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SUPPLEMENTARY INFORMATION:

The supplemental information is organized in the following order:

- I. What action is EPA taking today?
- II. What is EPA's response to comments received on the proposed rulemaking?
- III. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions of NO_x. These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting the NO_x emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_x emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmBtu from each unit's allowable emissions.

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO_x reduction rules, while other units would emit less than allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program "caps" the aggregate ozone season NO_x emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

II. What Is EPA's Response to Comments Received on the Proposed Rulemaking?

The Midwest Environmental Advocates provided adverse comments on EPA's proposed approval of Wisconsin's averaging program. The Natural Resources Defense Council requested clarification of an issue related to the proposed approval of the new categorical emissions limit for new integrated gasification combined cycled units. In addition, EPA received two positive comments on the proposed rulemaking from citizens. This section responds to the adverse comments and to the request for clarification.

The Midwest Environmental Advocates noted areas where Wisconsin's averaging program may differ from the EPA's guidance on Improving Air Quality with Economic Incentive Programs, EPA-452/R-01-001, January 2001 (EIP Guidance). The comments by Midwest Environmental Advocates are addressed in detail below, and in many cases EPA disagrees that Wisconsin's averaging program is inconsistent with the EIP. In general, EPA notes that the EIP Guidance is neither a law nor a regulation. While it provides important guidance on the development of economic incentive programs, differences between a SIP submittal and the EIP Guidance are not necessarily sufficient reason to disapprove a SIP submittal.

Comment: Wisconsin's NO_x averaging program should not be approved because it would not result in clear environmental benefit, as required under the EIP Guidance.

Response: The averaging program should be considered as an element of Wisconsin's overall NO_x reduction rules. EPA has determined that these rules will achieve the results that the state attributed to them in the one-hour

ozone attainment plan (proposed rule, July 2, 2001, 66 FR 34878; final rule November 13, 2001, 66 FR 56931). The averaging portion of the rules provides compliance provisions that make it possible for sources subject to the rules to comply with them in a timely way, which otherwise would not be possible. Therefore, the averaging program is an essential element in an overall package that will lead to actual emissions decreases, and conforms with the EIP Guidance provisions on environmental benefit. Moreover, units that enter into NO_x averaging plans must collectively accept a lower NO_x emissions limit than they would have individually, which will promote further reductions in actual emissions.

Comment: Wisconsin's NO_x averaging program fails to take source compliance margins into account, contrary to the EIP Guidance. The averaging program could lead to the disappearance of the margin between actual and allowable emissions that would occur in the absence of the averaging program, creating the potential for "an overall increase in actual emissions, despite a theoretical decrease in allowable emissions."

Response: The EIP Guidance (section 6.5(g)) states that in areas that have a required attainment demonstration, no provisions for considering compliance margins are necessary if the relevant attainment plan "includes the emissions from compliance margins as actual emissions" and "the relevant emissions inventories include emissions from the compliance margins for all sources covered under the EIP." Since the Milwaukee-Racine attainment and ROP plan and associated NO_x emissions inventories assume that the NO_x sources covered by the averaging program all emit as much as allowed, the compliance margin is already taken into account, and emissions will be reduced even if sources emit the maximum allowed. See "Technical Support Document for the Post-1999 Rate-of-Progress Plan Revision to the State Implementation Plan for the Milwaukee-Racine, Wisconsin Area," from Jacqueline Nwia to Randall Robinson, June 7, 2001, p. 27 (Docket WI 108-7338).

Comment: The rules require that excess emissions reductions used in an averaging plan be "beyond those required to meet all State and Federal requirements," but they do not require that reductions be in excess of those that would have occurred in the absence of the EIP, for instance due to upgrades, replacement or repair. The use of such reductions in averaging would frustrate