

September 22, 2005

(A-18J)

Jeffrey C. Hanson, P.E., Chief  
Permits and Stationary Source Modeling Section  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
101 South Webster Street  
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Dear Mr. Hanson:

I am writing in response to your July 28, 2005, letter requesting assistance from the United States Environmental Protection Agency (USEPA) in determining whether a relaxation of synthetic minor permit limits at Bombardier Motor Company of America (Bombardier) would be subject to non-attainment New Source Review (NAA NSR). Bombardier is located in Racine County, Wisconsin, which is designated as a moderate non-attainment area under the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone which has a major source threshold of 100 tons per year (TPY) of volatile organic compounds (VOC). Prior to June 15, 2005, Racine County was designated as a severe nonattainment area under the 1-hour ozone standard and had a major source threshold of 25 TPY of VOC.

The Wisconsin Department of Natural Resources (WDNR) issued Bombardier a permit in 2001 under the 1-hour ozone standard that limited its potential emissions of VOC to less than 25 TPY to avoid classification as a major source and to avoid NAA NSR review that would require emission offsets and the application of Lowest Achievable Emission Reductions (LAER). Bombardier has now requested that the restrictions in its synthetic minor NSR permit be relaxed from 25 TPY to less than 100 TPY.

Wisconsin has a State Implementation Plan (SIP) approved NAA NSR program. This authority was approved by the USEPA on January 18, 1995, and became effective on February 17, 1995. (See 60 FR 3538.) Pursuant to this approval, the WDNR is responsible for issuing NSR related applicability determinations to sources based on Wisconsin's regulations, in compliance with its SIP. USEPA's NSR regulations for nonattainment areas are set forth at 40 CFR 51.165, 52.24 and part 51, Appendix S. The following is our position regarding the application of EPA's NAA NSR requirements.

The NAA NSR rules at 40 CFR §51.165(a)(5)(ii) state:

At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

It is our view that if a stationary source becomes a major stationary source solely by virtue of a relaxation in any enforceable limitation on the capacity of the source, such as relaxation of a synthetic minor emissions cap, then the NAA NSR requirements apply to the source as though construction had not yet commenced on the source. USEPA's April 30, 2004, phase 1 8-hour ozone implementation rule (69 FR 23986) provides: "emission limitations and other requirements in NSR permits issued under 1-hour NSR programs will continue to be in force when the 1-hour NAAQS is revoked."

Bombardier's 25 TPY emissions limit was a requirement in a minor NSR permit, and the limit was taken to avoid application of major NAA NSR. Based on the language in the rule, the revocation of the 1-hour NAAQS should not allow relaxation of the permit limit without triggering major NSR.

The interpretation above was made in consultation with USEPA's Office of General Counsel and Office of Air Quality, Planning, and Standards.

If you have any further questions regarding this matter, please contact Susan Siepkowski of my staff at (312) 353-2654.

Sincerely,

/s/

Pamela Blakley, Chief  
Air Permits Section

cc: Donald Sutton, P.E., Manager  
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Illinois Environmental Protection Agency

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