located outside of reservation boundaries."

Response: As indicated, EPA is currently not aware of any title V source located on lands over which an Indian tribe has jurisdiction. Further, the State's comment does not identify any specific affected off-reservation sources. Without more information about specific circumstances, EPA cannot address the State's specific concern. In general, based on the information currently submitted to EPA by the State and largely for the reasons outlined in the preceding response, EPA's approval of Wisconsin's program would not extend to any sources located within Indian country, as defined at 18 U.S.C. 1151. The EPÅ will work with both the State and an affected tribal governments to evaluate any specific questions that are in fact presented.

## 2. Fee Adequacy

WDNR commented that the State's title V fees were developed to provide for adequate implementation of the minimum program requirements as they existed when the fees were developed. However, WDNR is concerned that these fees may not be sufficient to cover any extra requirements that may be added to the program, especially the section 114 enhanced compliance monitoring requirements and the section 112(r) emergency release requirements. WDNR stated that EPA must take into account the limited resources that States will have under the presumptive minimum fees established for the title V program in promulgating these regulations.

Ålthough title V establishes a presumptive minimum cost model, it also requires that a State's fee schedule result in the collection and retention of revenues sufficient to cover permit program costs. See 40 CFR 70.9 as well as the guidance memorandum issued on August 4, 1993 entitled, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V," signed by John Seitz, Director of the Office of Air Quality Planning and Standards. This adequacy requirement ensures that title V programs are not and will not be underfunded, and obligates the States to update and adjust their fee schedules if they are not sufficient to fund the program costs. It may therefore be appropriate to adjust fees for program expenditure increases, such as the implementation of new applicable requirements for enhanced monitoring and emergency releases.

## 3. Acid Rain Fees

The EPA proposed that the approval of Wisconsin's fee schedule does not

extend to Wisconsin's fee provisions for the collection of emissions fees from utilities with affected units under section 404 of the Act (s.144.399(2)(am), Wis. Stats., and s.NR 410.04(4), Wis. Adm. Code). 40 CFR 70.9(b)(4) provides that, for 1995 through 1999, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act. One commenter argued that the State fees are not directly charged on emissions from Phase I affected units, and therefore EPA should not be concerned about these fees, which would place Wisconsin's fee revenue collection slightly above the presumptive minimum cost established in part 70. Although the fees in question are not directly charged on emissions from Phase I affected units, they are charged to other units operated by a utility that owns or operates a Phase I affected source. In addition, the fee amount is equivalent to what would have been charged to the Phase I affected unit. In other words, the State program charges emissions fees to utilities with Phase I units in an amount equivalent to what would have been charged directly to the Phase I units. Because of this equivalency, EPA has determined that these fees cannot be considered title V fees.

## 4. Section 112(g) Implementation

The EPA received several comments regarding the proposed approval of Wisconsin's preconstruction permitting program for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. Two commenters argued that Wisconsin should not, and cannot, implement section 112(g) until: (1) EPA has promulgated a section 112(g) regulation, and (2) the State has a section 112(g) program in place. The commenters also argued that Wisconsin's preconstruction review program cannot serve as a means to implement section 112(g) because it was not designed for that purpose. One commenter also asserted that such a regulatory program is unconstitutional because the section 112(g) requirements are vague. In addition to the above comments, WDNR also commented that EPA should delay the implementation of section 112(g) until the Federal regulations are promulgated. WDNR anticipates that the implementation of section 112(g) without Federal regulations will be difficult and time consuming. However, WDNR also commented that it will implement the

requirements of section 112(g) if a such a delay is not possible.

In its proposed interim approval of Wisconsin's part 70 program, EPA proposed to approve Wisconsin's preconstruction review program for the purpose of implementing section 112(g) during the transition period before promulgation of a Federal rule implementing section 112(g). This proposal was based in part on an interpretation of the Act that would require sources to comply with section 112(g) beginning on the date of approval of the title V program, regardless of whether EPA had completed its section 112(g) rulemaking. The EPA has since revised this interpretation of the Act in a Federal Register notice published on February 14, 1995. 60 FR 8333. The revised interpretation postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The revised notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Wisconsin must be able to implement section 112(g) during the transition period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

For this reason, EPA is finalizing its approval of Wisconsin's preconstruction review program. This approval clarifies that the preconstruction review program is available as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by Wisconsin of rules established to implement section 112(g). However, since the approval is for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Further, EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

The EPA believes that, although Wisconsin currently lacks a program designed specifically to implement section 112(g), Wisconsin's