

BEFORE THE ADMINISTRATOR  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF	)	
WISCONSIN PUBLIC SERVICE	)	ORDER RESPONDING TO PETITIONER'S
CORPORATION - WESTON	)	REQUEST THAT THE ADMINISTRATOR
GENERATING STATION	)	OBJECT TO ISSUANCE OF STATE
	)	OPERATING PERMIT
Petition number V-2006-4	)	
Permit No. 737009020-P02	)	
Proposed by the Wisconsin	)	
Department of Natural Resources	)	
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**ORDER DENYING IN PART AND GRANTING IN PART  
PETITION FOR OBJECTION TO PERMIT**

On September 3, 2006, pursuant to its authority under the State of Wisconsin implementing statute, Wis. Stat. Ann. 285.62-285.64, and regulations, Wis. Admin. Code NR 407, Title V of the Clean Air Act (Act), 42 U.S.C. §§ 7661-7661f, and the United States Environmental Protection Agency's (EPA) implementing regulations in 40 C.F.R. part 70 (part 70), the Wisconsin Department of Natural Resources (WDNR) proposed a modification to the Title V operating permit for the Wisconsin Public Service Corporation - Weston Generating Station. The Weston Generating Station operates three coal-fired boilers with a maximum heat input of 5764 mmBTU/hr and an electrostatic precipitator (ESP). Other equipment at the facility includes two auxiliary boilers, coal handling and processing units, turbines fired with diesel and natural gas, and a gasoline storage tank.

On November 20, 2006, EPA received a petition from the Sierra Club (Petitioner), requesting that EPA object to issuance of the Title V permit to the Weston Generating Station, pursuant to section 505(b)(2) of the Act and 40 C.F.R. § 70.8(d).

Petitioner alleges that the Weston permit does not comply with the Act because (1) the permit limits evidence that can be used by citizens to demonstrate noncompliance; (2) the permit omits operating limitations applicable to Unit 3; (3) the permit fails to include a compliance schedule for the plant's continuing violations of the heat and energy limits in the prevention of significant deterioration (PSD) permit for Unit 3; (4) the permit contains insufficient monitoring for particulate matter emissions from Units 1, 2, and 3; (5) the permit fails to require sufficient monitoring to ensure compliance with visible emission limits on sources B11, B12, and B13; (6) revisions to the permit constitute a change in the method of operation without going through PSD permitting; (7) Units 1 and 2 underwent major modifications without PSD permit review; and (8) Weston Generating Station has unaddressed opacity violations.

EPA has reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which requires the Administrator to issue an objection if the petitioner demonstrates to the Administrator that the permit is not in compliance with the applicable requirements of the Act. *See also* 40 C.F.R. § 70.8(d.).

Based on a review of the available information, including the petition, the Weston proposed permit, preliminary determination, additional information provided by the permitting authority in response to inquiries, the information provided by Petitioner, and relevant statutory and regulatory authorities and guidance, I grant in part and deny in part the Petitioner's request.

## **STATUTORY AND REGULATORY FRAMEWORK**

Section 502(d)(1) of the Act requires each state to develop and submit to EPA an operating permit program to meet the requirements of Title V. EPA granted final full approval of the Wisconsin Title V operating permit program effective November 30, 2001. *66 Fed. Reg.* 62946 (December 4, 2001).

Sections 502(a) and 504(a) of the Act make it unlawful for major stationary sources of air pollution and other sources subject to Title V to operate except in compliance with an operating permit issued pursuant to Title V that includes emission limitations and such other conditions necessary to assure compliance with applicable requirements of the Act.

Section 505(a) of the Act, 42 U.S.C. § 7661d(a), and 40 C.F.R. § 70.8(a), through the state Title V programs, require states to submit all operating permits proposed pursuant to Title V to EPA for review. EPA will object to permits determined by the Agency not to be in compliance with applicable requirements or the requirements of part 70. If EPA does not object to a permit on its own initiative, section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d) provide that any person may petition the Administrator, within 60 days of the expiration of EPA's 45-day review period, to object to the permit. Section 505(b)(2) requires the Administrator to object to a permit if a petitioner demonstrates that the permit is not in compliance with the requirements of the Act, including the requirements of part 70 and the applicable implementation plan. Petitions must be based on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objection within the public comment period, or unless the grounds for the objection arose after the close of the public comment period. Upon receipt of an objection by the Administrator, the permitting authority may not issue a permit unless it revises the permit and issues it in accordance with section 505(c) of the Act, 42 U.S.C. § 7661d(c). However, a petition for review does not stay the effectiveness of the permit or its requirements if the permitting authority issued the permit after the expiration of EPA's 45-day review period and before receipt of the Administrator's objection. If, in response to a petition, EPA objects to a permit that has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue the permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii), and 70.8(d).

## BACKGROUND

Wisconsin Public Service submitted an application for a modification to its Title V permit on April 18, 2006. This application included requests for changes to a number of emission limitations for, among others, Units 1, 2, 3, B11, B12, and B13, and stack parameters at the existing plant; changes to several compliance demonstration methods; and removal of the Weston 1 & 2 car thaw pit and five portable diesel generators from the permit. WDNR issued a draft Title V permit modification on June 17, 2006. During the 30-day public comment period, WDNR received comments on the draft permit modification, including comments from the Petitioner. WDNR issued a proposed permit modification on September 3, 2006, which retained some of the changes that were in the draft permit modification, but did not include others. On November 20, 2006, Petitioner timely filed with EPA a petition to object to the issuance of the permits.<sup>1</sup> On March 30, 2007, WDNR issued the final modification permit. The final permit modification included some of the changes that were in the proposed modification permit, but, notably, did not include any changes to requirements for Units 1, 2, and 3.

## ISSUES RAISED BY THE PETITIONER

### A. Credible Evidence

The Weston permit states in Part I “[n]otwithstanding the compliance determination methods which the owner or operator of a source is authorized to use under ch. NR 439, Wis. Admin. Code, the department may use any relevant information or appropriate method to determine a source’s compliance with applicable emission limitations.” [sic] Petitioner notes that WDNR revised the draft permit based upon Petitioner’s comments, but claims that this sentence purports to reserve the right to use credible evidence only to WDNR. According to the Petitioner, the language “the department may use any relevant information” can be interpreted as prohibiting EPA and citizens from using “any relevant information” to enforce the permit. Petitioner claims that the permit cannot expressly or implicitly prevent the use of credible evidence by EPA or citizens. Petition at 2. Citing *Sierra Club v. Public Service Co. of Colorado, Inc.*, 894 F.Supp. 1455 (D.Colo. 1995), the *Credible Evidence Revisions*, 62 *Fed. Reg.* 8314 (Feb. 24, 1997), and the U.S. EPA, Region 9, Title V Permit Review Guidelines, Sept. 9, 1999, p III-46, Petitioner notes that EPA and citizens have authority to bring enforcement actions “on the basis of any information available to the Administrator.” Petition at 2-3. Petitioner asserts that the permit tacitly precludes that right to EPA and citizens. Therefore, Petitioner concludes, the Administrator must object to the permit and require WDNR to amend the permit to allow use of any credible evidence by EPA or citizens. Petition at 3.

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<sup>1</sup> EPA received the petition on November 29, 2006. WDNR had notified the public that January 16, 2007, was the deadline to file a petition requesting that EPA object to the issuance of the final permit.

## **Response**

EPA finds that the permit language cited by Petitioner is derived from, and virtually is identical to, section NR 439.06 of the EPA-approved Wisconsin State Implementation Plan ("SIP"). Furthermore, Petitioner has failed to point to any language that excludes the use of credible evidence. The permit language authorizes WDNR to use any evidence to determine compliance, notwithstanding the compliance demonstration methods provided in section NR 439. The statement does not require that compliance be determined only by methods specified in the permit, nor does it restrict the use of credible evidence by EPA or citizens. In fact, the language neither mentions the compliance demonstration methods provided in the permit, nor discusses the use of credible evidence by parties other than WDNR. In addition, EPA has clarified through the credible evidence rule, 60 *Fed. Reg.* 8314 (Feb. 24, 1997), that various kinds of information, including non-reference test data, may be used "to demonstrate compliance or non-compliance with emission standards." Lastly, WDNR has confirmed that it does not interpret this preamble to "limit the types of evidence which may be used by other parties seeking to enforce air pollution control requirements." See September 27, 2007, letter from Kevin Kessler, Director of the Wisconsin Bureau of Air Management to Steve Rothblatt, at 2. Therefore, I deny this petition with respect to this issue.

### **B. Omission of Operating Limitations for Unit 3**

Petitioner notes that page 20 of the draft permit describes Unit 3 as "a tangentially fired boiler installed in December 1981," and records the maximum input for Unit 3 as 3,906 MMBtu/hr. Petitioner claims that this maximum heat input fails to account for the fact that Unit 3 is subject to a lower limit on heat input. Petitioner additionally claims that the permit lacks enforceable operating limits applicable to Unit 3. Petition at 3.

Citing to 40 C.F.R. § 70.2, Petitioner states that every Title V permit must include all "applicable requirements," which includes requirements from preconstruction permits. Petitioner claims that EPA issued to Wisconsin Public Service Corporation ("WPSC") a preconstruction permit in 1977, authorizing, at page 4, construction of "one 321 MW electrical generating unit...." According to Petitioner, the preconstruction permit also required WPSC to construct and operate Unit 3 "consistent with the materials and data included in the application filed by the Corporation." Petitioner further states that WDNR issued a preconstruction permit for Unit 3 pursuant to the Wisconsin SIP that requires that "the system be installed in accordance with submitted plans and specifications" and that "[a]ny construction or operation of [the] facility which proceeds at variance with the submitted specifications or approval conditions will be regarded as a violation of the approval." Petition at 3-4. Petitioner interprets this language to mean that both preconstruction permits require compliance with specifications provided in the applications, including (1) a maximum 3,423.48 MMBtu/hr heat input; (2) a maximum 2,350,000 pounds of steam per hour; (3) a maximum 321 megawatts per hour of generation; and, (4) a maximum 191 tons of bituminous coal burned per hour. Petitioner further claims that, even if the permit were silent on the issue of operating limits, the specifications from the permit application constitute applicable requirements for Unit 3, and that the Act requires that a PSD applicant construct and operate the source

consistent with and according to the specifications provided in its permit application. Petitioner asserts, however, that the permit itself expressly provides that departure from the application specifications for Unit 3 constitutes violations of the permit. Petition at 4-5. Petitioner discusses in detail the importance of the operating limits that are applicable to Unit 3, and concludes that the permit is deficient because it does not incorporate limits from Weston's PSD permit and preconstruction permit applications for Unit 3. Petition at 6-8.

## Response

Petitioner's objections apply to provisions in the pre-existing permit that WDNR did not change in the final modification permit.<sup>2</sup> EPA interprets its regulations to limit the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action. Because Petitioner's petition on this issue is not directly related to the permit modification action, I deny the petition on this issue.

EPA interprets its Title V regulations at 40 C.F.R. part 70 to require different opportunities for citizens to petition on initial permit issuance, permit modifications, and permit renewals. The regulations state that a permit, permit modification, or renewal may be issued if specified conditions are met, 40 C.F.R. § 70.7(a)(1), including a requirement that "[t]he permitting authority shall provide a statement that sets forth the legal and factual basis for the *draft permit conditions.*" 40 C.F.R. §§ 70.7(a)(1)(ii) and 70.7(a)(5) (emphasis added). Further, 40 C.F.R. § 70.7(h), in requiring the permitting authority to provide adequate procedures for public notice and comment for permit proceedings that qualify as significant modifications, provides that the notice shall identify "*the activity or activities involved in the permit action; the emissions change involved in any permit modification; . . . and all other materials available to the permitting authority that are relevant to the permit decision . . .*" 40 C.F.R. § 70.7(h)(2) (emphasis added). We interpret these provisions to limit petitions on significant modifications to issues directly related to those modifications.

The preamble to the final rulemaking that promulgated these provisions lends additional support to this interpretation. In discussing the distinct procedural requirements for minor and significant permit modifications, we stated that the "track for significant changes essentially mirrors the permit issuance process. In this track, the public, the permitting authority, affected States, and EPA will review *the revision* in the same sequence they will use for permit issuance." (57 *Fed. Reg.* 32250, 32280/3 (July 21, 1992)(emphasis added). In expounding on the significant modification procedures we stated:

The EPA has not set forth a specific model for processing significant permit modifications. It is anticipated that the procedures will be very similar to those for processing initial permits or permit renewals. However, most significant modifications should be less

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<sup>2</sup> The draft modification permit had included changes to the provisions for Unit 3, and Petitioner commented adversely on some of those changes. WDNR did not include such changes in the proposed modification permit, and Petitioner does not raise these objections in its petition. The proposed modification permit did include certain other changes to the provisions for Unit 3, but those were not carried forward into the final modification permit.

complex than initial permits or permit renewals, *and the process need only focus on the changes to the permit rather than repeat any more comprehensive permit analysis of the source.* Therefore, EPA has required that each State program provide that the majority of significant modification applications are finally issued or denied within 9 months after they are received.”

(57 Fed. Reg. 32250, 32289/3 (July 21, 1992) (emphasis added). Finally, and most telling, is the following statement concerning the public participation provisions of the regulations:

Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, *objections addressed to portions of an existing permit that would not in any way be affected by a proposed permit revision would not be germane.* Public comments will only be germane if they address whether the draft permit is consistent with applicable requirements or requirements of part 70.

57 Fed. Reg. 32250, 32290/3 (July 21, 1992) (emphasis added).<sup>3</sup>

This interpretation is not only consistent with the regulations but it also furthers the statutory requirement that the Title V regulations contain “[a]dequate, streamlined, and reasonable procedures” for evaluating permit applications and issuing permits. See section 502(b)(6) of the Act. Sources required to have a Title V permit to operate must apply for such a permit. At the time the permitting authority issues the source its Title V permit, the public is provided an opportunity to review, comment on, and object to any aspect of that permit. Sources are also required to renew the permit at least every five years, and that process also provides the public with an opportunity to review, comment on, and object to all aspects of the permit. See 40 C.F.R. § 70.7(c). EPA’s interpretation that the opportunity to object during significant modification permit actions should be limited to the issues directly related to the permit modifications is a considered one that accounts for the review opportunities available to the public. EPA directed permitting authorities to complete the review of the majority of significant modification actions within nine months, half the time authorized for completion of initial permit issuance and renewal, knowing that the limited scope of the action would allow for expedited processing in most circumstances. 40 C.F.R. § 70.7(e)(4)(ii).

Therefore, in evaluating a petition objecting to a significant modification permit, EPA will determine based on the facts whether the issues raised by the petitioner are directly related to the permit modification action. In this case, the facts show that the final modification permit issued by

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<sup>3</sup> We note that the preamble to the final rule in certain instances contemplates permitting authorities determining the scope of comment appropriate for permit modification actions. We do not think the permitting authorities’ discretion concerning the solicitation of comments affects our interpretation of the rule concerning the scope of petitions for permit modification actions. Permitting authorities could have any number of reasons for wanting comments on a broader portion of a permit in a permit modification action and EPA did not want to foreclose that opportunity to them; however, EPA did not intend, in offering permitting authorities such discretion, to expand the permissible scope of petitions to issues not germane to the permit modifications the permitting authorities ultimately adopt.

WDNR did not include any changes to Unit 3, which is the unit addressed in the petition. Therefore, Petitioner's objection is not directly related to the final modification permit. We need not determine whether, if the proposed changes were carried forward in the final permit, the petition would have been relevant to those changes.

It should be noted that limiting petitions to object in significant modification permit actions to only those changes implicated by the significant modification itself does not in any way affect or otherwise limit the public's ability to participate in the permit issuance or enforcement processes. As stated above, the public retains an opportunity at issuance and renewal to review, comment and petition on all aspects of the Title V permit. The public may also, in the case of alleged noncompliance by a source, bring an enforcement action to compel compliance with the terms of a permit. Furthermore, a member of the public may also petition the Administrator to reopen a permit for cause if it believes that the permit fails to properly incorporate all "applicable requirements" pertaining to the source. For these reasons, I deny the petition on this issue.

### **C. Compliance Schedule**

Citing section 504(a) of the Act, 40 C.F.R. § 70.1, Wis. Stat. § 285.64(1), and Wis. Admin. Code § NR 407.09(4)(b), Petitioner asserts that every Title V permit must "assure[] compliance by the source with all applicable requirements," and notes that 40 C.F.R. § 70.2, Wis. Stat. § 285.64(1), and Wis. Admin. Code § NR 400.02(26) define the term "applicable requirements" to include requirements contained in preconstruction permits. Petitioner further claims that, if a source is not in compliance with any applicable requirement, it must disclose that fact in its Title V permit application, and provide a description of how it intends to come into compliance. 42 U.S.C. § 7661b(b), 40 C.F.R. § 70.5(c)(4)(i), (5), (8), Wis. Admin. Code § NR 407.05(4)(h). Finally, Petitioner asserts that, when WDNR issues a permit, it must include a compliance schedule to bring the source into compliance with any applicable requirements for which the source is not in compliance at the time of permit issuance. Petition at 9-10. Petitioner claims that Weston Unit 3 was operating in excess of its preconstruction permit specifications, without such violations being addressed in the Title V permit.<sup>4</sup> However, the WDNR did not include a compliance schedule to bring Unit 3 into compliance. Petitioner states that a failure of the Administrator to object will result in continuing operation of Unit 3 in violation of operation limits and, consequently, illegal amounts of air pollution. Petition at 10-12.

### **Response**

Petitioner's objection is related to its objections discussed in section B, above, and like that objection, applies only to provisions in the pre-existing permit that WDNR did not change in the final modification permit. As noted in section B, above, EPA interprets its regulations to limit the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action and, because the final modification permit did not include any

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<sup>4</sup> The requirements with which Petitioner asserts the source is out of compliance are the same requirements that are the subject of section B, above.

changes to Unit 3, Petitioner's objection is not directly related to the final modification permit. We need not determine whether, if the proposed changes were carried forward in the final permit, the petition would have been relevant to those changes. For this reason, I deny the petition on this issue.

#### **D. Monitoring For Particulate Matter Emissions**

Petitioner sets out its original comments in detail, and notes that it had requested in its comments that WDNR include in the Weston permit sufficient parametric monitoring to satisfy the requirement of 40 C.F.R. § 70.6(a)(3)(i)(B) and the Wisconsin SIP. Petition at 12-14. Petitioner notes that the permit relies on ESP and baghouse parameters to monitor compliance with the particulate matter emission (PM) limits for Units 1, 2, and 3. Citing to a number of orders issued in response to petitions, Petitioner notes that, in its comments to WDNR on the draft Weston permit, it had asked that WDNR add into the permit enforceable parametric ranges for the ESP and baghouse to ensure that the source is continuously complying with its permit limits. Petition at 14. Petitioner asserts that, instead of responding to the substance of its comments, WDNR stated that "[t]he emission limitation for particulate matter has not been changed in this permit and neither has the compliance monitoring requirements cited by the commenter. Since this compliance monitoring is unchanged in this permit revision from the original Title V permit, the Department is not accepting comments on this permit provision at this time." Petitioner claims that WDNR violated 40 C.F.R. § 70.8(h)<sup>5</sup> and the Wisconsin SIP, because it limited the comments to the portions of the permit that were revised, rather than providing for "public comments and a hearing on the draft permit." Petition at 15. Petitioner discusses in detail the importance of parametric monitoring for Units 1, 2, and 3, and how the monitoring in the draft Weston permit does not comply with the requirements of the Act and the Wisconsin SIP. Petition at 16-17. Petitioner concludes that the Administrator must object to the permit and require WDNR to include in the Weston permit an enforceable parametric monitoring range, which is subject to WDNR review and approval, and public review and comment. Petition at 17.

#### **Response**

As with Petitioner's objection discussed in section B, above, Petitioner's objection here applies to provisions in the pre-existing permit that WDNR did not change in the final modification permit.<sup>6</sup> As noted in section B, above, EPA interprets its regulations to limit the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action and, because the final modification permit did not include any changes to Units 1, 2, or 3, Petitioner's objection is not directly related to the final modification permit. We need not determine whether, if the proposed changes were carried forward in the final permit, the

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<sup>5</sup> Petitioner's reference to section 70.8(h) is a typographical error. The reference should be to 40 C.F.R. § 70.7(h).

<sup>6</sup> The draft modification permit had included changes to the provisions for Units 1, 2, and 3, and Petitioner commented adversely on some of those changes. WDNR did not include such changes in the proposed modification permit, and Petitioner does not raise these objections in its petition. The proposed modification permit did include certain other changes to the provisions for Units 1, 2, and 3, but those were not carried forward into the final modification permit.



petition would have been relevant to those changes. For this reason, I deny the petition on this issue.

### **E. Monitoring to Ensure Compliance With Visible Emission Limits**

Petitioner states that the monitoring for Units B11, B12 and B13 is insufficient to ensure compliance with visible emission (VE) limits. Petitioner asserts that the permit drafted by WDNR assumes compliance with PM and VE limits based on type of fuel used by the boilers (#2 distillate and gas). In its response to Sierra Club's comments on the draft permit, WDNR states that "the combustion of #2 oil could possibly lead to opacity exceedances," however, WDNR did not include VE monitoring because "the general incentive for the permittee to run these operations efficiently to lower the cost of producing power, are adequate to demonstrate compliance...." Petition at 17, citing WDNR's response to comments at 1. Petitioner asserts that section 439.06(9)(a) of the SIP requires the permittee to demonstrate compliance with the opacity limit using either Method 9 in 40 C.F.R. part 60, Appendix A, or a continuous emission monitor. Petition at 17-18. Petitioner asks that the Administrator object to the permit, because it does not include sufficient monitoring to assure compliance, and does not include all of the monitoring requirements of the SIP.

### **Response**

The proposed permit contains a statement of WDNR's authority to request testing for visible emissions. (See pages 26, 30, and 34 of the proposed permit.) However, it does not specify when or how often WDNR will require such testing. Merely including WDNR's authority to request a test in a permit condition rather than specifying the frequency with which testing must occur is inadequate to assure compliance with the SIP for the relevant time period. Therefore, the permit condition fails to include "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit . . ." as required by 40 C.F.R. § 70.6(a)(3)(i)(B) and Wis. Admin. Code § NR 407.09(1)(c)1.b. Because the proposed permit fails to require any monitoring that would "yield reliable data from the relevant time period that are representative of the source's compliance with the permit," I am granting the petition on this issue. The final permit must contain monitoring that meets the requirements of 40 C.F.R. § 70.6(a)(3)(i)(B) and Wis. Admin. Code § NR 407.09(1)(c)1.b. See EPA's order *In the Matter of Midwest Generation Fisk Power Plant*, Petition V-2004-01, at 6-7, (March 25, 2005), available on the internet at <http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions>.

### **F. PSD Permitting**

Petitioner alleges that the Administrator must object to the permit for the Weston plant because it does not comply with PSD permitting requirements. Petition at 18. Petitioner claims that the permit modifies emission limits for the boilers and combustion turbines in a manner that constitutes "a change in the method of operation," but does not require that the plant obtain the necessary preconstruction permits and comply with new source review requirements. Petition at 18.

## **1. Increases In the Carbon Monoxide Limits For Units 1 and 2**

Petitioner states that the proposed permit significantly increases the carbon monoxide (CO) limit for Units 1 and 2 from the limit in the original Title V permit, which allows increases in the production rate and a change in fuel. Petitioner believes that such changes constitute a “change in the method of operation” of Units 1 and 2 under EPA’s regulations and the Wisconsin SIP. Wis. Admin. Code § NR 405.02(21). Petition at 19. Petitioner discusses in detail methods by which the source could comply with the previous, lower CO limit for Units 1 and 2. Petition at 20-21. Therefore, Petitioner concludes, the previous CO limit acted as an enforceable limit on the type of fuel and production rate of the boilers, and the increase constitutes a “change in the method of operation” of Units 1 and 2. Petition at 21. Petitioner asserts that the term “change in the method of operation” “clearly covers” the changes in fuel and increases in production rates at issue in the Weston permit, because the federal regulations and Wisconsin SIP exclude from the definition of “major modification” only those changes in fuel and increases in production rates that are not prohibited by a federally enforceable limit. Petition at 21, citing 40 C.F.R. § 51.166(b)(2)(iii).

Petitioner further claims that WDNR relied on the CO limits for Units 1 and 2 from the original Title V permit in issuing a PSD permit for Weston. Petition at 22. Because the increase in the limit changes the air impact assumptions used for other permits, the increase must go through PSD review. Petition at 22, citing *Hawaiian Elec. Co., Inc. v. EPA*, 723 F.2d 1440, 1448-49 (9<sup>th</sup> Cir. 1984). Thus, according to Petitioner, the emission increases are unlawful unless authorized by preconstruction permits. Petition at 23.

### **Response**

Although the draft and proposed modification permits included changes to the CO emission limits, as well as other changes, for Units 1 and 2, the final modification permit did not include any changes to Units 1 and 2. By not finalizing the changes in the proposed modification permit to which Petitioner has objected, WDNR has rendered Petitioner’s objections moot, and for this reason, I deny the petition on this issue.

## **2. Increases In Allowable Emissions Of Particulate Matter, Carbon Monoxide and Nitrogen Oxides From the Combustion Turbines**

The Petitioner notes that the permit includes increases in the allowable PM, CO, and Nitrogen Oxide (NOx) emission limits for combustion turbines B11, B12 and B13. Petitioner alleges these increases require a preconstruction permit for the emission increases. Petition at 23.

### **a. Particulate Matter**

The Petitioner observes that the draft permit increases the allowable PM limits from 4.74 lbs/hr to 25 lbs/hr for Unit B11, and from 5.21 lbs/hr to 26.91 lbs/hr each for Units B12 and B13. Petition at 23. Sierra Club noted in its comments on the draft permit that the changes constitute a change in the method of operation because they allow the units “to operate more, operate at a higher rate, increase fuel consumption, and/or increase use of oil vs. gas.” Petition at 23-24. Petitioner further noted in its comments on the draft permit that the changes are not exempt from PSD because “the changes would be prohibited by a federally enforceable permit condition limiting PM and PM10 emissions.” WDNR disagreed in its response to comments, stating that the changes were not changes in the method of operation, and that they were “based on recent test data for the turbines.” Petition at 24. Petitioner asserts that WDNR’s response does not address whether the increase in hourly emissions results in an increase in production rate or a change in fuel. Petitioner further notes that the limits in the original Title V permit acted to limit the fuel that could be burned and the turbines’ operating rate. Moreover, Weston had included the limits in its permit application, and WDNR relied on them when issuing a PSD permit for Weston Unit 4. Therefore, according to Petitioner, the increased hourly emission rate is effectively an increase in production rate or a change in fuel, either of which is a change in the method of operation subject to PSD permitting. Petition at 24-25.

**b. Carbon Monoxide**

According to the Petitioner, the permit provides for an increase of the CO emissions limit from 1.30 lbs/hr in the original Title V permit (32.39 lbs/hr for firing natural gas) to 216.25 lbs/hr for Unit B11, and from 35.59 lbs/hr to 176.6 lbs/hr each for Units B12 and B13. Petitioner alleges that these increases also constitute a change in the method of operation of the turbines, because CO emissions are directly related to production rate and fuel. Petition at 25, citing U.S. EPA AP-42 Emission Factors, Fifth Edition, Section 3.1, Table 3.1-2a. Petitioner avers that the increase in the hourly CO emission limits effectively increases the allowable production rate and allows for more-polluting fuel to be burned, and that, as with the original PM limitations, Weston had incorporated the original limits into its application for a PSD permit for Unit 4 and WDNR had relied on the original CO limits in its review of the application. Petition at 25-26. Petitioner claims that, even assuming the 455 hours per month operating limit in the permit, the modification allowed by the proposed permit results in an annual CO emission increase greater than 500 tons per year. Petition at 26.

**c. Nitrogen Oxides**

The Petitioner states that the permit increases the allowable NOx emissions for Units B12 and B13 from 138.88 lbs/hr (natural gas) and 381.9 lbs/hr (fuel oil) in the original Title V permit to 212.7 lbs/hr (natural gas) and 411 lbs/hr (fuel oil). Petition at 26. Petitioner alleges that, in order to comply with the original limits, the turbines had to burn gas or limit their operation when burning distillate oil. Again, Weston had incorporated the limits in its permit application. Further, the original limits were specifically relied upon by

WDNR in conducting the PSD review for Unit 4. Finally, Petitioner alleges that, even though the permit limits the hours of operation for B12 and B13 to 73 hours per month, the change results in an increase greater than the “significance” threshold. Petition at 26–27.

## Response

Petitioner has not established that the PSD requirements are applicable to the Weston plant. The Petitioner has not provided sufficient evidence to establish the existence of major modifications that would trigger PSD review.

A major modification, which would trigger PSD review, occurs if the plant undertakes a physical change or change in the method of operation that increases emissions by specified amounts. Here, the Petitioner does not argue that there was a physical change. Rather, the Petitioner asserts that there was a change in the method of operation, and explains that the increased emissions limits allow for increases in production rate and fuel switching. See EPA’s order *In the Matter of Portland Generating Station*, at 4-6, (June 20, 2007), available on the internet at <http://www.epa.gov/Region7/programs/artd/air/title5/petitiondb/petitions>.

The change in emission limitation itself was intended by WDNR, according to consultations with WDNR staff, merely to be corrections. The limitations found in the original Title V permit (737009020-P01) were developed using an antiquated AP-42 factor. The 737009020-P02 limits reflect more realistic estimates for this particular facility because they are based on recent emission testing information. A change in emission limits, in-and-of-itself, does not trigger NSR as long as the pre-existing emission limits were not originally established to keep emissions from the plant, or from a project at the plant, below “major” thresholds and thereby avoid triggering PSD review, such that increasing the emission limits would now trigger PSD, under Wis. Admin. Code § NR 405.16(2).

Moreover, in general, increases in production rate and fuel switching are not changes in methods of operation unless they are limited by the permit and those limitations are changed. [Wis. Admin. Code § NR 405.02(21)(b)(5)-(6)] Here, the permit revision does not include any changes to any limits on production rate and fuel switching. (737009020-P02 limits the fuel that can be burned in Units B11, B12, and B13 to natural gas and distillate oil as did 737009020-P01. Therefore, no additional fuel switching is allowed under the revision.) Petitioners claim, that with higher emission limits the source could increase the production rate or could undertake fuel switching, does not mean that the higher emission limits trigger NSR.

Furthermore, WDNR included these limits in the Title V permit as a measure to demonstrate compliance with the Wisconsin SIP requirement that Weston not violate the National Ambient Air Quality Standards (NAAQS). The results of WDNR’s modeling of the revised limits based on stack tests in 737009020-P02 also demonstrate that Weston will not violate the NAAQS.

Petitioner also argues that since the limits found in 737009020-P01 were relied on in the PSD permit review for Unit 4, these limits should be considered in determining Weston’s PSD

applicability. As previously discussed, the AP-42 factors used as the basis for the pre-existing limits found in 737009020-P01, which were used in the modeling analysis required in the PSD review for Unit 4, are antiquated. In the process of issuing 737009020-P02, WDNR modeled Weston's emissions again using the more representative emission levels based on recent stack tests. The modeling demonstrated that Weston's emissions do not contribute to a violation of the NAAQS even at the higher level associated with the revised emission limits. Therefore, despite the difference in emission estimations used by WDNR in the modeling used for the PSD review for Unit 4 and 737009020-P02, the most recent modeling effort by WDNR continues to demonstrate that Weston will not contribute to a NAAQS violation. Petitioner has not made the requisite demonstration, under section 505(b)(2) of the Act; therefore, I deny the petition on this issue.

### **G. PSD Applicability For Physical Changes to Units 1 and 2**

Petitioner alleges that Units 1 and 2 made physical changes without a PSD permit, specifically, the 1990/1991 replacement of the economizer on Unit 1, the 1993 replacement of the economizer and secondary superheater on Unit 2, and the 1987 replacement of the lower pressure cylinder seal on Unit 1. Petitioner contends that WDNR did not address its comments on this issue. Petitioner notes that WDNR stated in its response to comments “[t]he Department has not made a finding that the Weston facility has violated PSD or NSPS requirements nor has the facility reported to the Department that such violations have occurred. If such a finding is made in the future, then the Department will take appropriate actions to revise the operation permit as needed. Without a finding of violation, the Department will not be including a compliance plan or other requirements pertaining to PSD or NSPS.” Petition at 28. Petitioner claims that the response is insufficient, and that WDNR must respond to Petitioner's comments. Petition at 29, citing *In re Midwest Generation, LLC, Fisk Generating Station*, (March 25, 2005), at 5-6.

Petitioner further alleges that Weston made a number of “physical changes” to increase the life of the facility, and allow it to burn lower-sulfur western coal. Petition at 30-32. Petitioner claims that these physical changes resulted in significant net increases that triggered PSD. Petition at 31. Petitioner asks the Administrator to object to this permit because of WDNR's failure to respond to its comments and because the permit fails to include applicable PSD requirements. Petition at 32.

### **Response**

As with Petitioner's objection discussed in section B, above, Petitioner's objection here applies to provisions in the pre-existing permit that WDNR did not change in the final modification permit. EPA interprets its regulations to limit the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action and, because the final modification permit did not include any changes to Units 1 and 2, Petitioner's objection is not directly related to the final modification permit. We need not determine whether, if the proposed changes were carried forward in the final permit, the petition would have been relevant to those changes. For this reason, I deny the petition on this issue.

## H. Visible Emission Violations

Petitioner asserts that its comments demonstrated that the facility had ongoing visible emission violations and violations of monitoring requirements. Petitioner included with its comments excess emission reports wherein, according to Petitioner, the company certified that it had violated the visible emission standards. Petitioner argues that WDNR did not sufficiently address the comment and did not include a compliance schedule in the permit, as required by section 503 of the Act and 40 C.F.R. § 70.5(c)(8)(iii)(C). Petition at 33. Instead, Petitioner notes, WDNR responded that “[t]he Department has not issued a Notice of Violation (NOV) to WPSC for emissions in excess of established opacity limitations nor for excessive downtime for the continuous opacity monitor identified in these comments. Without a finding of violation, the Department will not be including a compliance plan or other requirements pertaining to the continuous opacity monitor.” Petitioner asserts that, as a result of WDNR’s failure to include a compliance schedule in the permit, the source will continue to emit excess visible emissions into the ambient air, affecting its members, and asks the Administrator to object to the permit because it does not satisfy the requirements of section 503 of the Act, 40 C.F.R. §§ 70.1 and 70.5, and the Wisconsin SIP.

### Response

As with Petitioner’s objection discussed in section B, above, Petitioner’s objection here applies to provisions in the pre-existing permit that WDNR did not change in the final modification permit. That is, Petitioner’s objection is based on continuous opacity monitor (“COMS”) data. Only Units 1, 2, and 3 have COMS data, and the final modification permit did not include any changes to those units. EPA interprets its regulations to limit the scope of petitions to object in significant modification actions to issues that are directly related to the permit modification action and, because the final modification permit did not include any changes to Units 1, 2, and 3, Petitioner’s objection is not directly related to the final modification permit. We need not determine whether, if the proposed changes were carried forward in the final permit, the petition would have been relevant to those changes. For this reason, I deny the petition on this issue.

## CONCLUSION

For the reasons set forth above, and pursuant to section 505(b)(2) of the Clean Air Act, I grant in part and deny in part the petition of the Sierra Club requesting the Administrator to object to issuance of the Title V permit to Wisconsin Public Service Corporation, Weston Generating Station.

Dated: DEC 19 2007



Stephen L. Johnson  
Administrator