formal emission control programs and strategies as rules following the state's formal regulatory processes of notice prior to adoption, and, for any SIP revision not related to a single source, to provide the standing Committees of the state legislature with jurisdiction over environmental matters a 60 day review period which effectively ensures local entities have been engaged in the program development process. The Department is obligated to respond to inquiries by the committee Chairs within 15 days under s. 285.14, Wis. Stats.

Based on the information noted here, I believe that Wisconsin-DNR meets or exceeds all of the necessary CAA Section 110 infrastructure needs in regard to 8-hour ozone, regional haze and particulate matter in the form of PM-2.5 and PM-10 and that the authorities in place continue to satisfy those requirements of the CAA. If you have any questions, please feel free to contact Joe Hoch, Regional Pollutants and Mobile Sources Section Chief, Bureau of Air Management at 608-267-7543 or Joseph.Hoch@Wisconsin.gov.

Sincerely



John Melby, Jr. – Director
Bureau of Air Management

Cc: Sue Bangert – AD/8
Pat Stevens – AD/8
Cheryl Newton – USEPA Region 5

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March 28, 2011

Cheryl L. Newton, Director
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Mail Code: A-18J
Chicago IL 60604-3507

Subject: Wisconsin Infrastructure State Implementation Plan (SIP) Clarifications for the 1997 8-Hour Ozone (O₃) National Ambient Air Quality Standard (NAAQS) and the 2006 24-Hour Fine Particulate Matter (PM_{2.5}) NAAQS.

Dear Ms. Newton:

The Wisconsin Department of Natural Resources (WDNR) submitted a confirmation of Clean Air Act (CAA) Section 110 infrastructure SIP components to the U.S. Environmental Protection Agency (EPA) on January 24, 2011. The purpose of this letter is to provide important clarifications related to greenhouse gases (GHG) and the use of coarse particulate matter (PM₁₀) as a surrogate for PM_{2.5}.

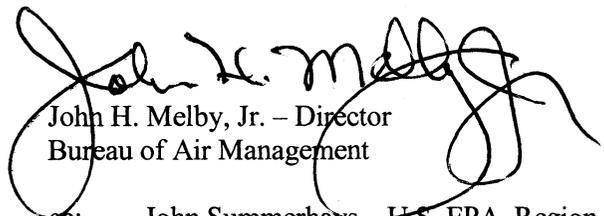
The U.S. EPA published the "Narrowing Rule" in the *Federal Register* on December 30, 2010 (75 FR 82536). The U.S. EPA narrowed its approval of state-specific Prevention of Significant Deterioration (PSD) rules to the extent that those rules required major source permits for sources emitting less than specified thresholds (e.g., 75,000 tons per year (tpy) of carbon dioxide equivalent ("CO₂e")). To avoid any unnecessary confusion, we want to be clear that by our letter of January 24th, we are requesting a finding that Wisconsin's SIP is sufficient to meet the requirements of CAA Section 110(a)(2)(C) and (J) that is based, in pertinent part, on a PSD program that reflects the elevated thresholds of the Narrowing Rule.

The U.S. EPA promulgated the PM_{2.5} NAAQS in 1997. Shortly thereafter, the U.S. EPA issued a guidance document entitled "Interim Implementation for the New Source Review (NSR) Requirements for PM_{2.5}." (John S. Seitz, U.S. EPA, October 23, 1997) ("Seitz Memo"). The Seitz Memo recognized that there were "significant technical difficulties" that exist with respect to PM_{2.5} implementation and that due to these difficulties "EPA believes that PM₁₀ may properly be used as a surrogate for PM_{2.5} in meeting NSR requirements until these difficulties are resolved." The grace period for use of PM₁₀ as a surrogate for PM_{2.5} ends on May 16, 2011.

Wisconsin has discontinued the use of PM₁₀ as a surrogate for PM_{2.5} for all NSR requirements. Wisconsin had always implemented this as policy so there is no administrative rule(s) that need to be revised to account for sun setting its use. NSR staff has been instructed that the surrogate policy is no longer to be used and peer review by both the WDNR and U.S. EPA Region 5 staff serve as a check to ensure that it does not occur.

Thank you for your cooperation on these clarifications regarding our infrastructure SIP components. If you have any questions or need additional information, please contact Joseph Hoch, Regional Pollutant and Mobile Source Section Chief, at 608-267-7543 or joseph.hoch@wisconsin.gov.

Sincerely,



John H. Melby, Jr. – Director
Bureau of Air Management

cc: John Summerhays – U.S. EPA, Region 5
John Mooney – U.S. EPA, Region 5
Michael Leslie – U.S. EPA, Region 5
Margaret Hofer – LS/8
Joseph Hoch – AM/7
Andy Stewart – AM/7