



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

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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), which was established in 1997 Wisconsin Act 27. The pilot program is administered by the Department of Natural Resources (DNR) and is intended to test and evaluate innovative environmental regulations for maintaining the protection of public health and the environment. The Legislative Audit Bureau is required by statute to monitor and report annually on this pilot program.

While DNR has successfully executed seven five-year agreements with six different companies, it has not yet established a methodology to collect and evaluate information about the innovative environmental regulatory methods implemented under the program. As a result, it does not have the information necessary to determine the applicability of innovations to other companies, the feasibility of extending this program's reduced reporting and monitoring requirements to more businesses, and the effect of innovative environmental regulations on its own administrative duties.

2003 Wisconsin Act 276 created the Environmental Results Program, commonly referred to as "Green Tier." This program aims to encourage enhanced compliance with environmental regulations and provides incentives to businesses that meet higher environmental standards while at the same time implementing environmental programs. DNR officials indicate that ECPP participants are eligible to transfer to the Environmental Results Program before the agreements are completed, however, four of the six companies indicate they plan to remain in ECPP. We include a recommendation for DNR to seek legislative approval should it attempt to terminate any existing ECPP agreements.

I hope you find this information useful. Please contact me if you have additional questions.

Sincerely,

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

Janice Mueller
State Auditor

JM/DB/bm

Enclosure

ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 7, the 1997-99 Biennial Budget Act, created the Environmental Cooperation Pilot Program (ECPP) to evaluate innovative environmental regulatory projects. The program is administered by the Department of Natural Resources (DNR) and is governed by contracts between DNR and private companies that allow for innovative environmental programs in exchange for simplified compliance measures. Section 299.80, Wis. Stats., limited program participation to ten agreements entered into by October 1, 2002; DNR entered into seven agreements with six different companies by that date.

Under s. 13.53(2)(d), Wis. Stats., the Legislative Audit Bureau monitors ECPP and is to submit annual reports to the Legislature. This is our fourth evaluation. In performing it, we analyzed the content of agreements, interviewed staff in DNR, examined reports required by the agreement, reviewed DNR's annual reports to the Legislature, and spoke with representatives of three participating companies.

Agreements

The seven agreements are for five-year periods. Each has the option to renew for another five years. Current agreements extend through October 1, 2007.

Each agreement appropriately includes provisions required by statute, including requirements for an environmental management system that will evaluate the environmental performance of the facility; creation of an interested persons group intended to allow local citizens to comment on the company's environmental performance under the agreement; submission of a baseline evaluation and annual updates to DNR; and a commitment by the company to correct any violations within 90 days of submitting its annual evaluation or within a time frame agreed to with DNR. In addition to these standard provisions, each agreement is customized to establish environmental innovations and flexibilities specific to the participating companies.

Table 1

Environmental Cooperation Pilot Program Participation

Company	Facility Location	Begin Date
Wisconsin Electric Power Company	Pleasant Prairie	February 5, 2001
Cook Composites and Polymers Company	Saukville	October 1, 2001
Northern Engraving Corporation	Sparta	June 10, 2002 ¹
	Holmen	
	West Salem	
	Galesville	
Packaging Corporation of America	Tomahawk	September 10, 2002
Madison Gas and Electric Company	Blount Generating Station-Madison	September 26, 2002
Wisconsin Electric Power Company	Milwaukee County Power Plant-Wauwatosa	September 30, 2002
	Oak Creek Power Plant	
	Pleasant Prairie Power Plant	
	Port Washington Power Plant	
	Valley Power Plant-Milwaukee	
	Concord Generating Station-Watertown	
	Germantown Power Plant	
Paris Generating Station-Union Grove		
3M	Menomonie	October 1, 2002

¹ The agreement was amended June 23, 2003, to include facilities at West Salem and Galesville.

Innovations and Flexibilities

Under each agreement, participating companies commit to innovative environmental regulatory practices in exchange for greater flexibility in monitoring, reporting, and permitting. Based on the nature of a facility's operations, agreements may contain multiple innovative environmental regulatory projects. The following are examples of an environmental practice implemented under each of the seven agreements:

- In an effort to reduce landfill space, the Wisconsin Electric Power Company-Pleasant Prairie agreement allowed the company to re-burn ash recovered and diverted from landfills as an alternative fuel at the Pleasant Prairie facility; no other company in Wisconsin is currently recovering ash from landfills. According to a report issued by the Wisconsin Electric Power Company, in 2002 the Pleasant Prairie facility re-burned more than 111,900 tons of ash diverted from landfills and more than 8,200 tons of ash recovered from the company's landfills in Caledonia and Waukesha. The report indicates that ash re-burn at the facility has saved the equivalent of 77,890 cubic yards of landfill space and avoided the purchase of 55,900 tons, or approximately 535 rail cars, of purchased fuel.
- DNR worked with the Cook Composites and Polymers Company to develop a time line for implementation of an alternative disposal method for the chemical xylene, a cleaning agent. Before the agreement, the company disposed of the cleaner by incineration or as a fuel source in the incinerator, which created water and air pollution concerns. In order to continue with these disposal practices, the company would have had to renew its air permit and re-license its hazardous waste incinerator, which the company estimated would have required \$80,000 to \$100,000 in testing. Under the agreement, the company was able to cease disposing of xylene through incineration. It reduced the amount of xylene it purchased, implemented on-site recycling, and located off-site locations to distill the product for re-purchase or re-use in fuel blending. According to a 2003 evaluation conducted by the company, the amount of xylene generated at the facility was reduced from 1.8 million pounds per year in 2000 to 1.57 million pounds per year in 2002.
- The Northern Engraving Corporation committed to reducing waste and improving processes at four facilities. In a 2003 report, it commits to reducing air emissions, solid and hazardous waste generation, and it reports more efficient use of solvents, coatings, and additives. It also indicates that in 2003, the volatile organic compound emissions level at its Sparta facility was 35.1 tons, which is lower than the 85.0 tons per year limit specified in the agreement but the highest level since 1998.

- Before the agreement between the Packaging Corporation of America and DNR, federal law would have required the company to install pollution control devices on its stacks. Under the agreement, the company has been allowed to implement alternative technology to capture released gases throughout the system, not just from the stacks. The company believes that this technology reduces pollution more than stack pollution control devices because it addresses ambient off-gassing. DNR uses methanol emissions as an indicator chemical; reduced methanol emissions indicate an overall improvement in air emissions. According to a 2003 report issued by the company, methanol emissions were reduced from nearly 1.4 million pounds per year in 2000 to slightly more than 200,000 pounds per year in 2002.
- Madison Gas and Electric (MG&E) uses paper-derived fuel (PDF), which is pre-consumer waste papers, plastics, and cardboard that cannot be recycled, as an alternative fuel at its Blount Street facility in Madison. Before the agreement, MG&E was limited to six suppliers because of the way DNR defined PDF. Under the agreement, DNR expanded the definition for MG&E, allowing the company to obtain PDF from 12 different suppliers. MG&E asserts that PDF is beneficial because it is less expensive than coal, uses materials that would otherwise be landfilled, and creates lower emissions than coal. MG&E representatives stated that PDF generates 1.5 pounds of ash per 100 pounds burned, compared to 8.5 pounds of ash created by burning the same weight of coal. A 2004 report issued by MG&E indicates that 8,092 tons of PDF were burned in 2003, displacing 10,758 tons of coal.
- Under the multi-facility agreement between DNR and the Wisconsin Electric Power Company, the company agreed to reduce nitrogen oxide emissions across its coal-burning plants: the Milwaukee County power plant, the Oak Creek power plant, the Pleasant Prairie power plant, the Valley power plant, and the Port Washington power plant. As a result, the company began operating selective catalytic reduction equipment at its Pleasant Prairie facility in the summer of 2003. Before the agreement, the equipment was not required to be installed until 2007.
- In an effort to comply with the ECPP agreement, the 3M Menomonie facility began reusing polyester linings used as a backing for film products. The company now uses the backing several times before sending it to a plastic recycling vendor. A 2003 report issued by 3M indicates that this innovation prevented 146 tons of material from being landfilled.

According to DNR, the flexibility in environmental regulation granted by the agreements will not compromise protection of public health and the environment, because it most closely relates to reduced frequency of monitoring or reporting. For example, DNR may conduct inspections semi-annually instead of quarterly, which is the typical practice. The following are examples of flexibility under the seven agreements:

- An ECPP agreement allows the Wisconsin Electric Power Company's Pleasant Prairie facility greater flexibility in the testing or research of new technologies.

- As a result of another agreement, the Cook Composites and Polymers Company was not required to complete a trial burn test, which is normally conducted as part of the ten-year air permit renewal, because it was able to stop incinerating xylene, the hazardous chemical it uses in cleaning. This flexibility saved the company approximately \$400,000 and saved DNR staff time that would have been spent to review plans and tests associated with re-licensure.
- Under an ECPP agreement, the Northern Engraving Corporation's permitting for construction projects was streamlined. According to a 2003 report issued by the company, it submitted one application for a construction permit at its Sparta facility under the streamlined agreement, which reduced the permitting process by 30 days.
- An ECPP agreement with the Packaging Corporation of America allowed the company a higher emissions level for carbon monoxide in order to accommodate an increased use of biomass fuel (bark and sawdust) as an alternative to fossil fuels. According to DNR staff, burning bark and sawdust as an alternative to coal will result in an overall reduction of air pollutants, particularly sulfur dioxide. DNR staff report that the company increased biomass use from 9,192 tons in 2002 to 17,463 tons in 2003, a 90.0 percent increase that is equivalent to approximately 3,000 tons of coal.
- An ECPP agreement allowed MG&E to submit annual rather than semi-annual air pollution reports.
- Wisconsin Electric Power Company's agreement covering multiple facilities allowed it to calibrate instruments for measuring air pollution a minimum of once every 24 months, instead of once every 12 months.
- In exchange for environmental commitments by 3M, DNR agreed to several pre-approved projects and facility changes that the company may implement at any time during the term of its agreement. To date, no pre-approved projects have been implemented because the company's federally required air permit has not been finalized, a condition that the agreement places on the use of the pre-approved projects.

Departmental Evaluation and Management

As directed in s. 299.80(2), Wis. Stats., DNR is to administer the pilot program in order to evaluate innovative environmental regulatory methods. In general, pilot programs are viewed as devices to gain information about a small group that can be applied to a larger population.

While efforts to establish the agreements have been adequate, DNR has not established a methodology to collect and evaluate information about the innovative environmental regulatory methods implemented under the Environmental Cooperation Pilot Program. As a result, it currently does not have the necessary information to determine the applicability of innovations to other companies, the feasibility of extending this program's reduced reporting and monitoring requirements to more businesses, and the effect of innovative environmental regulations on its own administrative duties.

Evaluation of the Program

DNR cannot address whether an innovation at one company will convert into a successful strategy for another company or an entire industrial sector because it has not yet established a methodology to fully collect and evaluate practices implemented under the seven agreements. For example, DNR is not able to address whether expanding the scope of allowable PDF, which was done under the agreement with MG&E, would benefit other power companies and maintain the same level of protection of public health and the environment.

Similarly, DNR does not have a plan to assess the feasibility of extending reduced reporting and monitoring requirements to more businesses. For example, it is not attempting to address whether allowing the Wisconsin Electric Power Company to calibrate instruments used to measure air pollution a minimum of once every 24 months, instead of once every 12 months, could be extended to other power plants while maintaining the same level of protection of public health and the environment.

In August 1999, DNR formed the Cooperative Agreement Advisory Group, made up of 15 appointed members representing each of the pilot companies, the Wisconsin Department of Commerce, environmental organizations, and the Wisconsin Manufacturers and Commerce Association. The group's function is to develop performance measures for the program as a whole, decide how to make program data accessible, define success for ECPP, monitor DNR's activities, and assist with the preparation of an annual report to the Legislature. The group has provided advice on DNR's annual reports to the Legislature, but it has not produced any independent reports. DNR has not convened the group since September 2002; a planned 2003 meeting was cancelled.

Finally, DNR is not adequately complying with s. 299.80(2)(i), Wis. Stats., to evaluate the effect of the ECPP agreements on its own administrative duties. DNR has not developed a systematic methodology to determine what, if any, administrative savings have resulted from the various regulatory flexibilities. For the seven agreements, it has not measured whether reduced reporting by companies reduces review time by DNR staff. Similarly, it has not determined if a company's behavior changes as a result of flexibility granted under an agreement or assessed whether pre-approved permits reduced the number of speculative permit requests submitted by a company. This type of information could be applied to average DNR staff time spent on a speculative permit application, allowing DNR to project time savings that could be assigned to higher-priority projects.

Management of the Agreements

Section 299.80, Wis. Stats., requires each agreement to direct participating companies to conduct a baseline evaluation and periodic updates, implement a company-wide environmental plan known as an environmental management system, and create an interested persons group to bring transparency to the agreement process. While overall, participating companies have complied with these requirements, DNR has granted extensions and allowances for some requirements. For example, it allowed Wisconsin Electric Power Company to use a dual reporting method that better mirrored the company's internal reports, instead of a single annual report. However, the reports did not explain the status of interested persons group meetings and utilization of

regulatory flexibilities. DNR staff indicate they are working with the company to ensure future compliance with reporting requirements. Several companies indicate that participation in interested persons groups is minimal to non-existent, and as a result have not held meetings according to the required biennial schedule. DNR indicates it is aware of the noncompliance and is working with the companies to generate increased public participation.

DNR also has not been successful in completing an amendment of the 3M agreement, despite plans to do so since 2002. The agreement remains vague in relation to other agreements in terms of specific company environmental improvement goals. Nevertheless, as noted, 3M's annual report indicates the company has reduced landfill use because of increased recycling efforts.

Environmental Results Program

2003 Wisconsin Act 276 created s. 299.83, Wis. Stats., establishing the Environmental Results Program, commonly referred to as "Green Tier." That program and ECPP share some goals, including the implementation of environmental management systems, annual program reports submitted to DNR, and a commitment to superior environmental performance. The Environmental Results Program aims to encourage enhanced compliance with environmental regulations and provides incentives to businesses that meet higher environmental standards. An additional feature of the Environmental Results Program is the authority granted to DNR to enter into charter agreements with industry sectors, and not just a single company. DNR may approve applications for the program until July 1, 2009. It is currently soliciting companies to enroll in the program.

The program has two components. Under the first component, there is no formal agreement between DNR and the participating company. Participating companies must demonstrate that they have established, or commit to establishing within one year, an Environmental Management System. Incentives for program participants are listed in the statute and relate to public recognition: use of the program logo, identification on the program Web site, and annual newspaper announcements. Participation in the first component is restricted to companies that have no criminal conviction of an environmental law that resulted in substantial harm or presented an imminent threat to public health or the environment within the last five years; no civil judgment for a civil violation of an environmental law that resulted in substantial harm to public health or the environment within the last three years; and no suit filed by the Department of Justice to enforce an environmental requirement or a citation issued by DNR to enforce an environmental requirement within the last two years.

The second component of the program requires a formal agreement between the company and DNR that includes incentives customized to each company, a feature similar to the structure of the ECPP agreements. Participants must demonstrate that an acceptable Environmental Management System has already been implemented. Participation in the second component is restricted to companies that have no criminal conviction of an environmental law that resulted in substantial harm or presented an imminent threat to public health or the environment within the last ten years; no civil judgment for a civil violation of an environmental law that resulted in substantial harm to public health or the environment within the last five years; and no suit filed by the Department of Justice to enforce an environmental requirement or a citation issued by DNR to enforce an environmental requirement within the last two years.

Future Considerations

DNR officials approached the six companies participating in ECPP to assess their interest in transferring to the Environmental Results Program before ECPP agreements are completed. DNR indicates that four of the six companies intend to remain in ECPP. Early departure of participants from ECPP would prevent DNR from evaluating environmental innovation and flexibility impacts on itself and feasible application to a broader sector.

Recommendation

We recommend the DNR seek legislative approval should it attempt to terminate any existing ECPP agreements.
