

1. *Attendance:*

Kristin Hart – WDNR; Kendra Fisher – WDNR; David Seitz – TRC; Phillip Bower – Whyte Hirschboeck Dudek; Donald Gallo – Whyte Hirschboeck Dudek; Todd Palmer – Michael Best & Friedrich; Brenda Kubasik – MG&E; Andrea Simon – Trinity Consultants; Susan Lindem – WDNR

2. *Scope/Problem to be solved:*

The group discussed the scope and the issues. Section NR 436.03(2) is at issue. EPA has ruled that state laws can't preemptively approve an emission limit exceedances for start-up/shut down/malfunction (SSM) events. States with SIP approved SSM rules have received SIP calls from EPA requiring removal of rule from SIP or modifications of rules such that they may be approved into a revised SIP. EPA informed Wisconsin that it was inadvertently left out of the original SIP call and that Wisconsin should expect a SIP call.

3. *Any relevant updates to the issues of SSM since the last Air Management Study Group:*

It was noted that Georgia and North Carolina are moving ahead. Georgia has a straw-man proposal out.

A question was raised about the status of law suits. They have been consolidated. Georgia has an off-ramp within the proposed rules in case litigation says rules don't have to be repealed. Arguments not scheduled until Nov. 2016. Phil will forward information to the group.

DNR noted that it still has not received a SIP call. Kendra will contact EPA to see if there is any news on timing. There was a question as to whether DNR would consider a challenge to the SIP call if/when it is received. DNR responded that all options are on the table at this point. There is merit in waiting until the current litigation is resolved to make that decision

4. *Gather information on how the SSM rule affects facilities or clients (examples of where there might have been an issue but for 436.03(2))*

- a. *Conditions in permits*
- b. *During stack testing*
- c. *Compliance concerns or malfunctions vs start up/shut down*
- d. *Other specific examples*

Members of the group from industry or representing industry gave examples of how they or their clients have relied on s. NR 436.03(2)

- Testing - ch. NR 445 testing on higher sulfur fuels or testing that requires operation at different loads. Testing on alternate fuels
- Federal rules such as NESHAPs and NSPS do allow exceptions that would otherwise conflict with state rules.
- Catastrophic malfunction or imminent malfunction making operation of a control device unsafe.
- Case-by-case limits such as BACT that do not take into account emissions during start up/shut down.

- Code provisions that can't be met during times of start-up and shut down. Specific chapters mentioned were:
 - Ch. NR 431 - Opacity
 - Ch. NR 415 – Particulate Matter
 - Ch. NR 426 – Carbon Monoxide
 - Ch. NR 417 - Sulfur Dioxide
 - Chs. NR 419-424 – VOC RACT rules

It was noted that being able to provide facilities with a path to compliance is important because some facilities have decided to shut down rather than operate out of compliance.

It was also noted that 436.03 is used when a facility is purchased. If there are compliance issues, the buyer wants an assurance of a period of time after acquisition to deal with any noncompliance.

There was a question about whether s. NR 436.03(2) is actually in the SIP. The DNR position is that it is approved into the SIP and that the approval noted that it would not jeopardize attainment.

If the rule were to be removed from the SIP but left as a state only requirement, then that would solve the whole SIP call issue but would not offer protection to Title V facilities and or for violations of SIP approved rules.

The group also noted that there seems to be an increasing issue with meeting emission limits during SSM events. Monitoring is believed to be at issue; improvements in technology allow more frequent measurement of emissions including measurement not just during normal operation but also during SSM. Rules have not kept up with technology.

5. *Present what EPA has laid out in the federal register*
<https://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12905.pdf>
 - a. *Summarize major points in the document*
 - b. *Summarize what some other states have done*

In the Federal Register Notice for the SIP calls EPA laid out method states could use to remedy their SIPs.

- Limits do not need to be the same at all times
- Do not need to be numeric
- May be a combination of non-numeric and numeric, specific technological control or work practice during a defined mode of operation
- May use enforcement discretion

Other states:

Michigan – rule 915, is an enforcement discretion rule that is not part of the SIP call. Rule 916 is affirmative defense rule and it was part of the SIP call.

The group briefly reviewed Michigan's rule 915 and did not feel it would be very useful since it does not provide any certainty.

Indiana – issued a letter stating that they would use their enforcement discretion. Todd will share the letter. Colorado - simply pulled rule and SIP and have not proposed to replace this with any regulations.

Texas - sued, they are part of the consolidated litigation. They have pulled language out of permits but not as of yet, pursued rule changes

Georgia – has a straw proposal that is in rule form that they have made public.

- Source makes a choice
 - 1) Meet limit at all times or
 - 2) Meet limit only during normal operations and for start-up/shutdown there are 3 options
 - a) Use one of the conditions specified in rule for different scenarios, processes or control device or as allowed by manufacturer;
 - b) Use a start-up/shutdown provision approved in an NSPS or NESHAP;
 - c) Use a source specific limit or method. This option requires a site specific SIP
- Distinction is made between numeric and nonnumeric provisions.
- They are also proposing other non-SIP provisions, including affirmative defense.
- Have an off-ramp in the event that their law suit is successful

North Carolina – plans to put forward a plan similar to Georgia's

6. *Discuss ways Wisconsin may go forward*

- Litigation or do an amicus brief - Keep in mind that EPA is trying to apply issues raised under ss. 111, and 112 of the Clean Air Act, which are technology based, to s. 110 of the act which covers protection of air quality standards. This revolves around making a case that emissions during SSM do not cause or exacerbate a violation of air quality standards.
- Rule and SIP revisions - Wisconsin may need a two pronged approach:
 1. Begin now to revise rules such as chs. NR 426, 417, 415, 431, etc. to specifically include alternate limits during defined periods of start-up/shutdown. This rule could focus on those rules with specific technology standards like s. NR 426.04
 2. Separate path works on revisions to 436.03(2) after SIP call is received
- Pull rule from SIP but keep rule as state only and provide guidance

7. *Summarize get a volunteer to present meeting summary at AMSG meeting on March 9.*

Kristin will present on March 9th

SIP call – narrow focus of this workgroup to just 436.03(2)

However – more pressing are the limitations in 415, 431, and 426.
Suggestion is that we work first on these rules.

Question to larger group – should we deal with the specific rules?

8. *Next steps*

- Kendra will talk to EPA – gets a sense of timing
- Phil will send around the briefing schedule to see if we can still do an amicus brief
- Could file in the 7th circuit after our own SIP call
- Todd will send information on Georgia and if available North Carolina
- DNR will find information on 9 states completely left out of the SIP call.
- Meet again in May