

The attached guidance “Changes to Air Pollution Control Permitting for Ethanol Plants in Wisconsin” is intended for use by WDNR Air Management Program permitting and compliance staff to inform them of the decision to implement the federal and state definition of chemical processing plants excluding ethanol production facilities under chapters NR 405 and NR 407, Wis. Adm. Code. This guidance will also guide permit holders when submitting applications for new projects.

Excluding ethanol production facilities from consideration as chemical processing plants results in an increase to the emission threshold for permitting projects at these sources under ch. NR 405, Wis. Adm. Code, Prevention of Significant Deterioration (PSD). The threshold for review of projects under PSD will increase from 100 tons per year of a criteria pollutant to 250 tons per year. In addition, fugitive emissions do not need to be included in determining the emissions thresholds for PSD or Title V.

WDNR is taking this action now to be consistent with implementation by US EPA as well as surrounding states, and respond to recent court actions which support implementing the change in definition.

The Department is soliciting comments from external stakeholders on the draft guidance for 21 days. Once the 21 day notice period is complete, all comments will be considered, revisions will be made to the guidance as appropriate and final guidance will be made available to the appropriate internal and external stakeholders.

Comments related to this draft guidance document should be sent to Kristin Hart, Kristin.hart@wisconsin.gov; (608) 266-6876.

DATE: June 22, 2015
TO: Air Program Managers, Permit and Compliance Staff, Legal (Kendra Fisher/Mike Szabo)
FROM: Kristin Hart – Chief, Permits and Stationary Source Modeling Section
SUBJECT: Program Guidance - Changes to Air Pollution Control Permitting for Ethanol Plants in Wisconsin

Background

The federal definition of chemical process plants, as it applies to the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NSR) and Title V regulations of the Clean Air Act, changed in 2007 through the “Major Emitting Facility” Definition, 40 CFR Parts 51, 52, 70 and 71 rule effective July 2, 2007¹. In this rule, EPA specifically excludes ethanol production facilities from the definition of “chemical process plants” in the list known as the “PSD source categories.”

The change to the Federal rule results in an increase in the threshold for permitting ethanol production facilities under PSD from 100 tons per year of a criteria pollutant to 250 tons per year. In addition, fugitive emissions do not need to be included in determining the emissions thresholds for PSD or Title V.

DNR implemented EPA’s 2007 rule by amending the definitions in ss. NR 405.02(22), NR 405.07(4), NR 407.02 and NR 408.02, Wis. Adm. Code. The amended state codes became effective August 1, 2008 and were submitted to EPA as an amendment to Wisconsin’s State Implementation Plan (SIP) on September 30, 2008. To date, WDNR has postponed implementation of the change to the definition pending EPA’s approval of the amendment to the SIP.

Regional Consistency:

To be consistent with the surrounding states, which follow EPA’s 2007 definition excluding ethanol production facilities from the PSD source categories, WDNR will begin implementing the approved rule as published in state code. Moving ahead with excluding ethanol production facilities from the PSD source category list is supported by a recent court decision² and language in EPA’s original rule giving states discretion to include the clarification in their SIPs.

Based on the factors previously identified, and because surrounding states now exclude ethanol production from the PSD source categories, the Department has concluded that it is appropriate to implement the approved rule in Wisconsin.

Transition:

Emission limits and other requirements established in permits are legally binding and remain in effect and enforceable until the permit holder applies for and obtains a modified or revised permit.

Emission limits established after August 1, 2008, which at the time were taken to avoid review under PSD, may be removed through appropriate construction permit actions.

Ethanol production facilities may apply for changes to production processes and increases in emission rates less than 250 tons per year as minor modifications under ch. NR 406, Wis. Adm. Code. Any increases to emission rates must be shown not to cause or exacerbate to a violation of national ambient air quality standards (NAAQS) and meet all applicable requirements under New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and state codes.

The WDNR will work with the ethanol production facilities to address permit transition issues/concerns as specific to each circumstance.

¹ Ethanol Production Facilities – “Major Emitting Facility Definition” Rule:
http://www.epa.gov/NSR/fr/20070501_24060.pdf

² Natural Res. Def. Council v. Poet Biorefining-N. Manchester, LLC, 49S02-1405-MI-313, 2014 WL 4331639 (Ind. Sept. 2014).