

allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program "caps" the aggregate ozone season NO_x emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

II. What Is EPA's Evaluation of This Program?

EPA has determined that this SIP revision will not interfere with reasonable further progress or with attainment or maintenance of the National Ambient Air Quality Standards or any other requirement of the Clean Air Act. Emissions averaging programs are considered a type of economic incentive program. EPA's guidance on such programs is "Improving Air Quality with Economic Incentive Programs," EPA-452/R-01-001, January 2001 (the EIP guidance).

Wisconsin's NO_x averaging program conforms with the EIP guidance, with one notable exception. The EIP guidance indicates that averaging should take place only among units that are under common ownership or control. This provision of the guidance is motivated by the concern that compliance and enforcement difficulties might result from averaging among sources under different ownership or control. Compliance in averaging programs depends not only on the emissions rates of the various sources, but also on the activity level (heat input) of higher-emitting sources relative to lower-emitting sources. Since activity levels are subject to constant change and are difficult to project, it could therefore be difficult for an averaging plan involving units under different ownership or control to ensure that compliance is maintained. It could be particularly difficult to maintain compliance if owners of units projected to have lower emissions rates projected

higher activity levels than could actually be maintained.

Wisconsin's NO_x averaging program allows averaging among sources that are not under common ownership or control. Nonetheless, EPA is approving Wisconsin's program, for several reasons. Most important, beginning in 2008, Wisconsin's program includes an enforceable emissions cap in addition to emissions averaging. The cap is set at a level consistent with the one-hour ozone attainment plan for the Milwaukee-Racine area, and ensures that emissions cannot increase beyond levels consistent with attainment, regardless of changes in emissions rates.

In addition, EPA finds that the operation of an averaging program with averaging across ownership will be of minimal risk in the individual case of Wisconsin's program. This program involves a limited number of existing sources, and new sources cannot use emissions averaging. Therefore, the State will receive only a small number of averaging plans, and it will be well able to review such plans ahead of time to ensure that projected activity levels are reasonable. Moreover, the sources that are potential participants in Wisconsin's averaging program all operate at levels close to capacity, and therefore have limited ability to project significant increases in activity levels. Therefore, EPA anticipates no problems resulting of averaging across sources under different ownership; nonetheless, EPA will evaluate as the program operates whether averaging across units under different ownership creates compliance problems or interferes with the achievement of expected reductions.

Other provisions of Wisconsin's program include:

- Excess emission reductions used in an averaging program must be reductions beyond those needed to meet all other state and federal requirements;
- Emissions averaging will create an environmental benefit, since in calculating the aggregate allowable emission rate, the allowable emission rate of each source is reduced by 0.01 pounds per million btu;
- If either the aggregate allowable emission rate or the mass ozone season cap is violated, each unit participating in the averaging plan is considered out of compliance for each day of non-compliance, and is potentially subject to penalties for each day of non-compliance;
- NO_x reductions used in an emissions averaging plan cannot be used for compliance with emissions limits established under the new source review or prevention of significant deterioration program, or with the NO_x

reduction requirements of the acid rain program;

- If the mass ozone season cap for an averaging plan is violated, WDNR can require additional emissions reductions from participating units;
- Emissions must be measured using continuous monitoring equipment;
- WDNR will have the opportunity to review emissions averaging plans to determine their completeness prior to the beginning of the ozone season. Averaging plans must be submitted to WDNR 90 days prior to the beginning of the ozone season, and WDNR has 30 days to determine whether additional information is needed;
- The public will be kept informed of potential changes in emissions caused by emissions averaging; operators of units involved in an emissions averaging plan are required to provide public notice at least 60 days prior to the start of the ozone season, and to provide copies of the plan to the public upon request.

In addition to the NO_x averaging and emission cap provisions, EPA is approving a new categorical emission limit for new integrated gasification combined cycle units. WDNR created this limit because these sources will not be able to comply with the limit for natural gas-fired units that would otherwise apply. While this new limit is higher than the natural gas-fired limit, these types of sources will be taking the place of higher emitting coal-fired units and will, therefore, not affect emissions projections made earlier by the WDNR, which included growth of coal-fired units. The approval of this new limit will have no impact on the Wisconsin one-hour ozone attainment demonstration SIP.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state regulations as meeting federal requirements and imposes no additional requirements beyond those imposed by state regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose