Permit Streamlining Phase 2  
Stakeholder Meeting Minutes  
April 13, 2017, 12:30 to 3:00  
Room 713 GEF 2  
101 South Webster Street, Madison, Wisconsin

Attendees
GEF II, Conference Room 713:  
Barbara Pavliscak, WDNR;  
Kristin Hart, WDNR;  
Emily Houtler, WDNR;  
Erin Hansel, WDNR;  
Andrew Stewart, WDNR;  
Jonathan Wright, WDNR;  
Mike Szabo, WDNR;  
Rob Harmon, Bemis Company, Inc.;  
Mark Thimke, Foley & Lardner;  
Radhica Kanniganti, EPA Region 5;  
Andrea Morgan, EPA Region 5;  
Steve Stretchberry, WEC Energy Group;  
Steve Dunn, Alliant Energy;  
David Seitz, TRC;  
Amy Litscher, Saga Environmental and Engineering

Skype:  
Dave Minkey, WDNR;  
Pete Tomasi, Quarles and Brady;  
James Bridges, WDNR

The meeting was kicked off with introductions and agenda repair. The main topics of the meeting focused on five different proposed rule changes: adding administrative construction permit revisions, proposed changes to the definitions of “reconstruction” and “shutdown”, clarifying and expanding exempt replacements, and adding provisions for treatment of insignificant emission units for construction permits.

Brief Notes
- Exclusion from Commence Construction – the program is reworking the proposal for rule revisions which will be the focus of the June stakeholder meeting
- Smaller rule clarifications – will be discussed next meeting

Main Topics
Administrative Construction permit revision
WDNR is considering a proposal to add an administrative revision section similar to that in ch. NR 407, which would allow streamlined revision procedures to correct typographical errors, change the facility name or ownership, or change the responsible official in a construction permit.
- Procedures for the revisions would be the same as is currently done in NR 407.
- Stakeholders expressed concern that the changes that can be made using the proposed administrative revision procedures are not very common and are generally not time sensitive.
- There was general agreement that providing administrative revision procedures in construction permitting rules is not a high priority.
• The group suggested that WDNR consider changes to permit structure so as to avoid having to revise a permit when the responsible official changes or when the facility name changes.
• If WDNR moves forward with administrative construction permit revisions, WDNR should consider having a required response time for revision requests.
• Changes to associated fees for construction permit revisions could not be addressed in this rule making, so WDNR will not be able to adjust fees for administrative revision.

Definitions of Reconstruction and Shutdown
WDNR examined the existing definitions of “reconstruction” and “shutdown” to determine if changes need to be made in order to meet statutory requirements to establish by rule the actions or events that constitute the reconstruction of a major source and the shutdown of a facility.
• WDNR concluded that the definition of “reconstruction” is adequate for the purposes of meeting statutory requirements. WDNR is proposing to modify this definition of “reconstruction” slightly so that it would apply to minor sources.
• No changes are proposed for the definition of “shutdown” at this time.

Current Exempt Replacement
WDNR examined clarification of and possible expansion of the exempt replacement rule in s. NR 406.04(6). This current exemption is difficult to apply consistently because of ambiguous rule language, such as the use of the undefined terms, “portion,” and “essential components.” Stakeholders have also asked WDNR to look at providing an exemption for “like-kind” replacement of entire emission units and exemption for “reconstruction” of entire emission units.
• The terms emissions unit and basic emissions unit are defined in s. NR 400.02.
• Stakeholders expressed that clarifying or redefining terms in the rule is difficult and may not provide consistency. More consistency could be obtained through guidance for permit drafters on how to apply the exemption.
• The current partial replacement rule is crafted specifically so it does not trigger “reconstruction.”
• Stakeholders reviewed proposed rule language that would expand this exemption for “reconstruction” and like-kind replacement of emission units.
• Stakeholders felt that the types of changes allowed were so narrow in scope that they would almost never be usable. Replacement equipment is almost always more efficient or has a different emission profile than the unit it replaces.
• EPA noted that no nearby states have a like-kind replacement exemption. EPA will do a search and provide information on states that do have such rules.
• Stakeholder consensus was that there doesn’t seem to be much value in expanding this exemption. The Department may proceed with proposing changes to clarify the original rule.
• WDNR will look at any additional information EPA can find from other states and continue evaluating a like-kind replacement exemption.

Insignificant Emissions Units in Construction Permits
WDNR was asked to look at the treatment of insignificant emission units in the operation permit rules, ch. NR 407, and determine if similar rules are needed in the construction permit rules, ch. NR 406. The insignificant emissions section of NR 407 allows certain emission units, operations, and activities with low air pollution emissions to be listed in an application, but does not require emissions estimates or other detailed analyses of such units.
• Major new source review rules require all emissions, no matter how small to be included in a construction permit application.
• Ch. NR 406 covers minor construction permitting and does not detail what information must be included in an application.
• A big difference between construction permitting rules, NR 406, and operation permitting rules, NR 407, is that construction permits apply to single emission units or groups of emission units while operation permits cover entire facilities. Insignificance, as described in ch. NR 407 requires sources to combine all similar small units in a facility to determine if their emissions are significant. Since construction permit applications are not for an entire facility, determining significance is complicated.
  o One suggestion was to include a section in NR 406 to address application content.
  o Another suggestion was to address what units need to be included in a minor source construction permit through guidance that refers back to operation permits.

Stakeholders also noticed that the rule as proposed would require sources to submit additional information about insignificant emission units versus what is currently required. This was not the intent of the draft rule language.

Additional Briefing
Update on Defining Cause or Exacerbate
WDNR is required by statute to define in rule the term “cause or exacerbate.” The meeting included an update on progress made in working through a definition. A discussion of proposed rule language will be the focus of the August stakeholder meeting.
  • WDNR must include a definition for NR 400 that would satisfy the mandate to define “cause or exacerbate.”
  • Many terms that can be used to define “cause or exacerbate” are themselves ambiguous. WDNR has looked at using the terms “produce” and “contribute”. Stakeholders thought “contribute” was more appropriate than “produce” given that no air is truly pristine. There was concern expressed over the ambiguity of the terms. However, it was also acknowledged that terms used to define other terms should have a plain meaning.

A discussion of “cause or exacerbate” within the frame of classifying existing sources was held. The discussion focused on looking for methods or criteria to make a determination that a source is not causing or exacerbating a violation of any standards in the context of existing sources.
  • Requiring monitoring is one method to find that a source does not cause or exacerbate a violation of a standard. Monitoring was historically required in areas not attaining the total suspended particulate (TSP) standard. No regulations currently prohibit monitoring as a method for complying with the statutes.
  • Modeling sources using actual emissions rather than maximum emissions was discussed.
  • The group discussed the current WDNR practice of not modeling emissions during operation permit renewal unless there had been a project or modification that had increased emissions since the last permit renewal was reviewed.
  • It was noted that the cause or exacerbate statute predates the operation permit regulations, so the intent of the rule with regards to operation permits can’t be determined.
  • The Department could possibly make a finding that facilities with emissions below certain levels do not cause or exacerbate. This would vary by pollutant and is similar to federal rules allowing use of significant impact levels (SIL). Currently, SIL is not included in state rule.
  • Stakeholders felt that the definition of cause or exacerbate would have to vary for individual criteria pollutants based on stability in atmosphere, the form of the standard, the averaging time of the standard, and the level of the standard compared to background.

Next Meeting Dates
June 26 – focus on Exclusion from Commence Construction
August 1 – focus on Definition of Cause or Exacerbate