



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF

FEB 19 2002

(AR-18J)

Lloyd L. Eagan, Director
Bureau of Air Management
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707

RE: Memorandum of Agreement (MOA) Regarding
Sections 111(d)/129 Federal Plans

Dear Ms. Eagan:

Enclosed please find your copy of the MOA signed by the Region 5 Administrator, Thomas Skinner. This MOA is a copy of the same document which Darrell Bazzell, Secretary of the Wisconsin Department of Natural Resources (WDNR), signed and dated December 3, 2001. Concerning the minor revisions in the signed MOA from the draft that the United States Environmental Protection Agency (EPA) originally sent to WDNR, we do not believe these changes affect the intent and approvability of the MOA, and therefore we accepted them.

Although technically this MOA does not constitute a "delegation of authority", it does lay out who has primary responsibility in implementing the 111(d)/129 Federal Plans in Wisconsin. Most of these responsibilities lie with WDNR, but the MOA clearly lays out the authorities in the Federal Plans retained by EPA. Further, EPA of course retains its inherent authority to enforce the plans itself. For instance, on occasion EPA staff may conduct inspections and witness stack tests at affected sources in Wisconsin. In any outreach you do to these sources, it should be made clear that this may occur.

If you have any questions concerning this MOA, please contact me or have your staff contact Robert Miller, Chief, Permits and Grants Section, at (312) 353-0396, miller.robert@epa.gov.

Sincerely yours,

Stephen Rothblatt, Chief
Air Programs Branch

Enclosure

cc: Roger Fritz
Wisconsin Department of Natural Resources

Keith Pierce
Wisconsin Department of Natural Resources

MEMORANDUM OF AGREEMENT
BETWEEN THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING EXISTING SOURCES SUBJECT TO
SECTIONS 111(d) AND/OR 129 FEDERAL PLAN REQUIREMENTS
UNDER THE CLEAN AIR ACT

INTRODUCTION

The purpose of this Memorandum of Agreement (MOA) is to define the implementation responsibilities and authorities of the Wisconsin Department of Natural Resources (WDNR) under the Federal Plan requirements for existing sources subject to sections 111(d) and/or 129 of the Clean Air Act. These plans are codified at Title 40 Code of Federal Regulations (CFR) part 62. This MOA sets forth specific expectations and responsibilities of WDNR and the United States Environmental Protection Agency (EPA). Both EPA and WDNR believe that it is advantageous and the best use of resources for WDNR to undertake administrative and substantive roles in implementing these Federal Plans. The parties to this agreement affirm their commitment to an effective WDNR/EPA partnership, and agree to review this commitment as the need arises.

SCOPE

The WDNR has requested primary responsibilities for implementation and enforcement of all sections 111(d) and 129 Federal Plans for affected sources in Wisconsin,¹ except for sources, if any, in Indian Country. This MOA addresses those provisions and responsibilities for which WDNR has requested responsibility.

BACKGROUND

If a State does not have an approved sections 111(d) and/or 129 State plan, section 111 and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal Plan for existing sources located in that State. For instance, the Preamble for the Final Rule for the Federal Plan for Municipal Solid Waste (MSW) Landfills (64 FR 60689 - 60706; November 8, 1999) describes two mechanisms for transferring implementation responsibilities to a State. Under the first mechanism, EPA allows States to submit their own plan and request approval of it for

¹ The current source category universe of sections 111(d) and/or 129 Federal Plans for existing sources, either currently promulgated or having the likelihood of being promulgated, are: Large Municipal Solid Waste Combustors, Hospital Medical Infectious Waste Incinerators, Municipal Solid Waste Landfills, Small Municipal Waste Combustors, and Commercial and Industrial Solid Waste Incineration Units.

existing MSW landfills after they are subject to the Federal Plan. Under the second mechanism, EPA can give to the State primacy to perform certain implementation responsibilities for the Federal Plan to the extent appropriate and where authorized by State law. A memorandum of agreement between the State and EPA setting forth the terms and conditions of this exchange, including its effective date, is used to transfer primary authority.

The WDNR requested transfer of primary authority to implement and enforce sections 111(d) and 129 Federal Plans for affected sources in Wisconsin using a variation of the second mechanism. As outlined in this MOA, the WDNR's mechanism for implementation and enforcement of emission standards and other requirements for air pollutants for sources under Wisconsin's jurisdiction and subject to these Federal Plans is through its operation air pollutant permit program, which was interim approved by EPA as meeting the requirements of Title 5 of the Clean Air Act and the implementing regulations at 40 CFR part 70.

The State shall undertake administrative and substantive roles in implementing these Federal Plans through the Title 5 permit program. The WDNR will implement and enforce the sections 111(d) and/or 129 Federal Plan standards by including such standards in State operation permits when they are issued or revised.² Authorities WDNR will exercise in implementing the program include (1) the authority to request application information for operation permits, (2) the authority to request and receive records relating to the emission of air contaminants, (3) the requirement that all applicable State and Federal requirements must be included in its operation permits, and (4) the authority to enforce all conditions and requirements of its part 70 permits.

POLICY STATEMENT

The WDNR and EPA hereby establish a process for the State to implement sections 111(d) and 129 Federal Plans.

The WDNR shall implement and enforce these Federal Plans pursuant to this MOA through the part 70 permit program. The WDNR shall include the applicable requirements from these Federal Plans in part 70 operation permits for permitted sources. The information submittal requirements of the sections 111(d) and/or 129 Federal Plans will be implemented and enforced by WDNR through the authority of the part 70 operation permit program to request and receive operation permit applications and through the authority of chapter NR 439, Wis. Adm. Code to request and receive records relating to the emission of air contaminants. The permit content requirements of the sections 111(d) and/or 129 Federal Plans will be implemented by WDNR through NR 407.09 and Statute 285.65 which specify that all applicable requirements must be included in an operation permit. Enforcement requirements of the sections 111(d) and/or 129 Federal Plans will be implemented by WDNR through NR 494.03 and 494.04, and

² This MOA is not a traditional delegation of authority because WDNR will be enforcing part 70 permit conditions and not either the sections 111(d) and/or 129 Federal rules themselves or Wisconsin adopted rules mirroring the Federal Plans. This MOA describes the WDNR and EPA roles and responsibilities for implementation and enforcement of the sections 111(d) and/or 129 Federal Plans.

Statutes 285.83 and 285.85, which specify the penalties that will be imposed if it is determined that a violation has occurred.

The WDNR and EPA agree to implement the following procedures:

I. The WDNR shall have primary responsibility for implementing and (upon issuance of the part 70 permit) enforcing the sections 111(d) and/or 129 Federal Plan standards in Wisconsin, except for applicable sources, if any, in Indian Country. Such implementation and enforcement shall include, as appropriate:

- A. Distribution of informational letters and information to potentially affected sources;
- B. Receiving and reviewing notices, reports, and compliance certifications;
- C. Conducting compliance inspections;
- D. Preparing inspection reports and sharing with EPA those reports which find violations;
- E. Requiring submittal, receiving, and reviewing part 70 operation permit applications from affected sources;
- F. Expeditiously issuing or revising existing part 70 operation permits for affected sources, as needed, to include the sections 111(d) and/or 129 Federal Plan standards; and
- G. Assuring compliance through implementation and enforcement of the part 70 permit program for affected sources.

II. While WDNR will have primary responsibility for implementation and enforcement of the sections 111(d) and/or 129 Federal Plans in Wisconsin, the EPA Administrator retains the sole authority to approve the following items:

- A. Alternative site-specific non-methane organic compounds (NMOC) concentrations or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate,
- B. Alternative emission standards,
- C. Major alternative to test methods,³
- D. Major alternatives to monitoring,³
- E. Waivers of record keeping, and
- F. Authority to implement and enforce the Federal Plan in Indian Country

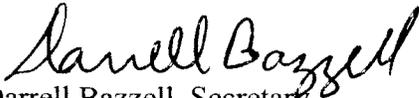
If owners or operators of sources subject to the sections 111(d) and/or 129 Federal Plans would like to avail themselves of the items listed above and specified in the Federal Plan, they should submit a request to the EPA Region 5 Regional Administrator with a copy to

³ Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

the State. It should be noted that EPA does not relinquish enforcement authority even when a State has authority to enforce these standards.

III. Until WDNR obtains the authority necessary to enforce the sections 111(d) and/or 129 Federal Plan standards through issuance of a part 70 operation permit to an affected source, EPA has the authority to initiate any enforcement action against that source. The EPA at all times retains its authority to enforce all provisions of the sections 111(d) and/or 129 Federal Plans.

The above agreement is effective when signed by both parties and may be modified upon agreement by WDNR and EPA. Nothing in this agreement shall be construed to restrict in any way the authority of either EPA or WDNR to fulfill its responsibilities under State or Federal law.



Darrell Bazzell, Secretary
Wisconsin Department of Natural Resources

Date: December 3, 2001

Thomas Skinner, Regional Administrator
U.S. Environmental Protection Agency, Region V

Date: Thomas Skinner
February 11, 2002