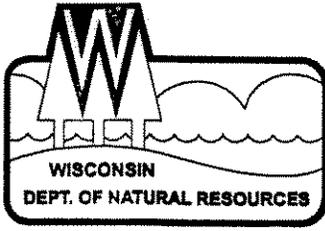


MISC-pt 01 50



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

November 20, 1998

Tom Walker  
Wisconsin Road Builders Assoc.  
1 S. Pinckney, Suite 818  
Madison, WI 53703

Madison, WI 53707-7910

Subject: Wisconsin's Response to the NOx SIP Call

Dear Mr. Walker: *Tom*

Thank you for your suggestions on how Wisconsin DNR should reorganize its stakeholder input process to respond to USEPA's NOx SIP Call. EPA's effort is a very important regional air quality initiative and it is extremely valuable to the citizens of Wisconsin. Therefore, it is critical that we get thoughtful stakeholder involvement in the plan development process.

I understand your concern related to the need for cross-fertilization of the technical groups advising us during the development of the implementation plan required by the SIP call. To address your concern, I have asked my staff to coordinate the activities of the groups working on the mobile source issues and the stationary source issues. Also, to the extent possible, we will try to have back-to-back meetings of the groups so people can easily attend both sessions if they desire.

Regarding your suggestion for having people from other state agencies serve as members of the SIP Coordination Group, since this is an internal DNR staff group that is charged with coordinating DNR activities related to Ozone SIP development, I believe it is not appropriate for other agencies' staff to participate as *formal* members of this group. However, we will make special efforts to invite the other state agencies to participate in the SIP development process through special interagency dialogue sessions, the mobile source and NOX TAGs, the Clean Air Act Task Force and the Inter-Agency Air Quality Task Force. We have already had such a dialogue session November 13. I received very positive feedback from dialogue participants. You have my personal assurance that I will schedule more of these sessions and take other actions to facilitate additional involvement of other agency staff in developing our SIP.

Regarding your suggestions for the Clean Air Act Task Force, your letter implies that the Task Force members report directly to the Governor. Considering that we have limited time to develop the NOx SIP, it would be very difficult for the Governor to make appointments, and for us to get the group up to speed in time to have any meaningful input into the process. Also, I am equally concerned about the implied reporting structure to the Inter-Agency Task Force. The Inter-Agency Task Force has approved a public outreach plan to provide stakeholder input into SIP development. Our comments on the proposed SIP clearly demonstrate that we were responsive to stakeholder concerns. Therefore, I do not



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believe that having the Clean Air Act Task Force report to the Inter-Agency Task Force would substantially augment stakeholder input to the process.

I do believe the Clean Air Act Task Force needs some revamping. Many of the original members do not attend the meetings and we are missing representation from key stakeholder groups. I intend to raise this issue with Secretary Meyer and would like him to re-appoint members. I have been working closely with DOT staff on suggested members to represent the transportation sector. My idea is not to change the basic representational structure of the Task Force, only to make it a more vibrant group. I hope to have new appointment letters for the Task Force out before the end of the year.

Thank you again for your suggestions on how we can improve the process for getting input from our stakeholders. I look forward to working with you as we move forward to shape this important air quality plan.

Sincerely,



Lloyd Eagan, Director  
Bureau of Air Management

cc: Clean Air Act Task Force  
Jay Hochmuth - AD/5  
Tom Steidl - LC/5

— Discussion Paper —

EPA's NO<sub>x</sub> SIP Call—*A Wisconsin Perspective*  
(November 6, 1998)

**Background.** On October 27, 1998, EPA issued its final NO<sub>x</sub> SIP Call. This rule requires 22 states, including Wisconsin, to submit State Implementation Plans ("SIPs") that substantially reduce emissions of nitrogen oxides ("NO<sub>x</sub>") from utility and large industrial boilers. The Wisconsin Department of Natural Resources (DNR) is currently proposing that the state fully comply with EPA's rule. Another option, which could be undertaken in conjunction with developing an "approvable" SIP, is for Wisconsin to participate in the judicial review of EPA's rule being initiated by other states such as Michigan. This participation need not attack the underlying need for regional controls, and may be the only means to address Wisconsin-specific concerns.

**Wisconsin's Position.** The State of Wisconsin submitted comments on EPA's draft rulemaking on June 25, 1998, making the following key points:

- In part, because "the proposed time line places electric reliability at risk," Wisconsin advocated a phased approach, with a year-2007 final compliance date. EPA rejected this approach and instead promulgated a compliance deadline of May 1, 2003.
- Because of "insufficient evidence to apply the SIP call to all of Wisconsin," the State requested EPA consider excluding the northern part of the state from the state budget calculations. EPA rejected this request and promulgated a NO<sub>x</sub> budget for the entire state.

**Other States' Response.** The states of Michigan and West Virginia filed petitions against EPA on October 30, 1998. South Carolina, Alabama, Ohio, Virginia, and several other states are reported to be seriously considering litigation as well. Industry and labor groups, including the Utility Air Regulatory Group and the United Mine Workers, have or will shortly file suit challenging EPA's decision. Thus, the final outcome of EPA's efforts is far from clear.

Wisconsin has a critical stake in these legal debates. We can ill afford allowing other states to establish the SIP Call implementation framework through litigation while we idly watch. In the worst of all worlds, which DNR's recommendations would allow, Wisconsin merely implements EPA's rule without question, while other more culpable states obtain relief.

**Wisconsin's Stake.** Rather than merely accepting EPA's rejection of the above Wisconsin positions, the State should evaluate the merits of participating in the judicial review of EPA's decision. For example, legal challenges by other states and industry groups will address the following issues of interest to Wisconsin:

- EPA's deadlines are not required by law, are not feasible, and cannot be justified by a proposed settlement with other states on their §126 petitions.
- EPA cannot find SIP deficiencies for the 8-hour ozone standard before 8-hour SIPs are required to be submitted — and before any 8-hour nonattainment areas have even been designated.

- EPA's interpretation of the Clean Air Act related to addressing a "significant" contribution is seriously flawed, including its failure to first define what is a significant contribution.

As noted in the State's comments, it is not reasonable for Wisconsin to develop its SIP rules, put them out for public comment, and obtain required legislative review by September 30, 1999. In order to comply with this deadline, DNR currently proposes to submit its "final" rules to EPA prior to legislative review and approval. In effect, the State Legislature is being presented a *fait accompli* in that the Legislature will have little or no ability to affect the SIP prior to EPA submittal. This is inconsistent with Wisconsin's prescribed administrative review process.

In addition, EPA has argued that the various SIP Call deadlines are necessary to meet its "settlement" with various states on Clean Air Act §126 petitions used to force reductions from upwind states. In light of EPA proposing to reject petitioners' inclusion of Wisconsin in these petitions, Wisconsin has an additional meritorious argument on EPA's deadlines.

The issue of whether the state "significantly contributes" to nonattainment in downwind states is also of particular interest to Wisconsin. EPA's required finding on contribution is that Wisconsin contributes to Michigan's nonattainment. (Most states are found by EPA to contribute to multiple states.) Based on the most recent air quality data, the entire State of Michigan is in attainment for the 1-hour standard. An EPA rulemaking in 1999 should formalize that attainment status, making the 1-hour standard no longer applicable to Michigan. Obviously, Wisconsin could argue that EPA has no legal basis for requiring a SIP based on contributions to nonattainment of the 1-hour standard in a state that has had that standard revoked.

In addition, with respect to the 8-hour standard, there is a sound argument that until EPA designates nonattainment areas under the 8-hour standard, EPA has no authority to require SIP submissions from upwind areas with respect to the 8-hour standard. Thus, under either rationale—its contribution to nonattainment of the 1-hour or 8-hour standard—EPA's authority to require a Wisconsin SIP as prescribed is tenuous.

The State of Wisconsin has other issues, such as emission growth rates, that will likely be litigated by Michigan and other states, as well as by industry groups. The question before the State is whether to participate in these proceedings that have critical implications for Wisconsin, or to merely put our fate in the hands of others who do not have any incentive to advocate for Wisconsin-unique positions.

*Should Wisconsin be an Island?* Letting others determine our destiny is particularly troubling considering Wisconsin has the best arguments for a relaxed, phased approach for NOx controls. (Wisconsin is a receptor state, more akin to Minnesota and Iowa — both excluded by EPA for this rule.) In addition, by not participating in any challenge to EPA's decision, either by petitioning itself or by intervening in other state cases, Wisconsin may irrevocably prejudice its ability to modify its SIP to take advantage of a subsequent ruling on issues of concern to Wisconsin. Should we submit without objection that SIP envisioned by DNR, and have EPA approve it, Wisconsin and its industries are locked into a federally binding SIP. The burdens on Wisconsin, then, may be greater than the burdens on other states if those states receive concessions in court or through related settlements with EPA. This would be patently unfair in light of Wisconsin's limited contribution to the interstate pollution problem.

Moreover, protecting Wisconsin's interests on this matter does not cause us to jeopardize the State's overall goal for regional ozone controls. For example, six states have been found by EPA to contribute to Wisconsin's current 1-hour nonattainment areas. Narrow arguments by Wisconsin on its contribution to Michigan, which unlike Wisconsin is in attainment, would not necessarily touch on those six contributing states' obligations to help Wisconsin. In any event, litigation will proceed with or without Wisconsin's participation.

In summary, Wisconsin — *consistent with its prior comments and current positions* — should consider the merits of participating in the legal review on the scope of EPA's SIP Call. The alternative, of course, is to accept a possible unjust outcome from this debate that reflects our lack of input.

#### ***Key Dates & Deadlines.***

- **October 27, 1998**—EPA promulgates final SIP Call rule
- **October 30-November 6, 1998**—Petitions begin to be filed in federal court challenging SIP Call rule
- **November 27 (or 30), 1998**—Deadline for intervening in Michigan case (assuming 30-day deadline from October 30 filing)
- **November 30, 1998**—Comment period deadline on related proposed EPA rules on Federal Implementation Plans and §126 Petitions
- **December 28, 1998**—Deadline for filing petitions challenging SIP Call
- **December 28, 1998**—Comments due EPA on proposed state NOx budgets
- **March – April 1999**—DNR issues final draft SIP rules for public comment
- **August – September 1999**—Decision expected by federal court in SIP Call litigation
- **September 30, 1999**—State NOx SIPs due to EPA, with promulgated implementing rules
- **May 1, 2003**—SIP Call controls implemented

## Agenda for 12-11-98 Meeting with WDNR/Alliant on EPA Ozone Transport Rule

1:30 p.m.; GEF 2; Room 517

- Status of state's legal position
  
- Flexibility through regulatory options/SIP submittal
  1. Energy growth rates
  2. Timing of reductions
  3. Allocation of supplemental compliance pool
  4. Credit for early reductions
  
- Issues affecting need for flexibility
  1. Impact on outage schedule/MAIN reliability study
  2. Engineering challenges/EPA assumptions
  3. SCR retrofit example/ background on catalyst/reagent
  4. Pictures of Oak Creek/high degree of retrofit difficulty
  5. Impact on ash sales/landfill acreage
  
- WDNR commitment to flexibility

### **What do we want and why do we need it?**

1. *Energy growth rates in line with Wisconsin's projections of 22-27% from 1996 to 2007*— In commenting on the draft rule, Wisconsin/PSCW commented that EPA's energy growth rates for Wisconsin were too low (~13% from 1996 to 2007) and that somewhere from 22 to 27% is more appropriate. EPA ignored that information and stuck with their view of Wisconsin and the upper Midwest over the next ten years.
2. *Reductions by 2007 (not 2003) in line with our ozone attainment date (2007) and concern for reliability* – EPA's compliance date for this rule is May 1, 2003. Wisconsin commented that a phased approach with final implementation by 2007 is more in line with our concerns about reliability and our compliance date of 2007 for the 1-hour ozone standard (the 8-hour compliance date will be later than 2007).

From a reliability standpoint, EPA has significantly underestimated the number of units that will need to be retrofit in the 22 state region. EPA assumed 1 SCR for Wisconsin. Our Wisconsin system will require at least 4 and as many as 6 SCRs (10 to 15 for all Wisconsin utilities, including WE's 4-6).

At our behest, MAIN has undertaken a study to estimate the impacts on reliability of implementing this rule. Schedule: info from utilities to MAIN by 12-18-98; modeling runs done by 1-22-99; final report by 2-5-99. A number of engineering challenges must be dealt with to complete the number of retrofits in the time allotted by EPA. We have significant concerns about the availability of catalyst and labor across the 22 state region that will be necessary for this massive undertaking.

3. *Proper consideration for the NOx waiver and ozone disbenefits issue* – Southeastern Wisconsin and the other Lake Michigan nonattainment area utilities have been exempt from NOx reduction requirements since modeling results earlier this decade showed that ozone can increase when NOx is reduced under some conditions. EPA ignored the existing NOx waiver in establishing the NOx budget for Wisconsin. We need to preserve our rights with respect to the waiver and be as well positioned in the future when EPA begins rulemaking on the fate of the NOx waiver.

### **How are we trying to get it?**

1. *Legal* – Many legal experts view a legal challenge as having less than a 50% chance of success. We do not want to rely entirely on a successful legal challenge in order to get changes to this rule.
2. *Regulatory* – At this point, WDNR has been unwilling to view their position on the final NOx budget and the SIP submittal to EPA as anything other than black and white issues. We still are trying to get WDNR to respond to EPA with comments on the NOx budget in line with the 22-27% and a SIP package that is more in line with the State's earlier position with respect to energy growth rates and timing of reductions between 2003 and 2007.

PRACTICAL CONSIDERATIONS FOR WISCONSIN ELECTRIC AND OTHER UTILITIES  
RELATED TO THE IMPLEMENTATION OF EPA'S OZONE TRANSPORT/NO<sub>x</sub> RULE

Estimated cost impacts for Wisconsin Electric compliance with EPA's NO<sub>x</sub> rule

- \$250-350 million in capital expenditures
- \$45-55 million per year in levelized costs
- 3-5% estimated rate impact

EPA significantly underestimated the number of selective catalytic reduction (SCR) retrofits for Wisconsin Electric, Wisconsin, and the entire 22 state region affected by the NO<sub>x</sub> rule

- EPA assumed only one for the entire state of Wisconsin on Alliant's Edgewater 4 boiler
- WE's current plan is for a total of 7-9 SCRs for our system alone (4-6 SCRs on units in southeastern Wisconsin and another three at our facility in Michigan's Upper Peninsula)
- All Wisconsin utilities currently estimate the need for 10-15 SCRs for Wisconsin to meet the requirements of the NO<sub>x</sub> rule

The Mid-American Interconnected Network (MAIN) will complete a study estimating the impact of the NO<sub>x</sub> rule on reliability in the MAIN region

- Utilities submit information on outage schedules by 12-18-98
- MAIN completes modeling runs by 1-15-99
- MAIN completes final report by 2-5-99

Potential shortages of SCR catalyst and labor will also complicate completion of necessary retrofits by the May 1, 2003 deadline

- Most catalyst production occurs off shore
- Only one-third of total production will be available for retrofits (one-third for new and one-third for existing units)
- Concern about availability of enough boilermakers and steelworkers as well as design engineers

Retrofitting SCR and selective non-catalytic reduction technologies requires the handling and storage of large quantities of ammonia

- Railcars and trucks containing ammonia will move through nearby areas on a regular basis and stored on site
- Risk management planning and local emergency planning procedures must be reviewed in light of these new activities; public hearings may be required

Use of ammonia for SCR and SNCR will jeopardize current ash reuse efforts and will likely require landfilling

- Wisconsin Electric currently beneficially reuses almost 600,000 tons of flyash per year
- Almost 500,000 tons of this flyash would be sent to landfills instead of sold to the reuse market
- Existing landfills would fill up sooner and new landfills would need to be permitted and licensed
- 500,000 tons of flyash to the landfill would consume about 15 acres of land per year

Save

**THE IMPACT OF EPA'S REGIONAL SIP CALL ON THE RELIABILITY  
OF THE ELECTRIC POWER SUPPLY IN THE EASTERN UNITED  
STATES**

Prepared By

Applied Economic Research

For the

Utility Air Regulatory Group

August 10, 1998

## EXECUTIVE SUMMARY

EPA'S current rulemaking to impose NOx reduction requirements on sources in the eastern United States would force affected utility companies in those states to take over 600 of their units off-line for many weeks per unit in order to retrofit NOx controls. If all those retrofit controls are installed during the non-peak demand months that occur between October 1, 2000 (when the first control systems can be installed) and May 1, 2003 (EPA'S currently proposed compliance deadline) – a period of just 83 weeks – that means that many units will have to be taken down for retrofits simultaneously. And that will affect the amount of electric power that will be available in affected areas.

The Utility Air Regulatory Group (UARG) retained Applied Economic Research (AER) to evaluate whether all the SIP-call-driven NOx retrofits could be accomplished in such a short amount of time without adversely affected the reliability of the electric power supply in the Eastern United States. In particular, UARG asked AER to evaluate the impact of the SIP-call-driven NOx retrofit program on the states of West Virginia, Pennsylvania, Ohio, Kentucky, Indiana, and Michigan – the states in the East Central Reliability Region (ECAR) – where NOx controls will have to be installed on approximately 81,000 MW of fossil-fired generation.

This past summer, ECAR's reserve margin – that is, the amount that ECAR's supply of power exceeds its demand for power – was predicted to be between 10 and 13%. Such a reserve margin was believed to be enough to ensure that there would still be enough generation to meet customers' demands for electric power even if there were forced outages (which, on average, affect 8% of the generation in ECAR at any given time) or extreme weather conditions in ECAR. As it turns out, though, even with that estimated reserve margin of 10 to 13% in ECAR, there have been power shortages in ECAR this summer.

UARG asked AER to determine whether EPA's proposed rule to require all affected utility sources in ECAR to retrofit NOx controls by May 1, 2003, would cause reserve margins to dip even lower than they were predicted to be this summer and whether that would be likely to cause power shortages – rolling black-outs – during many portions of the 83 retrofit weeks allowed by EPA's current rulemaking proposal.

AER conducted its analysis, using the most recent power supply demand information from ECAR and using the most up-to-date information from affected utilities concerning the control systems that they intend to use to meet the terms of EPA's currently proposed SIP call rule. AER also incorporated into its analysis some very optimistic assumptions as to the feasibility of the retrofits – e.g., that all the retrofit installations would proceed without glitches and that there would be perfect coordination between affected utility systems concerning the scheduling of retrofits. If there is any “bias” in the study, therefore, it is likely that the bias is *in favor* of the implementation schedule that EPA has proposed.

What AER found was that if EPA requires that all affected generation in ECAR retrofit NOx controls by May 1, 2003, then there will be serious power shortages in ECAR. Specifically, AER found that if even under the rosiest of all power supply scenarios – if all existing generation in ECAR continues to operate, if all planned generation is built, and if an additional 5,000 MW of generation is built in ECAR between now and 2001 (a very optimistic generation growth scenario in light of the fact that work has not yet been done to site or build any of that additional 5,000 MW of capacity in ECAR) – the reserve margin in ECAR, when SIP-call-driven retrofits are taken into account, will dip to **minus 1.7 percent**. And that does not take into account the expected forced outage rate of 8.0%. This translates into an estimate that **there will be rolling black-outs in ECAR for close to 500 hours during each year that the retrofits are being done.**

And, if the 5,000 MW of currently unsited, unpermitted generation does **not** get built by 2001, then the picture is bleaker. If only 3,000 MW of that generation is built, then **there will be rolling black-outs in ECAR for close to 764 hours during each year that retrofits are being done.** And if no additional generation comes into ECAR during the next three years, then **there will be rolling black-outs in ECAR for close to 1,200 hours during each year that the retrofits are being done.**

The bottom line is that there will be power shortages – severe power shortages – in ECAR if EPA insists upon forcing all plants covered by its proposed SIP call rule to retrofit NOx controls by May 1, 2003. And the shortages in ECAR cannot be “made up” by the purchase of power from other regions, because other regions – for example, SERC (most of the Southeast) and MAIN (much of Wisconsin, Illinois, and Missouri) – will be faced with similar demands for power and will have similarly reserve margins during the same times.

LETTER TO ADMINISTRATION

The Honorable William J. Clinton  
President  
United States of America  
White House  
Washington, D. 20500

Dear Mr. President:

I am writing to express my concern with EPA's proposal for reducing nitrogen oxide emissions from power plants. The proposed regulations affect twenty-two states including (**name your state**), penalizing those of us who are in compliance with the current Clean Air Act to placate those who are struggling to meet compliance standards.

In its proposal, EPA has adopted a "one-size-fits-all" approach to dealing with ozone transport that runs counter to the findings of its own Ozone Transport Assessment Group, poses serious economic consequences, imperils the reliability of the electric supply system, imposes on states' rights -- and still doesn't achieve the desired environmental goal!

Fueled by their desire to achieve effective environmental solutions for America in a manner that is consistent with the values established by the original Clean Air Act, the governors of 13 states have filed alternative proposals. Ours is one of those 13. While not identical in approach, all have the same, desirable outcomes:

- \* Each offers a significant commitment to NOx reduction within its own borders, achieving 55 to 65% by the year 2004;
- \* Each sets specific deadlines, as recommended by OTAG, for completion of subregional modeling to identify where additional controls may be necessary to protect downwind states and help achieve the new 8-hour ozone standard;
- \* And each does so in a way that would maintain the reliability of the electric power system.

These alternative proposals underscore a commitment on the part of these states and their governors to achieve the most effective environmental benefits at the least cost.

Mr. President, I urge you to do what you can to let the Environmental Protection Agency know that these alternative proposals should be given careful consideration and their principles be incorporated into the final EPA rule. It would be a significant achievement of the Administration if you were able to help ensure the rapid implementation of this

important environmental program and avoid the inevitable litigation that will result from a proposal that overreaches and threatens to impose significant economic havoc on a large portion of the country.

Sincerely,

(Your name)

cc:

Carol Browner  
EPA  
Administrator  
Phone: 202-260-4700  
Fax: 202-260-0279

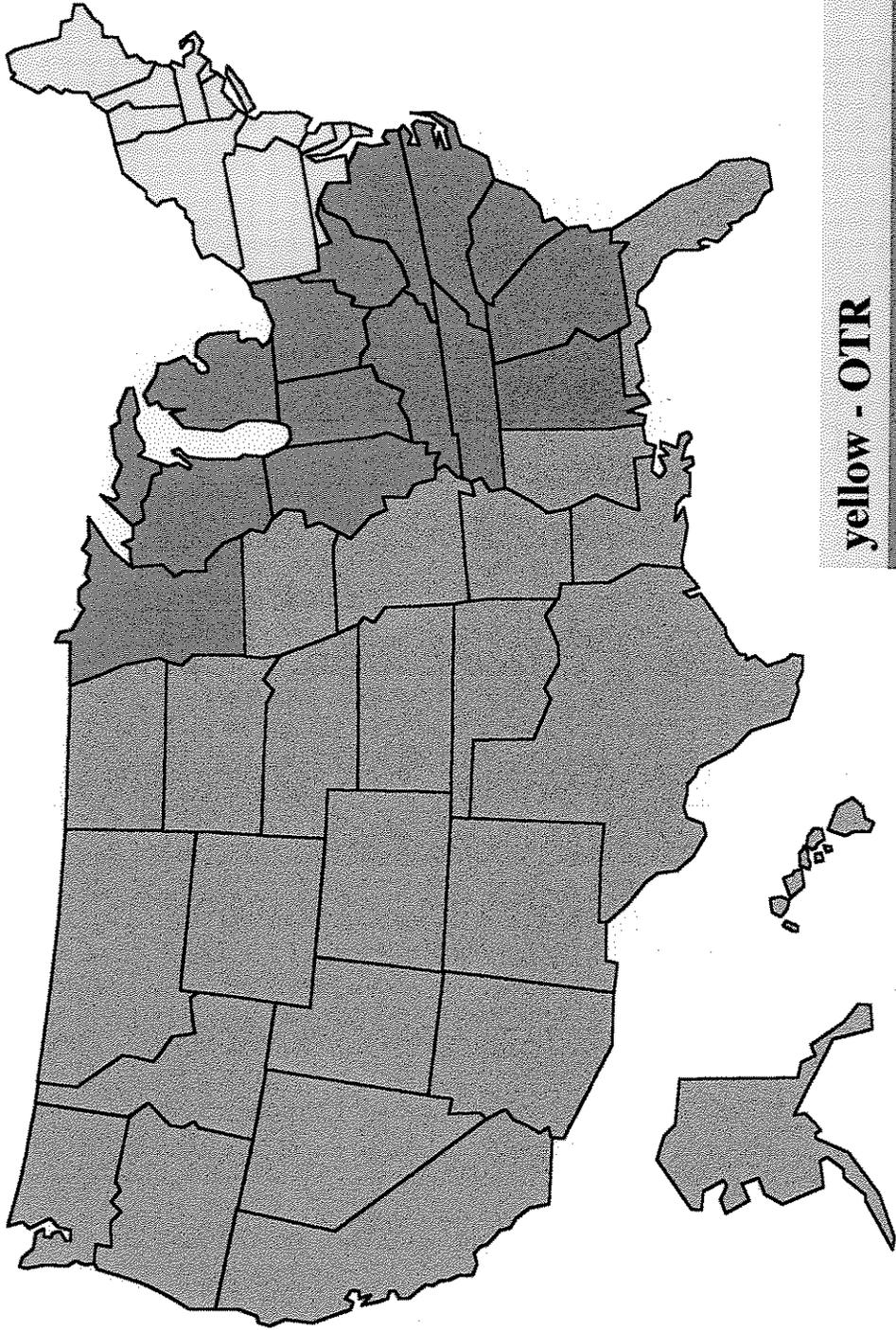
Jack Lew  
White House  
Office of Management and Budget (OMB)  
Director  
Phone: 202-395-4840  
Fax: 202-395-3888

Katie McGinty  
White House  
Chair Council of Environmental Equality (CEQ)  
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Janet Yellen  
White House  
Chair Council of Economic Advisors (CEA)  
Phone: 202-395-4042  
Fax: 202-395-6958

# Ozone Transport--SIP Call

## EPA's "One-Size-Fits-All Approach"



yellow - OTR

green - Additional SIP Call States

**CEED**

The plans offered by the governors are environmentally progressive. Each state would address ozone non-attainment in its area of influence, and all participating states would be in compliance with the new 8-hour ozone standard well before the 2010 compliance date. The plans are also cost-effective. They achieve real and measurable environmental benefit at about half the cost of the EPA proposal.

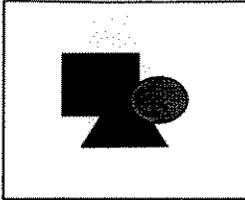
We urge you to contact the White House and express your desire for EPA to incorporate the components of the alternative state proposals in its final rule. A draft letter is enclosed for your consideration.

If you would like additional information concerning the alternative proposals, please contact the Center for Energy and Economic Development (CEED). A representative from the utility, rail or coal industries may be in touch with you in the near future to discuss this matter with you further.

Sincerely,

A handwritten signature in cursive script that reads "Stephen L. Miller".

Stephen L. Miller  
President



# Public Service Commission of Wisconsin

Joseph P. Mettner, Chairman  
John H. Farrow, Commissioner  
Ave M. Bie, Commissioner

610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

November 18, 1998

Mr. George E. Meyer, Secretary  
Department of Natural Resources  
101 South Webster Street  
Madison, WI 53703

Dear Secretary Meyer:

I am writing to express my concern regarding the recent issuance by the Environmental Protection Agency (EPA) of its final rules calling on 21 states, including Wisconsin, to submit by September, 1999, state implementation plans (SIP) to reduce certain emission of oxides of nitrogen (NOX).

While I appreciate having the opportunity to participate in the interagency taskforce to discuss the implications of the SIP call, this forum and others sponsored by your agency have tended to focus on a general discussion of a NOX SIP call and overall reduction requirements called for in the rules. I believe there needs to be more discussion concerning the legal strategy the state may want to pursue regarding a possible challenge to the EPA's rules.

As you know, our June 25, 1998, comments on the proposed rules called upon the EPA to adopt a phased-in approach for the rules and to limit the geographic scope of these rules. These suggestions were not incorporated into the EPA final rules. In addition to these arguments, there are a host of other potential legal issues that the state may want to evaluate in deciding whether to seek judicial review of the EPA's decision.

The Public Service Commission is very concerned that strict compliance with the EPA's action may not be technically feasible by the 2003 deadline and would seriously compromise electric reliability in Wisconsin. As many of our state's power plants are forced out of service for extended maintenance periods to adopt the expensive technology controls that will be necessary to achieve compliance with EPA's mandate, our utilities' ability to provide reliable electric service may be severely challenged. Wisconsin utilities can ill afford to place a large number of generating facilities out of service and still provide safe, reliable electric service to their customers. For this reason, I believe the state needs to carefully examine its legal options regarding our compliance with these rules.

It is my understanding that at least two states affected by the SIP call, including Michigan and West Virginia, have filed petitions challenging the EPA's rules. More states are expected to file similar petitions in the near future. The apparent timeline for intervening in the Michigan case is November 30, 1998. Moreover, it is my further understanding that Wisconsin has until

Mr. George E. Meyer  
Department of Natural Resources  
Page 2

December 28, 1998, to file a petition challenging the EPA's proposed rules. Accordingly, time is of the essence in developing whatever legal strategy the state chooses to pursue in this debate.

Please contact me at (608) 267-7897 if you would like to discuss this matter further.

Sincerely,

Joseph P. Mettner  
Chairman

JPM:RMG:sp:K:\jpm\letter\1998\Meyer Nox issues 11-17-98

cc: Governor Tommy G. Thompson  
Secretary Mark D. Bugher  
Secretary Charles H. Thompson  
Acting Secretary Philip Albert

# REGULATORY UPDATE

*Sponsored by*

Federation of Environmental Technologists  
(F.E.T.)

Patrick Stevens  
Director, Environmental Policy  
WMC  
PO Box 352  
Madison, WI 53701-0352

## I. AIR QUALITY

### A. PM/Ozone Standards

On June 25, 1997, Environmental Protection Agency (EPA) came out with new ozone and particulate matter standards. With respect to ozone, EPA replaced the existing one-hour primary standard with an eight-hour, 80 parts per billion (ppb) standard. This standard will be met when the three year average of the fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 84 ppb (EPA retained the existing rounding convention). EPA also created a secondary standard which is identical to the primary standard.

In regard to the particulate matter standard. EPA set a new primary annual  $PM_{2.5}$  standard of  $15 \text{ ug}/m_3$  and a new 24-hour average limit of  $65 \text{ ug}/m_3$  (EPA's original proposal set the annual standard at  $15 \text{ ug}/m_3$  and the daily average at  $50 \text{ ug}/m_3$ ). In addition, the annual standard will be met when the three year average of the annual arithmetic mean  $PM_{2.5}$  concentration is less than or equal to  $15 \text{ ug}/m_3$ . The 24-hour standard will be met when the three year average of the 98<sup>th</sup> percentile of the 24-hour  $PM_{2.5}$  concentration is less than or equal to  $65 \text{ ug}/m_3$ .

EPA also retained the current  $50 \text{ ug}/m_3$  annual  $PM_{10}$  standard, which will be met when the three year average of the annual arithmetic mean  $PM_{10}$  concentration is less than or equal to the limit. While the agency has also retained the current 24-hour  $PM_{10}$  standard of  $150 \text{ ug}/m_3$ , it has revised the form of the standard to allow it to be met when the three year average of the 99<sup>th</sup> percentile of the monitored concentration at the highest monitor in an area is less than or equal to  $150 \text{ ug}/m_3$  (EPA originally proposed compliance for the 98<sup>th</sup> percentile).

**The one hour standard was revoked for all counties currently in attainment, including Kewaunee, Sheboygan and Walworth counties, which were previously in nonattainment (June 5, 1998).** While these areas must continue to implement existing ozone requirements, these counties are no longer required to implement a contingency plan in the event the one hour standard is exceeded. The one hour standard is still in effect for Door and Manitowoc counties and the southeastern Wisconsin severe ozone nonattainment area.

In regards to the eight-hour standard, the Department of Natural Resources (DNR) will be submitting a preliminary list of nonattainment areas to EPA in July of 1999, based upon 1996-98 data. EPA, however, will be making final designations of nonattainment areas based upon 1997-99 data. **Currently, the DNR plans to propose the following counties be designated nonattainment: Kenosha; Racine; Milwaukee; Ozaukee; Sheboygan; Manitowoc; Kewaunee and Door. In addition, the DNR is still deciding whether to propose Washington, Waukesha and Rock counties for nonattainment designation.**

### B. Ozone Transport State Implementation Plan Call ( $NO_x$ SIP Call)

Another important issue for ozone nonattainment areas relates to the issue of air transport. Because it became clear that the Great Lakes States and other regions could not reach

attainment due to the high level of ozone and ozone precursors entering the areas. The EPA has required 22 states, including the state of Wisconsin, to obtain reductions in NO<sub>x</sub> emission to reduce transport. The NO<sub>x</sub> SIP Call, which was issued on October 27, 1998, requires the state to obtain 39,000 tons of NO<sub>x</sub> reductions by May of 2003. **In order to have a draft rule for consideration by the National Resources Board by March 1999.**

The amount of emission reductions that must be obtained was largely based on estimated reductions from large utility boilers, and large industrial boilers. In Wisconsin, the vast majority of large industrial boilers are operated by the paper industry. It is important to note, however, that the DNR has the flexibility to obtain these reductions from any sources, anywhere in the state. **The state is considering requiring NO<sub>x</sub> reductions at smaller sources, and whether the reductions should be required in all areas of the state.**

It should also be noted that a number of states, including Michigan, are engaging in litigation over this issue. While DNR has proposed to fully comply with EPA's rule, the state is also examining litigation as an option. One potential argument relates to whether Wisconsin is making a significant contribution to a nonattainment area in a downwind state, which is one of the requirements for inclusion in the NO<sub>x</sub> Sip Call.

### C. Air Toxics

DNR plans to update the tables in NR 445. The schedule for this update has been postponed on numerous occasions. It now appears that this rule package will not be authorized for hearing until the spring of 1999.

### D. Air Permitting

The main upcoming issue in regard to permitting is a proposed air construction permit fee increase. DNR has proposed an across the board, 35% increase in construction permit fees. Hearings were held November 3 in Milwaukee, November 4 in Madison, and November 5 in Wausau. DNR plans to go to the National Resources Board in January, 1999, for final adoption.

As part of the discussions regarding construction permit fee increases, we will continue to push the "facility-wide emission limitation" (FEL) concept. The FEL concept would allow facilities to upgrade or replace specified equipment without obtaining a construction permit. DNR had committed to pursue this concept, but then claimed it did not have resources to work on this issue. WMC has pointed out that it is disingenuous for the DNR to argue for a fee increase when it refuses to move forward on this streamlining proposal.

### E. Emission Fees

Another issue relates to emission fees. The DNR is pursuing an increase in air emissions fees as part of its biennial budget request. The DNR alleges that there are fiscal problems due to the fact that emissions are lower than anticipated, and because an EPA grant was cut back. The DNR completed an "Air Management Program Funding Report" in September, which sets forth a number of funding options. The DNR staff is proposing

charging a facility fee, with an annual adjustment. Under this approach, facilities would be charged a fee based upon the amount of emissions it produced, ranging between \$300 and \$8,000. The amount of the fee would be adjusted based upon the needs of the DNR.

**WMC has opposed any emission fee increase.**

## **F. Redesignation of Indian Reservation Lands to Class I Status Under the Clean Air Act**

Under the Prevention of Significant Deterioration provisions of the Clean Air Act, Indian tribes can request that reservation lands be redesignated to Class I status. This redesignation results in a significant decrease in the increments (amount of air degradation) available for economic growth. In addition, Class I areas also have regulations based upon Air Quality Related Values (AQRVs). AQRVs are those special attributes of a Class I area that may be affected by a decline in air quality, such as visibility, water quality, or cultural resources. Sources within 100 kilometers (62 miles) of a Class I area would be required to determine if they would impact on the increments or AQRVs.

The Potawatomi has submitted its request for redesignation to EPA for approval. WMC opposed this request. Over the Governor's objection, the EPA held final hearings on the Potawatomi's request on August 12 and 13, 1997. By letter dated July 16, 1997, however, Wisconsin Governor Tommy Thompson informed the EPA that Wisconsin was requesting the dispute resolution procedure available under the Act be initiated. In addition, the Governor informed the Potawatomi that the State would like to begin discussions regarding redesignation. The Tribe indicated that it was willing to discuss redesignation, but that it wanted EPA involved in the negotiations.

On April 21, 1998, the Governor sent another letter to EPA regarding this matter. That letter stated in "I hereby formally request that the EPA Administrator enter into negotiations and make a recommendation to resolve the dispute. If that effort is unsuccessful, I formally request the Administrator to resolve the dispute, as provided for under section 164(e)." On June 17, 1998, the EPA responded that it would enter into negotiations with the disputing parties.

Secretary Meyer was designated the state's representative for these negotiations. As a prelude to negotiations, the state submitted an 8-page letter outlining its concerns with the redesignation. Among other items, the state raised concerns regarding the EPA's trust responsibility to the Tribe, the redesignation process itself, AQRVs, the Potawatomi's Support Document, and the off-reservation impacts of the redesignation. The initial negotiation session was held on September 23, 1998, and the parties are scheduled to meet again on November 16.

## **II. WATER QUALITY**

### **A. Watershed Advisory Committee**

The Watershed Committee held its first meeting in May of 1997. WMC has a representative on this Technical Advisory Committee (TAC). Among other items, this committee will be reviewing issues pertaining to total maximum daily loads (TMDLs)

which must be established for waters that are designated as "impaired" under section 303(d) of the Clean Water Act. DNR's updated list of impaired waters (submitted in EPA in April of 1998) contains in excess of 500 waters.

Recently, EPA commented on DNR's list. Among other items, EPA asked for a prioritization scheme and a two-year schedule. The two-year schedule proposed work at the following locations: **Lower Fox River and Green Bay; South Branch Manitowoc River; Newton Creek, Hog Island Inlet; Sheboygan River; Milwaukee River and Cedar Creek; Squaw Lake; Red Cedar River, Tainter and Menomin Lakes; Wisconsin River Segment A; and Token Creek.**

#### **B. Safe Drinking Water Act (SDWA) Ad Hoc Advisory Council**

The Council held its first meeting in May of 1997. It will be addressing issues pertaining to the implementation of recent amendments to the SDWA. There are 276 water systems operated by industries in Wisconsin, which could be impacted by these changes. WMC is a member of this Council.

#### **C. Chlorides Water Quality Criteria TAC**

This TAC has discussed extensively whether the numeric criteria should be developed for chlorides. Industry advocated that DNR examine a "best management practices" approach to chlorides, because treatment for chlorides is not economically feasible. While DNR was persuaded to pursue this approach, EPA objected to this approach. **This rule package will go to the NR Board in December for authorization for hearing.** WMC has a representative on this Committee.

#### **D. Non-point Source Advisory Committee**

A newly established Committee is the Non-point Source Advisory Committee, which was created by DNR and DATCP. This Committee held its first meeting on June 17, 1998. The purpose of the Committee is to advise these agencies on the redesign of Wisconsin's nonpoint source pollution programs. This Committee is planning to meet 8-10 times over the next year. WMC is represented on this Committee.

#### **E. Wisconsin Lake Superior Advisory Team**

On June 4, 1998, DNR held its first meeting of the Wisconsin Lake Superior Advisory Team. This Team will be providing the state with feedback regarding Lake Superior issues. This will include how to reduce toxic substance inputs into Lake Superior, and whether Lake Superior should be protected through a special designation. WMC has a representative on this TAC.

#### **F. Ammonia Water Quality Criteria TAC**

This TAC was postponed temporarily, but has reactivated. The DNR estimates it will take a rule to the NR Board for authorization for hearing in February of 1999. WMC has a representative on this TAC.

## G. Temperature Water Quality TAC

This TAC was temporarily delayed, due in part to DNR staff changes. A draft rule was authorized for hearing in August, as part of the Stream Classification rule package. **The comment period closed on November 2, 1998.** WMC was represented on this TAC.

## H. Stream Classification TAC

This TAC is important for businesses located on these reclassified streams, permit limits may have to be revised. There have been concerns raised by industry regarding the need for reclassifying streams, and whether it is appropriate policy to punish dischargers with stricter limits as water quality in streams improve.

DNR is approaching this TAC in two phases. "Phase 1" involves updating the waterbodies listed in NR 104, which DNR considers noncontroversial. Phase 1 was authorized for hearing in August, 1998, along with the temperature water quality changes. **The comment period closed on November 2, 1998.** Phase 2 will deal with the criteria for reclassification, which is expected to be controversial. WMC has a representative on this TAC.

## I. Wetland Mitigation

There are regulatory and legislative components regarding wetland mitigation that are currently being addressed. DNR has a Wetland Mitigation Compensatory Advisory Committee, which is currently working on mitigation guidelines. These guidelines explain what type of mitigation would be acceptable to the DNR. It is unclear, however, how DNR proposes to include mitigation into the regulatory process.

**It is also clear that wetland mitigation proposals will be considered during the next legislative session.** DNR is expected to introduce mitigation legislation. In addition, a number of business groups, such as the Paper Council and the Builders' Association, are interested in pursuing legislation.

## J. NR 140 (Groundwater Standards)

There will also be some activity regarding groundwater standards for toluene and xylene. In November of 1993, the Assembly Natural Resources Committee objected to a proposed relaxation of the standards for toluene and xylene. The Committee did not object to the proposed standards for health, but rather argued that they would not meet the welfare standard due to odor. As a result, DNR contracted with the University of Wisconsin to study this matter.

This study was completed in 1998. In essence, the study concluded that the proposed standard for toluene was protective of public welfare, but that the proposed enforcement standard for xylenes was not protective of welfare. DNR is currently considering how to address this issue.

Another recent groundwater issue relates to the proposed boron standard and ammonia standard, which were resubmitted to the DNR Board in August. Recall that the Assembly

Natural Resources Committee had objected to the proposed standards. As a result, the DNR Board agreed to send the ammonia standard out for additional comment, and to delay the effective date for boron until January 1, 2000.

#### **K. "Tribes as States" Under the Clean Water Act**

A number of federal environmental laws allow Indian Tribes to become significantly involved in the implementation of these laws. Recognizing that Indian Tribes are sovereign nations, these laws contain provisions for treating Indian Tribes as States. The laws that contain these "Treatment as a State (TAS)" provisions include the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act.

In Wisconsin, four tribes have sought TAS status under the Clean Water Act for the purpose of establishing water quality standards. These tribes include the Mole Lake Band of the Lake Superior Chippewa, the Sokaogon Chippewa Community (Molwe Lake Band), the Lac du Flambeau, the Menominee, and the Oneida.

The State, as well as WMC and other associations, has sued over this grant of authority. In addition to the obvious concern of subjecting businesses to multiple environmental regulatory jurisdictions, this grant of authority raises other important issues. The first related to a tribe's authority to regulate non-Indians on Indian lands. The Oneida Reservation, for example, consists of about 65,000 acres, 85 percent of which is owned by non-Indians. The extent to which the Tribe can regulate these non-tribal members is unclear.

The other major issue relates to the authority of the tribes to require areas upstream of the reservation to conform with tribal water quality standards. Conflicts are certain to arise if a tribe adopts water quality standards more stringent than the States' standards and seeks to enforce the stricter standards against upstream users outside of the reservation boundaries.

The Menominee subsequently withdrew its request. In addition, the EPA withdrew its TAS authorization for the Lac du Flambeau and Oneida Tribes. These authorizations were withdrawn because EPA had backdated the administrative record in these cases. EPA planned to withdraw the authorization, and have the Tribes reapply so it could fix the record. WMC challenged the Oneida withdrawal of authority, arguing that EPA should not be able to benefit from its fraudulent behavior. However, the Court dismissed the case as moot. EPA, however, has agreed to pay attorney's fees of approximately \$160,000.

Also of interest is a Memorandum of Agreement the state entered into with the Oneida. The Agreement, among other items, restricts the Tribe's rights in regard to TAS authority under the Clean Water Act, and in regard to seeking to redesignate its land to Class I status under the Clean Air Act.

### III. SOLID/HAZARDOUS WASTE

#### A. Recycling

**One significant issue for the next biennial budget is likely to be recycling funding.** The recycling surcharge currently paid by businesses is scheduled to sunset in 1999. Also, the legislature had instructed DNR to develop a funding proposal for recycling. As a result, DNR developed a report discussing a number of funding options. These options include tipping fees, extending the sales tax to solid waste services, increasing fees on solid waste providers, increasing the sales tax rate, and using general-purpose revenue. The recycling funding debate will likely focus on tipping fees.

#### B. Solid Waste Management

During the last legislative session, a law was passed that authorized the University of Wisconsin Extension to conduct a study regarding solid waste management. The Extension has held one meeting, in which it sought input on a number of solid waste issues. It is possible that this study may result in some legislative proposals during the next session.

#### C. NR 720 (Soil Standards)

Another ongoing issue relates to Wisconsin's cleanup standards (NR 720). There are concerns that, even though responsible parties need not follow the table numbers contained in NR 720, the table numbers are being used as the cleanup standards in many cleanups. The DNR established a TAC to examine NR 720 issues. WMC is represented on this TAC. DNR originally estimated that the TAC would have a draft rule by January 1999. This TAC, however, is currently on hold due to DNR staff changes.

#### D. NR 749 (Fees for Case Closure, Brownfield Assistance)

On September 8, 1998, the DNR emergency rule became effective. In October, the NR Board adopted a permanent rule identical to the emergency rule. Among other items, this rule imposes a \$750 fee for obtaining case closure from DNR.

#### E. PECFA

As part of a veto message pertaining to a provision which would have prohibited the imposition of NR 749 fees in PECFA cases, **the Governor directed DNR and the Department of Commerce to develop "comprehensive redesign of the PECFA program,** including addressing long-term financing concerns, reviewing reimbursement mechanisms and enhancing cost control measures." In addition, a number of legislators and the press has been criticizing the PECFA program. This, in combination with the dismal financial condition of the fund, guarantees that the PECFA program will be debated next legislative session.

The program is funded by a 3¢ per gallon fee on petroleum products, which generates about \$94 million per year. According to a recent study conducted by the nonpartisan Legislative Audit Bureau, as of June 30, 1998, PECFA had reimbursed \$541 million in costs

associated with partial or complete cleanup at 5,655 sites (11,073 sites have been identified as eligible for PECFA funds). The Audit Bureau also estimates that there is a backlog for claims submitted of approximately \$271 million. This amount does not include eligible costs which have been incurred by owners but have not been submitted for reimbursement.

The Report also points out that because interest on loans owners pay to complete cleanups is reimbursable, the backlog diverts funding from paying cleanup costs to paying interest on unpaid claims. Because this backlog continues to grow, the Audit Bureau estimates that interest costs could be 32% of program payments by June 30, 2000. Clearly, the PECFA program is in significant financial trouble.

Wisconsin ranks third, behind only California and Florida, in total cleanup expenditures and unpaid claims. **The Audit Bureau identified four reasons why Wisconsin's costs were among the highest in the nation: 1) Wisconsin uses more stringent standards for cleanup goals than other states; 2) Wisconsin applies its standards to all groundwater regardless of its potential uses, while other states generally adjust their standards based on whether the groundwater will be used for drinking; 3) Wisconsin has not developed a system for prioritizing when sites must be cleaned up based on their relative threat to human health and the environment; and 4) site owners have less financial liability for cleanups in Wisconsin than other states, resulting in limiting owners' incentives to control costs.**

WMC is participating in a coalition of business groups that are pursuing changes to PECFA. Items being pursued include creating different standards for nonusable groundwater, and modifying the natural attenuation requirements contained in NR 700. In addition, the use of bonding to cover the backlog of PECFA cases is being discussed.

## **F. Brownfields Study**

Brownfields will again be an issue in the upcoming year. The last Budget Bill mandated the DNR, in cooperation with other state agencies, complete a brownfields study. This study is to include an examination of how the State can increase the amount of brownfields returned to productive use, how to fund cleanups that become the responsibility of the state due to the expansion of the definition of "voluntary parties," how to provide funding for brownfields assistance programs, methods for cleaning groundwater on a comprehensive basis, the effectiveness of existing laws concerning the redevelopment of brownfields, and the need for additional legislation to encourage brownfields redevelopment.

In pursuing this mission, DNR established a committee to examine these issues, on which WMC is represented. **The DNR plans to finish its report on this matter by December 1, 1998, so the Governor has an opportunity to incorporate these suggestions into his next Budget (due in January 1999).**

The study committee is meeting on November 13 to discuss a draft Brownfields report, which includes recommendations regarding: Brownfield incentives for local governments;

financial incentives for Brownfields; liability modifications; area-wide groundwater issues; and public outreach and education. Proposals supported by WMC in this process included:

- Eliminating the "reckless and intentional " restriction on the "voluntary party" definition
- Expanding the 50% Brownfield tax credit so it applies outside development zones
- Eliminating restrictions on the use of Natural Attenuation to obtain case closure
- Making cleanup standards reflective of the "usability" of groundwater aquifers

#### **G. Sediments**

DNR will be establishing a committee to examine cleanup standards for sediments. Issues likely to be discussed include the use to fish advisories as *de facto* cleanup standards.

### **IV. Other Issues**

#### **A. Environmental Audit Legislation**

WMC will continue to pursue environmental audit legislation. This legislation generally provides incentives for conducting audits. First, there is an evidentiary privilege established so that audit information is confidential. Second, there is immunity from certain penalties for violations found during an audit, provided certain requirements are met. These requirements include informing DNR of the violation, and correcting the violation.

#### **B. Environmental Justice**

During the last two legislative sessions, environmental justice proposals have been introduced. Among other items, these proposals would have prohibited DNR from issuing permits for proposed facilities located in affected communities unless there was no feasible alternative site. Some version of an environmental justice bill may be introduced again this session.

#### **C. DNR Reorganization Survey**

The Wisconsin Environmental Working Group, an Affiliate of WMC, is currently conducting a survey of WMC members regarding DNR's reorganization. Questions focus on the helpfulness and accessibility of DNR staff, the timeliness of DNR decisions, the knowledge of DNR staff, and the consistency of application of DNR policies. A report regarding the results of this survey will be available in January.

# Wisconsin Petroleum Council

Division of the American Petroleum Institute

ROOM 703, 25 WEST MAIN STREET • • • MADISON, WISCONSIN 53703



PHONE: 608 256-3312

FAX PHONE:  
608 255-3210

December 15, 1998

Erin T. Roth  
EXECUTIVE DIRECTOR

The Honorable Marc Duff  
306 North, State Capitol  
Madison, WI

Dear Representative Duff:

The regulation of gasoline sulfur levels (by USEPA or by Wisconsin) as part of the NOx SIP call is inappropriate from practical, economic and legal perspectives.

### Practical Perspective

Wisconsin must reduce NOx emissions by 254 tons per day (tpd) to meet the budget set by USEPA. Reducing the sulfur level of gasoline to a 40 part per million (ppm) average would reduce statewide NOx emissions by 11 tpd more than the oil industry proposal. See Attachment A. Thus, a lower sulfur gasoline (40 ppm) only generates 4% of the reductions needed to satisfy the state's budget.

### Economic Perspective

This very small reduction comes at a steep cost. USEPA decided to base the NOx budgets on "highly cost-effective" controls, defined as those controls that "achieve the greatest feasible emissions reduction, but still cost no more than \$2,000 per ton of ozone season NOx emissions removed." 63 Fed. Reg. 57399 (October 27, 1998). EPA concluded that there were no mobile source controls "that are both technologically feasible and highly cost-effective for NOx control." 63 Fed. Reg. 57402. The oil industry estimates that a 40 ppm sulfur gasoline will cost \$23,000 tpd of NOx removed. See Attachment B. Thus, gasoline sulfur controls are an order of magnitude more expensive than the controls deemed cost-effective by USEPA. USEPA is considering a national regulation that would limit sulfur levels in gasoline. Wisconsin should defer to USEPA in this regard.

In sum, a Wisconsin sulfur rule (a) will do little to address NOx issues that Wisconsin faces; (b) will not be cost-effective; and (c) further discussion whether Wisconsin can legally implement mobile source controls needs to be investigated. Thus, a sulfur requirement should not be included in Wisconsin regulations.

Sincerely,

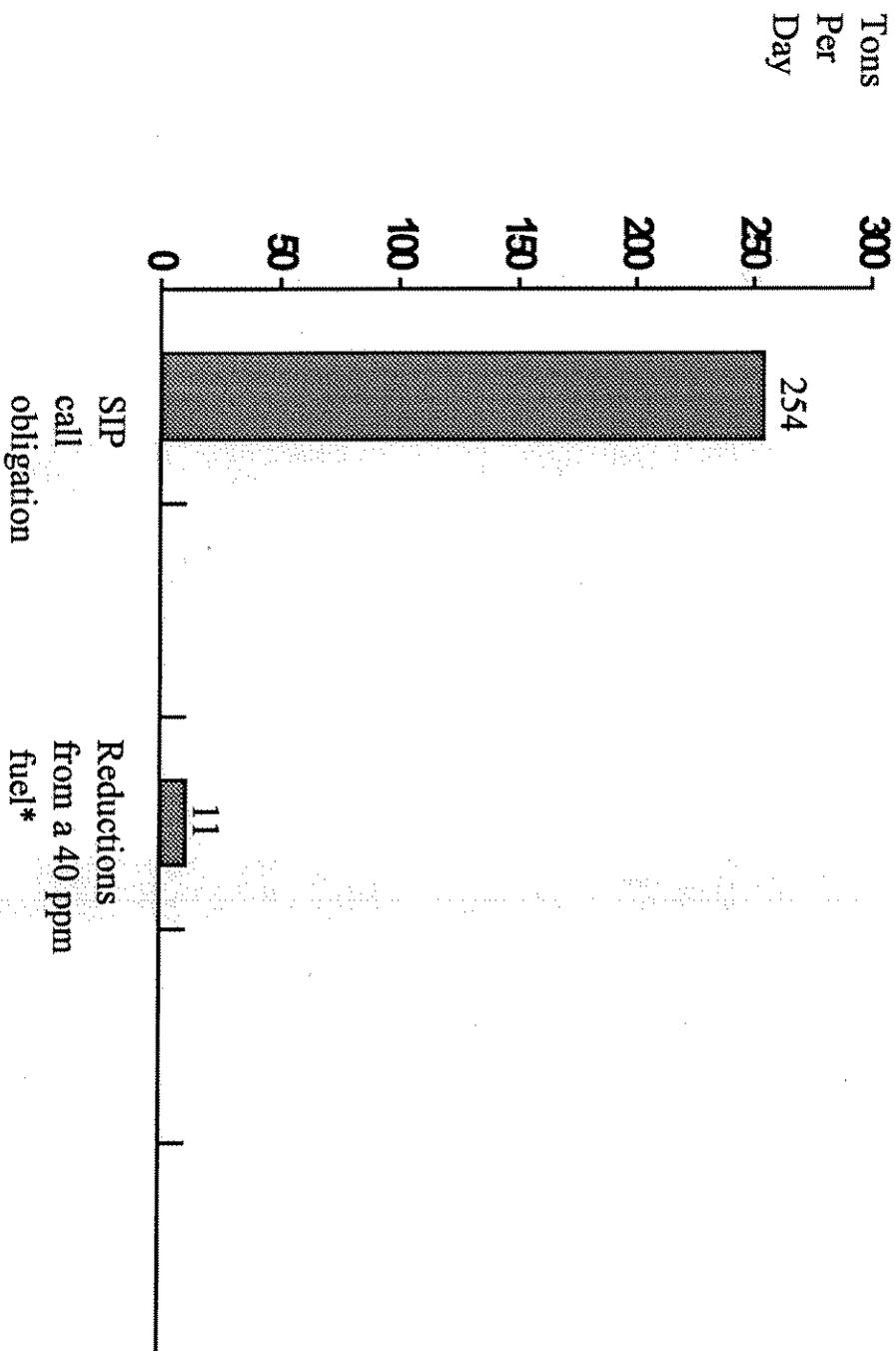


Erin T. Roth  
Executive Director

Enclosures

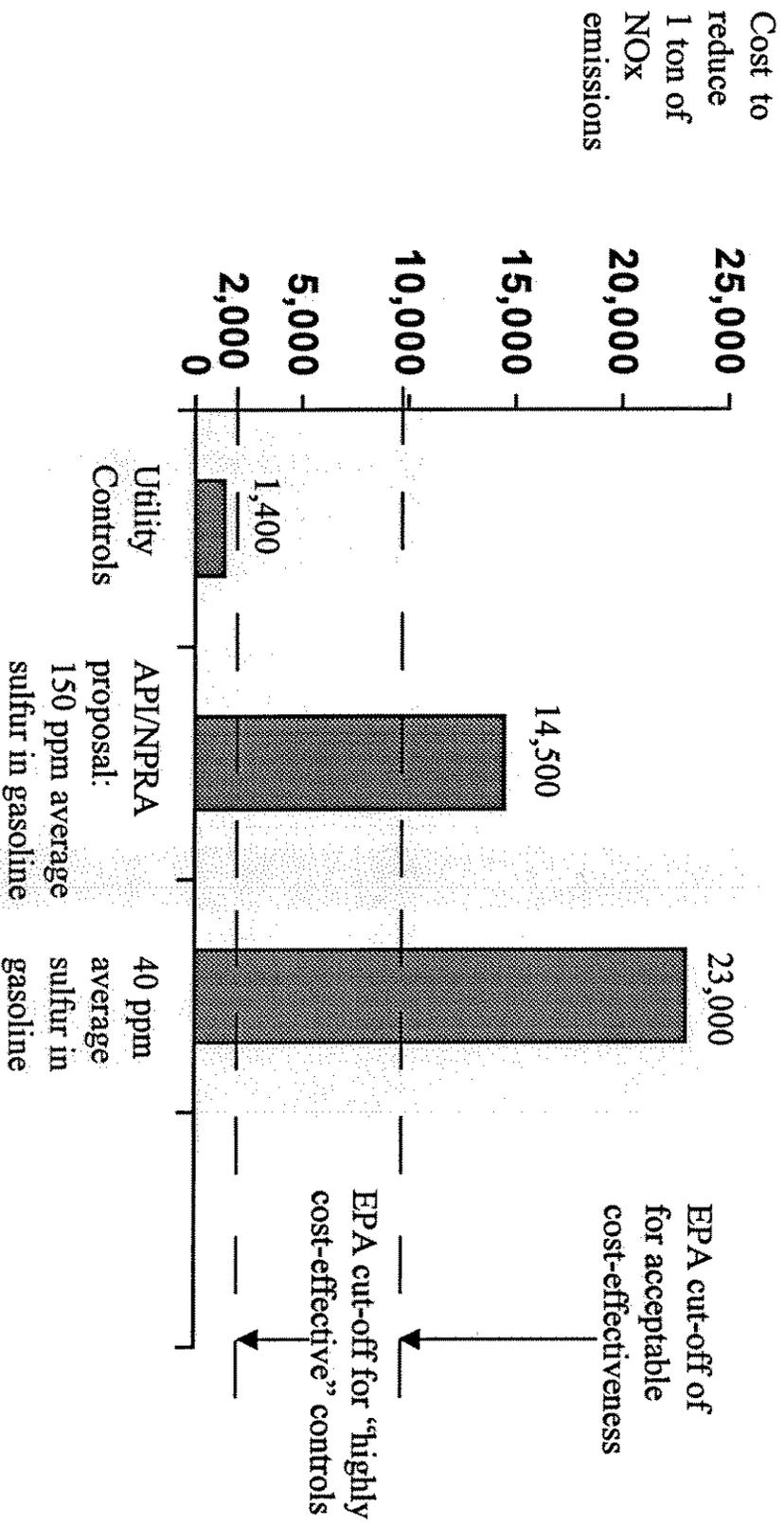
## Attachment A

NOx reductions needed to meet Wisconsin's obligation under SIP call compared to NOx reductions from a 40ppm sulfur gasoline



\*API/NPRA advocate a 150 ppm average sulfur level which achieves an 8 tpd reduction. A 40 ppm average sulfur level would achieve a 19 tpd reduction. Thus, the incremental benefit of a 40 ppm rule is 11 tpd (19-8).

# Attachment B





COOPERATIVE • 3200 EAST AVE. SO. • P.O. BOX 817 • LA CROSSE, WISCONSIN 54602-0817

December 14, 1998

OFFICE: (608) 788-4000  
WEB SITE: [www.dairynet.com](http://www.dairynet.com)

Mr. Joseph Mettner, Chairman  
Public Service Commission of Wisconsin  
610 North Whitney Way  
P. O. Box 7854  
Madison, WI 53707-7843

Dear Chairman Mettner:

I am writing in response to your request for information on the impacts of the Environmental Protection Agency's (EPA) recently promulgated Ozone SIP call rule on Dairyland Power Cooperative (DPC). You made this request at our NO<sub>x</sub> discussion group meeting on December 7, 1998. I understand that you will assimilate this information with the other Wisconsin utilities and provide the analysis at Representative Duff's upcoming hearing on December 15, 1998.

First, I would like to reiterate the points that I made at our group meeting. EPA has promulgated this rule because people are breathing unhealthy air, at levels exceeding the ozone ambient air quality health standards, in large parts of the eastern United States. The EPA and the Wisconsin Department of Natural Resources (WDNR) have demonstrated through their monitoring and modeling studies that the southeastern part of Wisconsin and parts of western Michigan, which are in non-attainment for ozone, are impacted by emission sources in Wisconsin. Therefore, EPA has required the State of Wisconsin to meet a specified budget of NO<sub>x</sub> reductions which EPA argues will help to solve the problem.

WDNR has also conducted more refined air quality simulation modeling and has demonstrated that not all sources are contributing equally to this health issue. In fact, WDNR modeling demonstrates that nitrogen oxide (NO<sub>x</sub>) emission sources located west of the MAPP/MAIN NERC reliability region interface do not significantly impact the ozone levels in southeast Wisconsin or Michigan. Specifically, the impacts of MAPP sources in western Wisconsin have ZERO impact on the non-attainment ozone areas. It was for this reason that the WDNR took the position in the State's comments to the EPA docket on this rule proposal that the MAPP emission sources should be excluded from further consideration for NO<sub>x</sub> emission reduction, and these same MAPP source emissions should be excluded from EPA's determination of the State's budget for NO<sub>x</sub> reductions. The Governor expressly supported this position in his transmittal letter to EPA Administrator Browner.



December 14, 1998

EPA rejected the State's comments on geographical culpability, promulgated a "one size fits all" rule, and included western Wisconsin/MAPP source emissions in the State's NO<sub>x</sub> "budget". The EPA stated, however, that Wisconsin was free to set the NO<sub>x</sub> reduction requirements in the manner that they felt made sense for Wisconsin. At our NO<sub>x</sub> discussion group, you made a reference to utilities accepting their "fair share of the pie". You will recall that I said that the 'fair share of the pie' method does not apply here. WDNR modeling has already demonstrated that reductions of NO<sub>x</sub> from MAPP emission sources will not improve the health of the Wisconsin residents breathing unhealthy air. Indeed, if we are serious about solving this ozone health-related issue in southeastern Wisconsin, then reductions of NO<sub>x</sub> emissions in western Wisconsin will only dilute the effort at correcting the problem. It is demonstrated through WDNR's modeling that certain NO<sub>x</sub> sources, by reason of geographical location and size, need to accept a much larger portion of the NO<sub>x</sub> reductions to correct the problem. The science is clear on this matter. The State's solution to this public health issue should first and foremost be designed to solve the problem. Any discussion of costs, cost effectiveness, reliability issues, fair share discussions, and supplemental NO<sub>x</sub> allowance pool allocations should all be secondary issues to the main issue of the health of Wisconsin citizens.

Another argument which I recall was advanced was the "level playing field". This also is the "share the pain" argument. Actually, DPC could support a level playing field, as long as it is recognized that our playing field, the NERC region in which we operate and serve, is the MAPP power pool. DPC is the only MAPP utility whose coal-fired generating facilities are all affected by this rule. We are the only utility in our primary economic market which is hugely financially impacted, since EPA determined that Iowa and Minnesota emission sources were not significantly contributing to ozone non-attainment. The inclusion of DPC sources in this rule creates a very unfair playing field for us.

Because we disagree with EPA's approach on this final NO<sub>x</sub> transport SIP call rule, we have filed a motion to intervene in Michigan's Petition for Review on this subject rule. We also are considering our own Petition for Review, which would have to be filed before December 28, 1998. Throughout this EPA rulemaking process, we have been active participants in both the federal and state processes. We believe EPA was incorrect to ignore the WDNR's air quality modeling work demonstrating that MAPP emission sources do not contribute at all to ozone non-attainment, and DPC sources should have been excluded from EPA's final rule. We have continued to make our case that DPC's NO<sub>x</sub> emission sources are not impacting the non-attainment of ozone ambient air quality standards. No costs imposed upon DPC customers as a result of this rule would have a benefit in improving ozone non-attainment. It is for this reason that we encourage the State to pursue litigation with EPA over this rule regarding the incorrect inclusion of MAPP emission sources, which has been referred to in the state comments to EPA as the "geography issue".

We have made only a preliminary analysis of the potential costs of control equipment for NO<sub>x</sub> reduction. Engineering studies are ongoing, but the results will not be available until sometime in January. The DPC electrical load is quite variable over the diurnal and annual cycles, as a large portion of our load is rural dairy farmers. Our units cycle heavily over the day to match our load. As a result, the cheaper Selective Non-Catalytic Reduction technology, which requires very narrow flue gas temperature limitations, would not work well on our generating units. It appears that the only control technology method available to us after accounting for the emission reduction requirements and our own expected growth is full Selective Catalytic Reduction (SCR) technology. It is also likely that we would have to install in-furnace Low NO<sub>x</sub> Burners at our Alma #4 and #5 units. This means approximately 720 MW of SCR controlled capacity and 150 MW of Low NO<sub>x</sub> burner capacity. A preliminary estimate is \$81,000,000 capital cost, with another \$4,200,000 annual O&M, for an annualized cost of about \$14,000,000. These estimates of costs are optimistic since they assume that we can retain the existing precipitators, air heaters, and fans at our Genoa Station No. 3 unit. The preliminary analysis suggests this will not be possible, with final costs running much higher than the estimate above. If it is necessary to remove the plant precipitators, air heaters, and induced draft fans at our Genoa unit, it is estimated that at least a 4-6 month outage will be necessary. Since estimates of replacement power or capacity are not available, we have not included replacement power costs in these estimates, although they could be substantial.

At DPC we recycle most of our flyash. Our boilers generate well over 100,000 tons of ash. It has been suggested that the likelihood of recycling ash after installation of SCR is greatly diminished due to the presence and smell of ammonia. The ammonia is the principal reagent used in SCR control technology, and in order to achieve the high NO<sub>x</sub> removal efficiencies, it is necessary to operate with an excess of ammonia injection. The present costs associated with operation of a landfill designed to WDNR's specifications are estimated to be approximately \$50 per ton of ash disposed. This could lead to additional annual operating costs of \$5,000,000 for disposal of ash which is not able to be recycled, and increased land use impacts.

At DPC we have embraced the principle of pollution prevention by substituting non-toxic chemicals in our plant process operations which previously were designed for the use of toxic chemicals. This results in less of an overall regulatory burden and improved employee safety, and benefits the environment as well. We also develop improved public relations with our neighboring communities as we make choices to utilize safer chemicals. The utilization of SCR technology, however, requires significant quantities of ammonia. We have not evaluated the implications of on-site ammonia from a toxic use or community emergency response standpoint, but it is a step backward for our toxic pollution prevention efforts.

Joseph Mettner, Chairman  
Page 4  
December 14, 1998

These potential costs to our generating units come at an especially difficult time. Transmission system open access will continue to favor competitive cost generating units. Some of DPC's generating units at Alma have relatively high marginal production costs due to their age, lower operating efficiencies, and smaller size. Adding extra costs to these units could make them unattractive to operate. Yet, depending upon the transmission system constraints, these units are "must run units". This situation places DPC in the unattractive position of not wanting to operate boilers because of unattractive economics but being required to do so because of transmission support requirements.

I hope I have been responsive to your request for information. I look forward to continuing to work with you on this very important issue.

Sincerely,

DAIRYLAND POWER COOPERATIVE



Eric Hennen  
Director, Environmental Affairs

ERH:mkw

cc: Ave Bie, PSC Commissioner  
John Farrow, PSC Commissioner  
William Esbeck, PSC  
Bert Garvin, PSC  
Lloyd Eagan, WDNR  
Jeff Landsman, Wheeler  
Dave Jenkins, WFC  
Bill Berg, DPC  
Harold Frank, DPC  
Jack Leifer, DPC



## Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers  
Association • 1911

Wisconsin Council  
of Safety • 1923

Wisconsin State Chamber  
of Commerce • 1929

James S. Haney  
President

James A. Buchen  
Vice President  
Government Relations

James R. Morgan  
Vice President  
Education and Programs

Michael R. Shoys  
Vice President  
WMC Service Corp.

September 22, 1998

Trygve A. Solberg  
Chair, Natural Resources Board  
PO Box 50  
Minocqua, WI 54548

Dear Chairman Solberg:

I am writing this letter to provide comments on the Wisconsin Department of Natural Resources' (DNR) Air Management Program Funding Report (September 1998). As you know, WMC is a business association with approximately 4,700 members who employ about 500,000 people in Wisconsin. Many of our members pay emission fees, which are the subject of the Funding Report. At this time, WMC is opposed to the proposed fee increases discussed in the Funding Report.

As a general matter, we are concerned about the continued stream of new fees and fee increases that businesses are facing. As you are aware, industry has faced numerous increases in fees in the environmental area over the last number of years. Most recently, the DNR created a new series of fees relating to remediation activities, such as case closure. In August, the DNR also proposed a 35% increase in air construction permit fees, which had already been doubled only three years ago. Now, the DNR is seeking a 16% increase in emission fees. (The 16% increase is based on the DNR's statement that stationary source obligations for FY 1999 are \$10.3 million, while anticipated revenues are \$8.9 million. Some of the revenue options discussed in the Funding Report, however, would generate a much larger percentage increase.)

We also question the "funding philosophy" the DNR sets forth in the Funding Report. DNR states that "air emission fees must be sufficient to support stationary source parts of the program" (page 2). The Clean Air Act contemplates charging fees only for "permit program costs" See 40 CFR 70.9. Furthermore, DNR acknowledges that the emission fee on stationary sources was enacted to "support direct and indirect costs of the federal operation permit program" (page 12). It is unclear whether the fees at issue in the Funding Report would be used solely for operation permit program purposes, or for that matter, whether they would even be used for stationary source related activities.

There are also public policy reasons to question the funding philosophy discussed above. Funding the entire stationary source program through fees is poor fiscal policy because it provides less accountability to the public than general purpose revenue funding. It also fails to recognize that some expenditures for the program provide public benefits, and are appropriately paid by general purpose revenues.



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We also question the increase in expenditures in FY 1998. In FY 1997, expenditures were \$8,335,732, while they were \$9,776,964 in FY 1998 (page 7). This is a 17% increase in expenditure in one year. This significant increase is very troublesome.

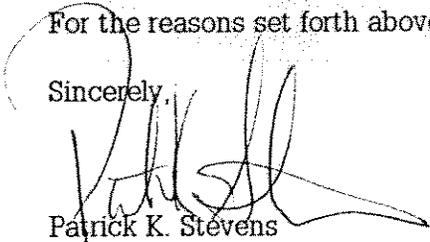
In general, the DNR makes two arguments in regard to its proposed fee increase. First, the DNR argues that certain federal grant dollars have decreased. Second, the DNR contends billable emissions have been significantly below the anticipated level of 315,000 tons. We do not believe either of these arguments support a fee increase.

As mentioned, DNR contends that part of its funding crisis is due to a decrease in a federal Section 105 grant. The DNR states (page 6) that the Section 105 grant for FY 1996 was \$3 million, and that only \$2.4 million will be available for general program purposes in FY 1999. The Funding Report also notes, however, that EPA will be providing \$480,000 in FY 1999 to purchase particulate matter monitors. Thus, while Section 105 grants may decrease in FY 1999, other revenues are increasing. Consequently, there does not appear to be a significant net decrease in funding when compared to FY 1996. In fact, there appears to be an increase in net funding when compared to FY 1997 and 1998 (See Figure 1, p. 11). Consequently, we do not believe this charge in federal funding justifies a fee increase.

The DNR also contends that billable emissions were under its estimated level of 315,000 tons, and therefore a fee increase is justified. It is important to note, however, that billable tons have been significantly under this amount since the fees under the 1990 Clean Air Act amendments were initiated. DNR notes, for example, that billable emissions for 1992 were 278,605 tons (page 12). Thus, we would ask when DNR's original estimate for billable tons becomes irrelevant. As noted above, it is also significant to note that, regardless of estimated tonnage, Wisconsin was one of the few states to exceed the base fee established by EPA. Consequently, we do not believe this reduced tonnage justifies a fee increase.

For the reasons set forth above, we do not support an increase in emission fees.

Sincerely,

  
Patrick K. Stevens  
Director, Environmental Policy

c: Natural Resources Board Members  
George Meyer, DNR  
Lloyd Eagan, DNR  
John Henrich, DNR  
Chris Spooner, Governor's Office

PKS/eah

Draft letter to Governor Thompson

DRAFT

Dear Governor:

The State of Wisconsin has a long-standing commitment to the elimination of ozone-related air quality problems. The State has implemented a wide variety of control measures with the goal of bringing southeastern Wisconsin into attainment with national standards. Affected sources have complied with these control measures, often at significant cost. Unfortunately, the State's efforts have failed to completely remedy these air quality problems due largely to pollution that is transported into Wisconsin from other states.

The U.S. Environmental Protection Agency recently finalized a rule intended to address the long-range transport of nitrogen oxides (NO<sub>x</sub>), a key element in the formation of ozone (the NO<sub>x</sub> "SIP Call"). Wisconsin stands to benefit significantly from this rule. However, the rule will also impose significant costs on in-state sources. We are concerned that these costs are unwarranted and will far exceed any associated environmental benefit.

Because of a number of issues that are unique to Wisconsin, we urge the state to initiate legal action to insure that Wisconsin sources are treated fairly and to insure that other states take the actions necessary to allow southeastern Wisconsin to comply with the ozone air quality standard.

A key issue is that Wisconsin is alleged to affect only one state-Michigan. The legal standard specified in the Clean Air Act for imposing controls on one state that affects another state is that the upwind state (Wisconsin) significantly contributes to ozone nonattainment in the downwind state (Michigan). Based on past EPA decisions, Wisconsin's impact on Michigan does not appear to meet this legal standard. This issue is critical in determining what, if any, controls are necessary in Wisconsin.

In addition, the NO<sub>x</sub> SIP Call imposes a uniform level of control on affected sources in all states, regardless of the impact of emissions from each state. This results in generally the same level of control being imposed in Wisconsin, which affects one state, as is imposed in Illinois, which affects 17 states. This approach results in Wisconsin being charged with reducing more than its fair share of emissions.

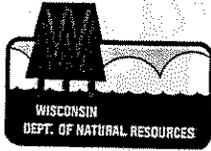
Other problems that should be addressed include the use of inappropriate and inaccurate methods for determining the cost of implementing NO<sub>x</sub> controls, failure to properly assess the downwind impacts from Wisconsin-only sources, and a number of other technical issues.

We want to make it clear that we support the goal of the EPA rule. Actions by other states to address the long-range transport of ozone causing substances are the only way to bring southeastern Wisconsin into compliance with air quality standards. However, the way that EPA structured the rule is fundamentally unfair to Wisconsin sources.

In addition, we believe that it is imperative that Wisconsin be "at the table" when issues relating to the NOx SIP Call are decided. Several other states and private groups have already filed lawsuits relating to this rule for a variety of reasons. We are concerned that if Wisconsin does not initiate legal action it will not be able to effectively participate in negotiations to resolve key issues facing the State. After fifteen years of effort on the ozone issue, the State must be part of the final decision-making process. If we are not effectively represented, we risk other states escaping their obligations to reduce emissions and thereby bringing southeastern Wisconsin into compliance, while Wisconsin sources spend millions of dollars to remedy a questionable problem.

We request that the state take legal action prior to the December 28 filing deadline.

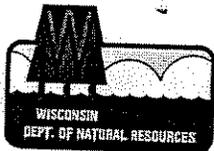
Sincerely



## *Likely System Outcome of SIPs*

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- ◆ Combustion control retrofits for NO<sub>x</sub> for almost all WI electric and larger industrial facilities with boilers by 2002/3
- ◆ Tailpipe (Post-Combustion) control installations for largest emitting facilities by 2004/07 [with some earlier for trading]
- ◆ Electric revenue impact between 1%-2% by time of full phase-in depending on flexibility



## *Major Legislative Needs*

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- ◆ Legislation supporting NO<sub>x</sub> Emission Reduction Trading and Banking Program
- ◆ Additional depending on final structure of EPA's NO<sub>x</sub> SIP "Rule" as may affect DNR's rulemaking authority



## Controlling Ozone Concentrations in Wisconsin

Briefing for the  
Assembly Environment Committee  
June 2, 1998



## *Controlling Ozone Concentrations in Wisconsin*

- ◆ Briefing Outline
  - ◆ 1-Hour Attainment Demonstration
  - ◆ Reduction in Transported Ozone
  - ◆ Results of Air Quality Modeling
  - ◆ Next Steps



## *Controlling Ozone Concentrations in Wisconsin*

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### ◆ Next Steps

- ◆ Complete Comments on USEPA Transport Reduction Proposals
- ◆ Begin Working on Transport Reduction Plans
- ◆ Work with Other Lake Michigan States on Analyses for 1-Hour and 8-Hour Attainment Demonstrations
- ◆ Begin Working on Attainment Demonstration Plans



## **Regional Ozone Transport Reduction**

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**US EPA's Proposed  
110 "NO<sub>x</sub>" SIP Call as Updated  
with Supplement Elements - 5/98**



## *US EPA's Regional Ozone Transport Reduction Proposal*

### *What is it?*

- ◆ Call by EPA to 22 States and D.C. for enforceable plans ("SIPs") to provide major reductions in statewide NO<sub>x</sub> emissions by 2002-2004 in order to reduce regional "background" ozone levels

### *Who's affected?*

- ◆ Budget covers all sectors, but focus is on major Point Sources of NO<sub>x</sub> including Utility Plants and large Industries Boilers/Furnaces/Engines
- ◆ Proposal presumes statewide reductions to meet statewide Budget



## *US EPA's Regional Ozone Transport Reduction Proposal*

### *What's the purpose?*

- ◆ Significantly lower the level of ozone and the pollutants that cause ozone (precursors) being transported into areas with high ambient concentrations during May-September
- ◆ Provide for a real capability to address any residual ozone problem locally by reducing background levels
- ◆ Provide a real basis for addressing the new ozone and PM-fine health standards and the proposed national haze program



## *US EPA's Regional Ozone Transport Reduction Proposal*

### *Basis and Background*

- ◆ EPA finding of states' "Significant Contribution" to other areas' nonattainment problem
- ◆ Noted as expected regional control approach in Presidential Directive on New Health Standards
- ◆ Result of OTAG Evaluations and Recommendations
- ◆ A major SIP element related to 1 hr (and 8 hr) attainment plans



## *US EPA's Regional Ozone Transport Reduction Proposal*

### *How will it work?*

- ◆ State part of a regional structure pursuing refined technical evaluation and modeling
- ◆ Working through both a stakeholder structure and technical workgroup to develop programs
- ◆ Using regional structure to coordinate as possible
- ◆ Rulemaking for significant actions and to codify control programs
- ◆ Committed to regional and/or intrastate trading programs as feasible



## *Regional Ozone Transport Reduction*

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### *Some Key Points*

- ◆ Very Beneficial to Air Quality in the Lake Michigan Region
- ◆ Provides Flexibility
- ◆ Reductions in Lake Michigan Region Beneficial Downwind
- ◆ Addresses Much of Our Concerns Related to Transport



## *Regional Ozone Transport Reductions*

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### *Seasonal Budget Components*

- ◆ Utilities
- ◆ Non-Utility Point Sources
- ◆ Highway Vehicles
- ◆ Off-Road Equipment
- ◆ Area Sources



## *NOx Control Applied to Budget Calculations - NPR*

Emissions Source Sector	Controls Applied in Developing Budget
Electric Utilities - Boilers > 25 MWe	0.15 lb/MMBtu
Non-Utility Point Sources	70% Control for Large Sources RACT for Medium Sources
Nonroad Mobile Sources	Phase 2 Small Engine Standards Marine Engine Standards Locomotive Standards
Highway Vehicles	NLEV 2004 Heavy Duty Diesel Standards Revisions to FTP
Area Sources	Existing CAA Requirements and Measures Required in SIPs



## *Regional Ozone Transport Reductions*

### *Finding of "Significant Contributions"*

- ◆ No Bright Line
- ◆ Weight of Evidence Approach
- ◆ Aggregation of Emissions in a Geographic Region

### *Expected Costs*

- ◆ Approximately \$1,700 per ton of NOx Reduced
- ◆ \$2.8 Billion for 22 States and D.C.
- ◆ Cap & Trade Provides Flexibility and Reduced Costs



## *US EPA's Regional Ozone Transport Reduction Proposal*

### *What are the critical dates?*

- ◆ Initial Response to proposal March 9
- ◆ Submit Final Comments by June 25
- ◆ EPA finalizes budgets and SIP Call Rule Fall 1998
- ◆ Develop plans and programs and submit SIPs by Fall 1999
- ◆ Implement programs by 2002 with effectiveness targets between 2002-2005?
  - ◆ *(under negotiation due to 126 petitions by some states and significant effort by others to pursue Phased Approach to reach control targets)*



## *Regional Ozone Transport Reduction*

### *Section 126 Petitions*

- ◆ Section 126 of Clean Air Act
- ◆ Addresses Interstate Transport from Point Sources
- ◆ 8 Northeast States Filed Petitions
- ◆ 2 Petitions Named Wisconsin
- ◆ Petitions Request Large Reductions Fast
- ◆ EPA Working to Integrate Petitions with the SIP Call



## *Regional Ozone Transport Reductions*

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### *NOx Waiver*

- ◆ Waivers Cover Section 182 Not Section 110
- ◆ Budgets Not Adjusted for Waived Sources
- ◆ EPA Acknowledges Problem in Lake Michigan Region

### *Transportation Issues*

- ◆ Transport Budget Doesn't Trigger Conformity Determination
- ◆ No Proposed Adjustment for Fuel Improvements



## *Comments on NPR Package*

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- ◆ *NPR Comment Areas (Sent Mar 9)*
  - ◆ NOx Budget Details & Flexibility
  - ◆ Program and Controls Timing
  - ◆ Control Level Targets
  - ◆ Control Region Boundary (esp in WI)
  - ◆ Need for Level Playing Field between States
  - ◆ Addressing State Power Reliability Concerns
  - ◆ Optimizing Program for Multipollutant Concerns



## *New Comment Areas - SNPR*

- ◆ Focus on NO<sub>x</sub> Trading & Banking Model Program
- ◆ Focus on NO<sub>x</sub> "Budget" Correction and Refinement
  - Technical Adjustment Need as Better Info
  - Consistent Growth and Control Targets
- ◆ Emissions Tracking and Reporting Requirements
- ◆ Phasing of Control Requirements
  - Default 2nd Level to address Regional Attainment
  - Opt-out or adjustment for 2nd Level should be possible with Technical Demonstration based on Modeling and Monitoring
- ◆ Flexibility to Adjust NW Boundary or Control Level during SIP based on Technical Demonstration of Attainment



## *Follow-up to NPR Comments*

- ◆ Still Modeling Impact of Western & Northern Emissions on problem ozone areas
- ◆ More formal proposal - Phasing of Control Requirements
  - Default 2nd Level to address Regional Attainment
  - Opt-out for 2nd Level possible with Technical Demonstration based on Modeling and Monitoring
- ◆ More formal proposal - Control Region Boundary
  - NO<sub>x</sub> SIP flexibility to adjust control region boundary (in WI) with 3-4 alternatives under review
  - Flexibility to establish multiple control level boundary "zones" on fringe of 22 state area based on technical demonstration of ozone attainment (2000-2002)



## *Control Region Options*

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- ◆ Statewide Default in NOx SIP Call
- ◆ Three smaller area options under evaluation:
  - ◆ Alt 1 - SE 21 Counties encompassing ozone problem areas and emissions concentration
  - ◆ Alt 2 - Elec Supply Region (NERC) deliniation splitting MAIN [WE, WPL, MGE] & MAPP [NSP, DLP]
  - ◆ Alt 3 - 44 Degree Latitude (OTAG Fine Grid)
- ◆ Demo of "No AQ Detriment" Critical for any Alternative
- ◆ Linked Zone and Phasing Approach may be most Supportable in final SIP Package (1999)