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(2) SIP Revision. Guam shall adopt, pursuant to required procedures, and submit to EPA a revision to Guam's SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant the exemption authorized in this § 69.13.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[WI-118-2; FRL-8037-5]

### Notice of Resolution of Notice of Deficiency for Clean Air Act Operating Permit Program; Wisconsin

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of resolution.

**SUMMARY:** EPA issued a notice of deficiency (NOD) on March 4, 2004 (69 FR 10167), in which EPA identified problems with Wisconsin's Clean Air Act (Act) title V operating permit program and a timeframe for the State to correct these deficiencies. The Wisconsin Department of Natural Resources (WDNR) submitted corrections to its permit program on August 18, 2005, and revisions to a related rule on December 8, 2005. This document announces that based on information provided by the WDNR, EPA concludes that the State of Wisconsin has resolved all of the issues identified in the March 4, 2004, NOD.

As a result, EPA will not impose sanctions set forth under the mandatory sanctions provisions of the Act. In addition, EPA will not promulgate, administer, and enforce a whole or partial operating permit program pursuant to the title V regulations of the Act within 2 years after the date of the finding of deficiency.

**DATES:** Effective February 16, 2006.

Because this notice of resolution is an adjudication and not a final rule, the Administrative Procedure Act's 30 day deferral of the effective date of a rule does not apply.

**ADDRESSES:** The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Susan Siepkowski, Environmental Engineer, at (312) 353-2654 before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Susan Siepkowski, Environmental Engineer, Air Permit Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-2654, [siepkowski.susan@epa.gov](mailto:siepkowski.susan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is the Background Information for This Action?
- II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?
  - A. Demonstration of Sufficient Fees to Cover Program Costs
  - B. Demonstration of Title V Fees Being Used Solely for the Title V Program
  - C. Issuance of Title V Permits
  - D. Program Implementation Issues
- III. What Action Is EPA Taking and What Does This Mean?

#### I. What Is the Background Information for This Action?

On March 4, 2004, EPA published a NOD for the title V Operating Permit Program in Wisconsin. (69 FR 10167). The NOD was based upon EPA's findings that the State's title V program did not comply with the requirements of the Act or with the implementing regulations at 40 CFR part 70 in the following four respects: (1) Wisconsin had failed to demonstrate that its title V program required owners or operators of

part 70 sources to pay fees sufficient to cover the costs of the State's title V program in contravention of the requirements of 40 CFR part 70 and the Act; (2) Wisconsin was not adequately ensuring that its title V program funds were used solely for title V permit program costs and, thus, was not conducting its title V program in accordance with the requirements of 40 CFR 70.9 and the Act; (3) Wisconsin had not issued initial title V permits to all of its part 70 sources within the time allowed by the Act and 40 CFR 70.4; and (4) Wisconsin had other deficiencies with the implementation of its permit program.

Wisconsin was required to address these deficiencies within 18 months of the date of the issuance of the March 4, 2004 NOD, or the state would be subject to the sanctions under 40 CFR 70.10(b)(3) and section 179(b) of the Act. In addition, 40 CFR 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months of the date of the finding of deficiency, EPA will promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

#### II. What Did Wisconsin Submit and What Did EPA Determine Regarding Each Deficiency?

On August 18, 2005, WDNR submitted to EPA the "Wisconsin DNR Response to USEPA Notice of Deficiency Related to the 'Title V Program' dated March 4, 2004" (NOD Response). The NOD Response is available to view in the docket, Docket ID No. WI-118-2. In the NOD Response, and its accompanying attachments, WDNR explained and documented how each of the deficiencies identified in the NOD had been, or were being, addressed. The NOD Response contains documented internal operational changes within WDNR, a copy of the fee structure included in Wisconsin's 2005-07 biennial budget bill enacted into law as 2005 Wisconsin Act 25 (published July 26, 2005), and numerous attachments describing WDNR's permit program, program costs, fee structure, and workload. Additionally, on December 8, 2005, WDNR submitted to EPA for approval, a SIP revision related to one of the deficiencies, "Request to the USEPA to Revise Wisconsin's SIP Pertaining to the Permanency of Construction Permit Conditions" (Permanency Revision).

Based on the information in WDNR's NOD Response, and the Permanency Revision to Wisconsin's SIP, EPA has determined that Wisconsin has demonstrated that it has resolved each

of the issues listed in the March 4, 2004, NOD, as discussed below.

#### *A. Demonstration of Sufficient Fees To Cover Program Costs*

As discussed in the NOD, pursuant to 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(a), a state program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs. 42 U.S.C. 7661a(b)(3) and 40 CFR 70.9(b) provide that a state may collect fees that cover the actual permit program costs, or may use a presumptive fee schedule, adjusted for inflation.

In a 2001 title V program revision submittal, WDNR disclosed that it had removed the inflation adjustment factor from its title V fee schedule. Instead of providing for inflation adjustments, Wisconsin's fee schedule now required the state to bill sources for each 1,000 tons of emissions in excess of the 4,000 ton cap allowed for by the presumptive fee schedule provided by 40 CFR 70.9(b)(2)(ii)(B).

In light of this change, and, as provided by 70.9(b)(5), EPA requested from Wisconsin a detailed fee demonstration to show its collection of fees is sufficient to cover its permit program costs. However, the information subsequently provided by Wisconsin did not adequately demonstrate that the revised fee schedule resulted in the collection of fees in an amount sufficient to cover its actual program costs, as required by 40 CFR 70.9(b)(1). Additionally, Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.4(b) provide that a state must have adequate personnel to ensure that the permitting authority can carry out implementation of its title V program. EPA also had serious questions regarding the adequacy of Wisconsin's ability to fully implement its title V program.

To address these issues, WDNR provided in its August 18, 2005, NOD Response, the required fee demonstration. The fee information includes a description of the State's title V fee structure, a description of the title V permit program activities and costs, a demonstration that its fee schedule results in the collection of revenues sufficient to cover the title V permit program costs, and a description of the activities funded by part 70 fees, including personnel.

In its NOD Response, WDNR elected to demonstrate that it collects fees that cover the actual permit program costs, rather than use a presumptive fee schedule, adjusted for inflation, as

allowed by 40 CFR 70.9(b)(5). WDNR provided detailed information regarding its program costs, which included, among other things, a Workload Analysis and a Fee Analysis for Wisconsin fiscal years 2005–2008. These documents describe the actual costs of implementing Wisconsin's title V program, a breakdown of how the costs were calculated, and permit funds WDNR anticipates will be collected. Additionally, the documents establish WDNR staffing requirements, including full time employee (FTE) hours needed, and corresponding funding needs, that WDNR concludes are necessary to operate a complete stationary source program over its fiscal years 2005–2008. The analyses do not cover all aspects of Wisconsin's Air Program, but instead, focus on the activities related to the permit program. WDNR provided further information regarding its permit streamlining efforts, which, if implemented as planned, will, over time, continue to reduce the costs of running its title V program beyond fiscal year 2008, and will allow staff redeployment.

Upon review of the information submitted, EPA finds that WDNR has demonstrated that it has adequate staffing and funding levels to support a complete title V program through Wisconsin fiscal year 2008. Accordingly, WDNR has demonstrated that it collects fees that cover the actual title V program costs. Thus, the State's program complies with the requirements of the Act and 40 CFR 70.9. Also, based on the Workload Analysis and the information regarding its permit streamlining efforts, EPA determines that WDNR is adequately staffing its title V program. Accordingly, Wisconsin is also complying with the requirements of the Act and 40 CFR 70.4, and has resolved these issues raised in the NOD.

#### *B. Demonstration of Title V Fees Being Used Solely for the Title V Program*

One of the issues identified in the NOD was that the fee revenue information that WDNR provided to EPA in 2003 showed that the State was not distinguishing between fees collected from sources under different operating permit programs. Specifically, the information provided showed that WDNR did not account separately for or maintain separate accounts for fees collected under title V and fees collected from non-title V sources. Section 502(b) of the Act, 42 U.S.C. 7661a(b), and 40 CFR 70.9(a), which provide that a state's title V program must ensure that all title V fees are used solely for title V permit program costs.

Additionally, 40 CFR 70.10(b) provides that states must conduct approved state title V programs in accordance with the requirements of 40 CFR part 70 and any agreement between the state and EPA concerning operation of the program. Information provided to EPA by WDNR in 2003 also disclosed internal fee management deficiencies that demonstrated that WDNR was not conducting its title V program in accordance with the requirements of the Act and 40 CFR part 70 and, therefore, was not adequately administering its title V program.

In its NOD Response, WDNR provided documentation which demonstrates that it is using its title V fees only for title V permit program costs. The fee revenue information provided establishes that the State is now distinguishing between fees collected from sources operating under different Clean Air Act permit programs. Specifically, the information shows that WDNR now accounts separately for, and maintains separate accounts for, fees collected under title V and non-title V programs. This change is the result of legislative changes adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.) In 2005 Wisconsin Act 25, Wisconsin created a new appropriation to separate title V from non-title V funding and expenditures. The expenditure authority for the title V program specifies that permit fees be collected from sources with operation permits required under the Act. The expenditure authority for the non-title V program is for sources with state operation permits not required by the Act. Thus, the State now provides for an accurate description and accounting of its title V fee collections.

The NOD Response and its attachments also demonstrate that WDNR is using title V funds only for title V work. EPA has evaluated the information WDNR provided regarding its accounting and timekeeping practices, including FTE Hours, Time Report Activities by Employees, Activity and Funding Codes, and changes to these activity codes to better account for tracking and billing employee time, and concludes that WDNR has demonstrated that it is not using title V funds to subsidize the work of employees performing non-title V work. Further, Wisconsin Act 2005 also created a new fee structure for the non-title V program to ensure that the non-title V program work was self funded. Accordingly, WDNR is ensuring that all title V fees that it collects are used solely for permit program costs as required by 42 U.S.C. 7661a(b) and 40

CFR 70.9(a). Thus, WDNR is conducting its title V program in accordance with the requirements of the Act and 40 CFR part 70 and adequately administering its title V program.

Regarding the potential grant matching issue raised in the NOD, WDNR has demonstrated it is not using title V funds for grant matching. Specifically, WDNR included in its NOD Response, "FY05 Air Management Activity Codes, Funding Source and Air Pollution Control Grant Match Eligibility," which provides for each air program activity the funding source and whether it is eligible to use for 105 grant match. As discussed above, by separating the non-title V and title V accounts, WDNR is able to specifically track where the matching funds came from to ensure title V funds are not being used. Thus, EPA concludes that WDNR has ensured that all title V fees that it collects are used solely for permit program costs, consistent with 42 U.S.C. 7661a(b) and 40 CFR 70.9(a).

### C. Issuance of Title V Permits

The NOD cited Wisconsin for failure to comply with section 503(c) of the Act, 42 U.S.C. 7661b(c), and 40 CFR 70.4, which require that a permitting authority must act on all initial title V permit applications within three years of the effective date of the program. Pursuant to section 503 of the Act, Wisconsin was to have completed issuance of initial title V operating permits to all of its part 70 sources by April 5, 1998.

In an October 23, 2003 letter to EPA, "Schedule for Completing Review of Title V Operation Permits," WDNR provided a schedule for completing issuance of its initial title V permits by December 31, 2004. WDNR met this commitment and finished issuing its title V permits on December 30, 2004. WDNR notified EPA of its completion in a January 14, 2005, letter to EPA, "Update of Wisconsin Response to EPA Notice of Deficiency." Accordingly, EPA concludes that WDNR has resolved the NOD issue of failure to issue all of its initial title V permits.

Additionally, WDNR has committed to issuing all remaining initial Federally Enforceable State Operating Permits (FESOP) prior to March 4, 2006, with the majority of these permits to be issued by December 31, 2005. WDNR provided in its NOD Response, "FESOP Issuance and Other 2005 Operation Permit Priorities," which includes its FESOP issuance strategy and deadlines. On January 17, 2006, WDNR also indicated to EPA that it completed issuance of these FESOP permits.

### D. Program Implementation Issues

#### 1. Expiration of Construction Permits

40 CFR 70.1 requires that each title V source has a permit to operate that assures compliance with all applicable requirements. The definition of applicable requirement includes any term or condition of any preconstruction permit issued pursuant to programs approved or promulgated under title I, including parts C or D of the Act. These permits must remain in effect because they are the legal mechanism through which underlying preconstruction requirements become applicable, and remain applicable, to individual sources. If the construction permit expired, then the construction permit terms no longer would be applicable requirements and the permitting authority would not have the authority to incorporate them into title V permits. (See EPA's May 20, 1999 letter from John Seitz to Robert Hodanbosi and Charles Lagges.)

Wisconsin statutes, Wis. Stat 285.66(1), provided that construction permits expired after 18 months. (WDNR had also interpreted NR 406.12 to provide that construction permits expired.) Because Wisconsin's construction permits expired, resulting in terms in its title V permits that did not have underlying applicable requirements, Wisconsin's title V program did not meet the minimum requirements of part 70.

In response to the NOD, Wisconsin has revised Statute 285.66(1) to make permanent all conditions in construction permits. WDNR submitted a SIP request, "Wisconsin SIP Revision Pertaining to the Permanency of Construction Permit Conditions" on December 8, 2005. Statute 285.66(1) was revised to provide that, "Notwithstanding the fact that authorization to construct, reconstruct, replace, or modify a source expires under this subsection, all conditions in a construction permit are permanent unless the conditions are revised through a revision of the construction permit or through the issuance of a new construction permit." This statutory revision was adopted as part of the Wisconsin 2005–07 biennial budget bill enacted into law as 2005 Wisconsin Act 25. (Published July 26, 2005.)

EPA reviewed Wisconsin's December 8, 2005, SIP revision submittal and determined it was approvable because it makes Wisconsin's construction permit program consistent with Federal program requirements for state permit programs. This revision also resolves the deficiency identified in the NOD. EPA published its proposed approval of

Wisconsin's Permanency Revision on January 12, 2006 (71 FR 1994), and no comments were received. EPA signed the final approval for this revision on February 16, 2006, and has submitted it to the Office of the **Federal Register** for publication.

Unlike Wisconsin's statute, its rule governing the expiration of construction permits, NR 406.12, provides that "[a]pproval to construct or modify a stationary source shall become invalid 18 months after the date when a construction permit was issued by the Department unless the permit specifies otherwise." Therefore, no revision is necessary to NR 406.12, since the rule itself does not provide that the permits expire.

Based on our final approval of Wisconsin's statutory change to make all conditions in construction permits permanent, EPA concludes that WDNR has resolved this deficiency identified in the NOD.

#### 2. Combined Construction and Operating Permits

The NOD discussed that states have the option of integrating their preconstruction and title V programs as described at 57 FR 32250, 32279 (July 21, 1992). Part 70 requires that, to implement an integrated permit program, the state permitting authority must, among other things, comply with the permit content requirements in 40 CFR 70.6, including the requirement to specify the origin of and authority for each term or condition in a title V permit, and, ensure that the construction permit conditions do not expire, whether previously established in a separate pre-construction permit, or in the combined title V/pre-construction permit.

Wisconsin has been issuing a version of a combined construction and title V permit for several years. However, Wisconsin was not complying with the requirements above in that it was not identifying the construction permit conditions or specifying the origin and authority of these conditions in the title V or combined permit. Furthermore, Wisconsin did not have any provisions to ensure that the construction permit conditions were permanent.

In its NOD Resolution, WDNR included an internal guidance memorandum, "Interface Between Construction and Operation Permits," dated June 3, 2004. This memorandum directs permit writers to identify conditions from the construction permit and specify the origin and authority of these conditions in the title V permit. In addition, the SIP revision discussed in the previous section ensures that all

construction permit conditions are permanent. Thus, WDNR has resolved this deficiency identified in the NOD.

### 3. Federal Enforceability

The NOD cited Wisconsin for failure to comply with 40 CFR 70.6(b), which provides that all terms and conditions in a title V permit are federally enforceable, that is, enforceable by EPA or citizens. However, the permitting authority can designate as not federally enforceable any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. 40 CFR 70.6(b)(2). In contrast, EPA has determined that all conditions of a permit issued pursuant to a program approved into a state's SIP are federally enforceable. 40 CFR 52.23. (See the May 20, 1999 letter from John Seitz to Robert Hodanbosi and Charles Lagges.)

Wisconsin had identified all permit requirements in title V permits originating from Wisconsin's air toxics program (Wis. Admin. Code NR 445) as enforceable by the State only, even when the requirements were established in a permit issued pursuant to a SIP-approved program, such as a construction permit. Wisconsin's failure to include the terms established in a permit issued pursuant to a SIP-approved program into the federally enforceable side of its title V permits was contrary to 40 CFR 70.6.

In its NOD Resolution, WDNR included the internal guidance memorandum, "Interface Between Construction and Operation Permits", cited above. This memorandum directs the permit writers to make federally enforceable any requirement in the title V permit that was included in the source's construction permit issued pursuant to a SIP-approved program. EPA has determined that WDNR has addressed this program implementation issue identified in the NOD.

### 4. Insignificant Emission Unit Requirements

40 CFR 70.5(c) authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that the application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. Nothing in part 70, however, authorizes a state to exempt IEUs from the permit content requirements of 40 CFR 70.6.

Wisconsin's regulations, at NR 407, contain criteria for sources to identify IEUs in their applications, and require that permit applications contain

information necessary to determine the applicability of, or to impose, any applicable requirement. However, WDNR did not include in its title V permits federally enforceable applicable requirements to which IEUs are subject. Therefore, Wisconsin's interpretation and implementation of its regulations was inconsistent with part 70.

WDNR included in its NOD Resolution an example of a revised title V permit template establishing the changes it has implemented in order to address this issue. WDNR has revised its title V permits to include the source's IEUs under the federally enforceable portion of the permit. WDNR has also included the requirements applicable to the IEUs as part of the general terms and conditions for each permit. Thus, EPA has determined that WDNR has adequately addressed this program implementation issue identified in the NOD.

### III. What Action Is EPA Taking and What Does This Mean?

EPA is notifying the public that based on the information provided by WDNR; internal operational changes within WDNR; and EPA's approval of statutory changes requested by Wisconsin, that EPA has determined that Wisconsin has resolved each of deficiencies identified by EPA in the NOD for Wisconsin's Operating Permit Program, 69 FR 10167 (March 4, 2004). Therefore, based on the rationale set forth above, EPA is not invoking sanctions pursuant to section 179(b) of the Act, nor administering any portion of the State's operation permit program, pursuant to 40 CFR 70.10(b)(4).

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: February 16, 2006.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. 06-1797 Filed 2-24-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

[FRL-8037-1]

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA, also the Agency or we in this preamble) today is granting a petition to modify an exclusion (or delisting) from the lists of hazardous waste previously granted to Nissan North America, Inc. (Nissan) in Smyrna, Tennessee. This action responds to a petition for amendment submitted by Nissan to increase the maximum annual volume of waste and to eliminate the total concentration limits in its wastewater treatment sludge covered by its current exclusion. After careful analysis, we have concluded the petitioned waste does not present an unacceptable risk when disposed of in a Subtitle D (nonhazardous waste) landfill. This exclusion applies to F019 wastewater treatment sludge generated by Nissan at its facility in Smyrna, Tennessee. Accordingly, this final amendment conditionally excludes a specific yearly volume of the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when the petitioned waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

**DATES:** *Effective Date:* February 27, 2006.

**ADDRESSES:** The RCRA regulatory docket for this final amendment is located at the EPA Library, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, and is available for you to view from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public may copy material from the regulatory docket at \$0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general and technical information concerning this final rule, please contact Kris Lippert, RCRA Enforcement and Compliance Branch (Mail Code 4WD-RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW.,