

Letter Report

**Environmental
Cooperation
Pilot Program**

Department of Natural Resources

February 2006



Legislative Audit Bureau

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STATE OF WISCONSIN

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Janice Mueller
State Auditor

February 23, 2006

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

We have completed a review of the Environmental Cooperation Pilot Program (ECPP). The program is administered by the Department of Natural Resources (DNR) and was established by 1997 Wisconsin Act 27 to test innovative environmental regulatory methods. Statutes require the Legislative Audit Bureau to monitor ECPP and report annually to the Legislature on our findings.

DNR manages seven agreements with six companies. We have reviewed the terms of the agreements and DNR's administration of them and make several recommendations to ensure adequate public involvement in ECPP and comprehensive performance measures for quantifying its economic and environmental effects.

Addressing the need for effective performance measures is important given that the initial five-year ECPP agreements will expire in 2006 and 2007. DNR anticipates renewing all seven agreements for a second five-year period, and performance information will help DNR ensure the agreements are structured to promote program success.

We appreciate the courtesy and cooperation extended to us by DNR and the ECPP companies we contacted during our review.

Sincerely,

A handwritten signature in cursive script that reads "Janice Mueller".

Janice Mueller
State Auditor

JM/KW/km

Enclosures

ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 27 established the Environmental Cooperation Pilot Program (ECPP) to evaluate innovative environmental regulatory methods and directed the Wisconsin Department of Natural Resources (DNR), which administers the program, to enter into no more than ten agreements with private companies by October 2002 for this purpose. Section 299.80, Wis. Stats., identifies steps to be taken by DNR, participating companies, and the public in the development of innovative regulatory methods, including working together to reduce pollution below statutorily allowed levels.

Under s. 13.53(2)(d), Wis. Stats., the Legislative Audit Bureau is required to monitor and report on ECPP. This is our fifth annual review. In conducting it, we reviewed processes associated with the amendment, revocation, and renewal of ECPP agreements; interviewed DNR staff; examined reports prepared by DNR and the participating companies; spoke with representatives of the participating companies; and visited three facilities covered by ECPP agreements.

Agreements

DNR manages seven ECPP agreements with six companies. The agreements cover a total of 17 facilities, as shown in Table 1. All of the agreements are for five-year terms, as required by statute, and were signed in 2001 or 2002. When the original five-year agreements end in 2006 and 2007, each will be eligible for a five-year extension, as allowed by s. 299.80(6e), Wis. Stats. At present, DNR anticipates renewing all seven agreements for one statutorily allowed five-year term, based on the expressed interest of the participating companies.

DNR has also begun to implement a new program—Green Tier—that will affect ECPP. Unlike ECPP, which is a pilot program, Green Tier is a permanent program involving cooperative agreements between companies and DNR. Green Tier is similar in concept to ECPP but aims at wider and longer-term participation. Because the two programs are very similar, DNR's ongoing evaluation of ECPP could be used to inform operations of the Green Tier program.

Table 1

Environmental Cooperation Pilot Program Participation

Company	Plant Location	Anticipated Renewal Date
We Energies	Pleasant Prairie	February 5, 2006
Cook Composites and Polymers Company	Saukville	October 1, 2006
Northern Engraving Corporation	Sparta Holmen West Salem Galesville	June 10, 2007
Packaging Corporation of America	Tomahawk	September 10, 2007
Madison Gas and Electric Company	Madison (Blount Generating Station)	September 26, 2007
We Energies	Wauwatosa (Milwaukee County Power Plant) Oak Creek Pleasant Prairie Port Washington Milwaukee (Valley Power Plant) Watertown (Concord Generating Station) Germantown Union Grove (Paris Generating Station)	September 30, 2007
3M	Menomonie	October 1, 2007

Program Management

We reviewed the processes by which DNR amended two ECPP agreements, as well as the content of those amendments and public involvement in the development and monitoring of ECPP agreements.

Agreement Amendments and Revocations

In 2004, DNR's agreements with Packaging Corporation of America and 3M were amended with the consent of the participating companies. DNR may also amend agreements unilaterally in some circumstances, which are specified in s. 299.80(7), Wis. Stats.

Statutes require a public comment period for all amendments and an informational meeting if public interest is high. For both agreements, DNR complied with the statutory requirement to allow for public comment. For one agreement, DNR also held a public hearing.

We reviewed the content of the amendments to understand how they maintained the statutory goals of the program. DNR's amended agreement with Packaging Corporation of America allows for the collection and burning as fuel of gas byproducts of a wastewater treatment process that the company developed under its original ECPP agreement. This amendment is consistent with statutory directives to minimize transfers of waste discharges between air, water, and land. The amended agreement with 3M allows for a facility-wide air pollution control permit rather than multiple smaller permits in exchange for the company's commitment to reduced emissions caps for volatile organic compounds and hazardous air pollutants. The amendment is consistent with the statutory directive for DNR to achieve efficiencies through the consolidation of environmental requirements that would otherwise be included in separate approvals.

DNR may revoke its ECPP agreements with the consent of participants or unilaterally under circumstances that are specified in s. 299.80(7)(c), Wis. Stats., and include a company's failure to self-report violations of environmental regulations not replaced by the agreement. To date, DNR has not revoked any ECPP agreements because to its knowledge no company has failed to comply with the requirements of either its ECPP agreement or statutes.

Public Involvement

Statutes contain provisions that require DNR to involve the public in the development, monitoring, and amendment of ECPP agreements. For example, s. 299.80(2), Wis. Stats., directs DNR to:

- seek to improve the provision of useful information to the public about the environmental and human health impacts of companies;
- provide public access to information about performance evaluations conducted by participating companies;

- encourage facility owners and operators and communities to work together to reduce pollution to levels below those required in statute; and
- seek to increase trust among the government, facility owners and operators, and the public through open communication and through support of early and credible resolution of conflicts over issues concerning the environment and environmental regulation.

Under s. 299.80(3), Wis. Stats., cooperative agreements require both meetings with interested persons, which are to be held at least once every six months, and measurement of employee and public opinion concerning the company's participation in the program.

All seven ECPP agreements include requirements for interested persons' involvement, but the extent to which ECPP companies have fulfilled these requirements varies. At two participating companies, Cook Composites and Polymers and Madison Gas and Electric, interested persons' involvement has exceeded requirements: all meetings have had high attendance and participation, and in some cases meetings have occurred more frequently than every six months. Cook Composites and Polymers attributes some of its successes to an outside consultant hired to facilitate meetings of interested persons and help the company manage relations with the community, in which it is centrally located.

The other participating companies have been less successful in achieving the community involvement goals of ECPP. For example, Northern Engraving Corporation held just one meeting for interested persons during 2005, and the six attendees, two of whom were company employees, primarily discussed business issues such as the company's sales and costs rather than environmental concerns related to its operations. 3M also held just one meeting for interested persons in 2005. Five members of the interested persons group attended the meeting, along with four 3M representatives. In addition, two other participating companies, We Energies and Packaging Corporation of America, have had difficulty developing community interest in the initiatives addressed in their cooperative agreements, as evidenced by the low attendance at their 2004 and 2005 meetings for interested persons. For example, We Energies noted that when it scheduled meetings, invitees did not attend.

Although the reasons for the poor participation vary, these meetings provide the public with an opportunity to raise concerns, and s. 299.80(3)(n), Wis. Stats., requires participating companies to meet with interested persons at least once every six months. We found that the amendment to one agreement calls for only annual meetings with interested persons.

Recommendation

We recommend the Department of Natural Resources ensure all cooperative agreements with companies participating in the Environmental Cooperation Pilot Program comply with statutory requirements for meetings with interested persons at least once every six months.

Informing the Legislature of Agreement Extensions

Section 299.80(6e), Wis. Stats., allows for extension of the cooperative agreements if DNR determines the agreement renewal is consistent with other statutory provisions and the participant agrees to the extension. In addition, this section states that DNR “may notify” the Joint Committee on Finance of the intention to renew. However, our review of drafting records and interviews with legislative staff involved with the drafting of s. 299.80(6e), Wis. Stats., as well as with DNR staff, indicates there was strong interest in requiring DNR to notify the Committee when seeking to extend an ECPP agreement. DNR officials indicate they are planning to notify the Committee when extending ECPP agreements, and we believe this step is needed to ensure the Legislature is adequately advised.

Recommendation

We recommend the Department of Natural Resources notify the Joint Committee on Finance of all proposed extensions of the Environmental Cooperation Pilot Program agreements.

Performance Measures

Section 299.80(2), Wis. Stats., requires DNR to evaluate innovative environmental regulatory methods initiated under ECPP. Performance measurement is required in a number of areas, including environmental benefits, time spent by DNR and participating companies on administrative tasks, and the cost-effectiveness of pollution-reduction strategies. We noted weaknesses in the measurement of program results in our September 2004 letter report on ECPP. At that time, DNR indicated its intention to improve its evaluation efforts, as well as the documentation of ECPP’s ability to deliver environmental and economic results. While participating companies have largely met their obligations to measure their performance, DNR’s progress in establishing performance measures for the program as a whole has been limited.

Each of the companies participating in ECPP has developed an environmental management system, as required by the terms of the cooperative agreements. Section 299.80, Wis. Stats., defines an environmental management system as an organized set of procedures implemented by the owner or operator of a facility to evaluate the environmental performance of the facility and to achieve measurable or noticeable improvements in environmental performance through planning and changes in the facility’s operations. We reviewed the procedures established by participating companies and found them to be in compliance with statutory requirements.

In August 1999, DNR held the first meeting of the Cooperative Agreement Advisory Group, which was given the task of providing guidance to DNR on ECPP program development. The Advisory Group’s purposes were, among other things, to develop performance measures for ECPP as a whole, to monitor DNR activities, and to develop methods for making program data accessible. The Advisory Group included representatives from each company participating in ECPP, as well as environmental organizations and others. In 2000, DNR designed tools for the

Advisory Group to use in developing performance measures and tracking achievement. However, the Advisory Group has neither used these tools nor met since September 2002.

Statutes also direct DNR to seek to reduce the administrative costs it and participating companies incur. At least two of the cooperative agreements include language requiring DNR to report periodically to the participating companies on the amount of time saved in the approval of permits and other regulatory activities as a result of the cooperative agreements. We found, however, that DNR has not attempted to assess any administrative or paperwork efficiencies.

In addition, we found that DNR currently relies on anecdotal self-reporting of economic and environmental achievements of ECPP participants. This self-reporting is the basis of the annual reports issued by the participating companies and DNR. In its 2005 annual report on the program, DNR lists ongoing and new achievements for 2004. The report highlights state and national awards that ECPP participants received and the environmental leadership role that participants have played, both regionally and nationally. However, DNR has not yet completed work on measures that compare air emissions and hazardous waste outputs of ECPP participants to those of nonparticipating companies in Wisconsin.

It appears that a main cause of DNR's limited progress in establishing performance measures is related to the time it invests in the program. To assess the level of resources directed to implementing and managing ECPP, we reviewed time reported by DNR staff on these activities. We found that the number of staff hours spent on the program has declined substantially over time.

In 2001, DNR staff recorded 7,311 hours, or the equivalent of 4.0 full-time equivalent (FTE) staff positions, for the program. By 2005, the number of reported hours had fallen to 1,238, or approximately 0.7 FTE positions. Some decline in the number of hours spent on the program might be expected as the more staff-intensive activities associated with recruiting companies and developing agreements were completed. However, DNR staff time has not been used for facilitating the development of performance measures, quantifying regulatory efficiencies resulting from the program, and ensuring adequate public involvement. DNR officials attribute some of the decline in hours spent on the program to staffing needs in other areas, such as Green Tier. However, dedicating more staff time to ECPP could enable DNR to develop tools for measuring performance and for encouraging public involvement, which could also be used in assessing Green Tier's performance in the future.

Recommendation

We recommend the Department of Natural Resources develop performance measures to quantify the economic and environmental effects of the Environmental Cooperation Pilot Program and report on these efforts in its November 2006 Environmental Cooperation Pilot Program Annual Report to the Legislature.

Information Transfer between Regulated Companies

Statutes direct DNR to encourage the transfer of information about methods for improving environmental performance and the adoption of these methods by other companies. While interest in innovative regulatory approaches and methods for pollution reduction appears to be strong, DNR has had limited success in encouraging the exchange of information.

At the time of our review, DNR had not developed a clear strategy for promoting the exchange of information generated by the program and cited several challenges to facilitating information transfer. First, as noted, DNR staff have spent less time on the program in recent years. Resources currently dedicated to the program primarily support day-to-day management of the agreements. Second, DNR indicated that some ECPP companies are reluctant to make proprietary information available because they fear it could be used by competing companies. At least one ECPP company has reportedly patented technologies it developed under ECPP, which limits DNR's ability to promote information exchange.

Nonetheless, there are some low-cost strategies DNR could employ in the future to enhance information exchange among interested companies and community members. For example, company representatives with whom we spoke indicated that periodic teleconferences would help meet their needs for information exchange with other companies. In addition, with the financial support of sponsors, DNR held a conference in October 2005 that included bus tours throughout Wisconsin highlighting companies that are carrying out cooperative environmental projects, including ECPP projects. Participants indicated this was a useful forum for exchanging information.
