



State of Wisconsin \ LEGISLATIVE AUDIT BUREAU

JANICE MUELLER  
STATE AUDITOR

22 E. MIFFLIN ST., STE. 500  
MADISON, WISCONSIN 53703  
(608) 266-2818  
FAX (608) 267-0410  
Leg.Audit.Info@legis.state.wi.us

February 19, 2003

Senator Carol A. Roessler  
Representative Suzanne Jeskewitz  
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, which was established in 1997 Wisconsin Act 27. The pilot program, operated by the Department of Natural Resources (DNR), is intended to provide increased flexibility for businesses in complying with environmental regulation, while maintaining existing levels of environmental protection. The Legislative Audit Bureau is required by statute to monitor and report annually on this pilot program.

The program allowed DNR to sign up to ten cooperative agreements with businesses by October 1, 2002. DNR negotiated seven agreements with six different companies, including four agreements signed between September 10, 2002 and October 1, 2002.

In reviewing the agreements, we found that each appears to meet the statutory requirements established by the Legislature and that required public comment was solicited and considered. We note, however, that for one of the agreements, the baseline report was not completed within the time line stipulated in the agreement or set by statute and the environmental management system was not completed within the time line stipulated in the agreement. Because five of the seven agreements were not executed until 2002, we will be reviewing the baseline reports, environmental management systems, and DNR oversight of those agreements during our next annual review.

It is too early in the cooperative agreement process to draw any conclusions regarding the overall success of the program. Reviews of the program in future years will yield additional information, which should allow for more conclusions to be drawn regarding both business flexibility in meeting environmental regulations and the goal of obtaining superior environmental performance.

We appreciate the courtesy and cooperation extended to us by DNR during our review.

Sincerely,

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

Janice Mueller  
State Auditor

JM/DB/bm

## ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 27 created the Environmental Cooperation Pilot Program with the objective of encouraging innovation and experimentation in environmental regulation, while maintaining at least the current level of environmental protection. The legislation authorized the Department of Natural Resources (DNR) to establish up to ten cooperative agreements with businesses covered by environmental regulatory approvals or permits, such as water pollution discharge elimination permits or air pollution control permits. More than one facility of the same business may be covered under a single agreement. In agreements, which last five years and may be renewed for an additional five years, DNR agrees to reduce administrative requirements and to give businesses greater flexibility in meeting federal and state environmental regulations. In return, participants must evaluate their effect on the environment, establish goals to reduce their level of pollution, and document progress toward those goals.

The legislation creating the pilot program requires annual progress reports to the Legislature by DNR and directs the Legislative Audit Bureau to monitor the program. In performing this review we interviewed staff in DNR, analyzed the content of agreements, reviewed public comments regarding the agreements, evaluated DNR progress reports, and analyzed reports specific to each agreement.

### Agreements

DNR negotiated seven signed agreements with six different companies, including four agreements signed between September 10, 2002 and October 1, 2002, which was the deadline for reaching new agreements. Table 1 provides the name of each participating company, the date signed, and the facilities covered under each agreement.

---

Table 1

### Agreements Reached

<u>Participating Company</u>	<u>Date Signed</u>	<u>Facilities Covered</u>
Wisconsin Electric Power Company	February 5, 2001	Pleasant Prairie power plant
Cook Composites and Polymers Co.	October 1, 2001	Saukville facility
Northern Engraving Corporation	June 10, 2002	Sparta and Holmen facilities
Packaging Corporation of America	September 10, 2002	Tomahawk facility
Madison Gas and Electric Company	September 26, 2002	Blount generating station-Madison
Wisconsin Electric Power Company	September 30, 2002	Milwaukee County power plant-Wauwatosa Oak Creek power plant Pleasant Prairie power plant Port Washington power plant Valley power plant-Milwaukee Concord generating station-Watertown Germantown power plant
3M Company	October 1, 2002	Paris generating station-Union Grove Menomonie facility

---

Statutes require several major provisions to be included in each agreement. For example, each participating company is required to implement an environmental management system that is based on international standards or is acceptable to DNR. An environmental management system is intended to evaluate the environmental performance of a facility in order to achieve measurable improvements in environmental performance through planning and changes in operations. In addition, each participant is required to create an interested persons group, which consists of local citizens who comment on the company's environmental management system and baseline report, and review its performance under the agreement. Other requirements include:

- identification of the facilities covered by the agreement;
- specification of approvals that are replaced by the agreement;
- a commitment to achieve measurable or noticeable improvements in environmental performance and to reduce both natural resource usage and waste generation;
- pollution limits at least as stringent as current limits;
- submission of a baseline performance evaluation within 180 days;
- a description of the operational flexibility granted to the participant; and
- a commitment by the participant to correct any violations within 90 days of submitting a required report or within a time frame specified in a compliance schedule agreed to between DNR and the participant. In return, DNR will defer civil enforcement action of reported violations.

Although all the agreements have similar provisions, many terms are tailored to meet the goals and needs of each participant and DNR. The following is a brief summary of each agreement.

### **Wisconsin Electric Power Company—Pleasant Prairie**

The agreement allows Wisconsin Electric to recover coal ash from its landfills and to mix it with coal for combustion at the Pleasant Prairie power plant. This process would not have been permitted under ordinary circumstances. The company estimates that it has recovered approximately 100,000 tons of coal ash from its landfills through December 2002, with the energy content of almost 300 railroad cars of coal. Additional benefits of removing coal ash from landfills include reducing the potential for groundwater contamination and restoring the landfills to a more desirable use. The agreement also provides a reduction in reporting requirements by the company and provides for a streamlined permitting process. For example, Wisconsin Electric may report discharge monitoring results in an annual report rather than in monthly reports. The company has used the streamlined permitting process twice during its first year. The first use allowed Wisconsin Electric to begin testing of mercury removal technologies with 30 days written notice to DNR for comment; in the past, obtaining the necessary approvals from DNR would have taken much longer. The second use allowed Wisconsin Electric to construct a building to hold ash that has been taken from the landfill but not yet burned in the power plant. Wisconsin Electric was only required to provide DNR with written notification detailing its plans. In the past, obtaining the necessary DNR approvals would have taken a considerable amount of time.

## **Cook Composites and Polymers Company**

The agreement covers the company's facility in Saukville, which manufactures resins used in a variety of applications, including the coatings, sanitary, automotive, and marine industries. Under the most significant portion of the agreement, the company agreed to stop burning hazardous wastes in its incinerator by September 30, 2001, which is one year earlier than required under federal regulations. Instead of burning hazardous wastes, the company is allowed by the agreement to test new technologies designed to minimize hazardous wastes by eliminating, reducing, or recycling them. The company must share the results of its tests with DNR and the interested persons group. After testing is completed, the company will submit a project design that will be used for determining which permits and other authorizations will be required from DNR to implement and construct the waste minimization project. The project design and permitting processes are still in progress.

## **Northern Engraving Corporation**

Northern Engraving Corporation manufactures nameplates and other industrial decoratives using plastic and aluminum as primary components. The agreement currently includes Northern Engraving's Sparta and Holmen facilities. However, DNR officials anticipate that the agreement will be amended in 2003 to also include the company's facilities in West Salem and Galesville. While the Sparta facility completed its environmental management system before signing the agreement, the Holmen facility's environmental management system is currently under development.

Under the agreement, the company commits to keeping emissions of volatile organic compounds and hazardous air pollutants below the level allowed and will continue to seek reduction on a yearly basis. The company is also granted some variances from current administrative and permit requirements. For example, it may construct, modify, or move equipment between facilities, as well as operate new equipment, before obtaining construction permits from DNR. In addition, the agreement allows monthly record keeping and calculations of hazardous wastes and air pollutants, rather than daily record keeping and calculations.

## **Packaging Corporation of America**

The Packing Corporation of America makes corrugated packaging at its Tomahawk facility. The main focus of the agreement is the company's implementation of two environmental control projects:

- First, the company is required to reduce methanol, a hazardous air pollutant, through a new process that it began testing in May 2001. The company sought to use this new process as an alternative to a process required by the Environmental Protection Agency. Both DNR and the Environmental Protection Agency agreed to the alternative process, and the Environmental Protection Agency is expected to promulgate a site-specific rule giving the company permission to use the new process in 2003.
- Second, the company will be allowed to increase the use of bark and sawdust as fuel in one of its boilers, which will reduce coal consumption.

## **Madison Gas and Electric Company**

The agreement applies to Madison Gas and Electric's Blount Street generating station in downtown Madison and specifies 15 actions that are intended to achieve a higher level of environmental performance. For example, the station will increase use of alternative fuels that burn cleaner than coal, as well as increase its mercury recycling efforts, research ways to reduce diesel emissions, and address noise concerns raised by neighbors. In return, the company will be granted permission to burn more fuel derived from paper and plastic than would be permitted under current air permits, although it is still required to meet emissions limits. The company is also granted an expedited review process for future requests to use solid wastes as alternative fuels. Finally, the agreement eliminates a provision in the company's air pollution control operation permit to reduce dust, now that DNR believes the company has implemented a solution to the problem.

## **Wisconsin Electric Power Company**

The agreement between Wisconsin Electric and DNR includes the company's five coal burning and three natural gas burning power plants, but it does not include its nuclear power plant, several hydroelectric power plants, a wind turbine, or power plants that will be constructed in the future. Under the terms of the agreement, the company is required to meet new system-wide limits for sulfur dioxide, nitrogen oxides, and mercury within five years and ten years, which are more stringent than current limits. In addition, the company intends to take several actions regarding greenhouse gas emissions, including monitoring and reporting greenhouse gas emissions, working with DNR to register reductions in greenhouse gases, supporting development of a federal greenhouse gas registry, and supporting global climate change research and development. In exchange, Wisconsin Electric receives:

- flexibility with regard to permit streamlining;
- reduced reporting requirements and decreased administrative expenses;
- alternative monitoring requirements for pollutants; and
- the right to terminate the agreement if its terms do not qualify as an alternative under a proposed DNR rule to reduce mercury emissions.

## **3M Corporation**

The 3M facility in Menomonie consists of a variety of specialized business units that develop and market products for consumer and industrial use, including adhesives, abrasive materials for semiconductors, tape, specialty fibers, and fuel cells. The agreement is intended to be the beginning of the permitting process required under federal law to provide a single air permit for the entire facility, rather than separate permits for each activity. In addition, the company has agreed that its environmental management system, which was completed before the cooperative agreement was signed, will set goals for reducing hazardous wastes, reducing volatile organic compounds, establishing an integrated emergency response plan, and reducing emissions. In return, the company will be given flexibility through pre-approved facility changes.

## Issues to Consider

We found that DNR followed statutory process requirements, including providing for a 30-day public comment period for each agreement and public hearings on each agreement. DNR appears to have made changes to the agreements based on comments received. In addition, each of the agreements appears to meet the other statutory requirements established by the Legislature. However, we did note that for one of the agreements, the baseline report was not completed within the time line stipulated in the agreement or set by statute, and the environmental management system was not completed within the time line stipulated in the agreement. In addition, one of the agreements lacked detail and will be substantially amended in 2003.

Under both the agreements and s. 299.80 (3)(j), Wis. Stats., participating companies are required to submit baseline performance evaluations to DNR within 180 days of signing an agreement. Two of the three participants required to have their baseline reports completed by December 2002 (Wisconsin Electric Power Company—Pleasant Prairie and Northern Engraving Corporation) met the 180-day requirement. Four of the seven agreements will have baseline reports due in 2003, which we will evaluate as part of our next annual review.

Cook Composites and Polymers Co., which is the third participant required to have a baseline report completed by December 2002, did not complete its baseline performance evaluation until one year after its agreement was signed. DNR staff indicated that they would have preferred receiving the baseline report earlier but were not concerned because implementation of other portions of the cooperative agreement took precedence. DNR chose not to send any correspondence asking Cook to complete the baseline report in a more timely manner or advising the company that it was in violation of the agreement and the statute.

All agreements require participating companies to implement environmental management systems. Two companies (Wisconsin Electric Power Company—Pleasant Prairie and Packaging Corporation of America) met their requirement to have completed the environmental management system. However, Cook Composites and Polymers did not meet the one-year deadline established in its agreement. The company currently estimates that the environmental management system will be completed in August 2003, or ten months after its deadline. As with the baseline report, DNR staff did not send any correspondence advising the company that it was in violation of the agreement or encouraging it to complete the management system in the time specified under the agreement. Three other agreements require completion of environmental management systems in 2003. We will evaluate compliance with those agreements as part of our next annual review.

We also noted a significant lack of detail in the 3M Company agreement. 3M did not approach DNR about entering into an environmental cooperative agreement until August 15, 2002, which was only one-and-one-half months before the statutory deadline of October 1, 2002. Unlike other agreements, 3M's lacks specific criteria regarding hazardous wastes, air pollutants, water pollutants, or other environmental issues. The agreement also lacks specifics regarding the flexibilities that will be granted to the company. According to DNR officials, both DNR and 3M intend to reach agreement on specific environmental goals and operational flexibilities during 2003. Accordingly, the parties intend to amend the agreement to include the greater specificity by December 2003. We will review the amended agreement during our next annual review.

Overall, it is too early in the cooperative agreement process for us to draw any conclusions regarding the success of the program. During future annual reviews, additional information should be available regarding progress toward achieving the goals under each agreement, including the benefits to both DNR and the participating companies in providing flexibility in meeting environmental regulations, as well as the success in achieving superior environmental results.

\*\*\*\*