

construction; (2) waiver from the requirement that facilities receive an appropriate permit prior to operating new process equipment; (3) waiver in the facilities' minor source permits of individual process line latest available control technology requirements for controlling volatile organic compound emissions; and (4) record keeping and reporting flexibility.

The Environmental Cooperative Agreement, specifically section XII (Operational Flexibility and Variances), proposes to establish new requirements for the two NEC facilities. The proposed new requirements would replace or revise certain requirements that might otherwise apply to those sources. Some of the requirements to be replaced or revised are currently embodied in Wisconsin's SIP for meeting air quality objectives. In such cases, the proposed flexibility in the Environmental Cooperative Agreement cannot be granted by WDNR unless the new requirements are first approved by EPA as a source-specific revision to the SIP.

The WDNR submitted the following portions of Section XII of the Environmental Cooperative Agreement (Operational Flexibility and Variances) as a source-specific SIP revision:

1. *Item:* Waiver from the requirements to obtain a construction permit prior to commencing construction of new process equipment, commencing modification of existing equipment, or relocating existing process equipment of a minor stationary source between the facilities covered by this Agreement.

Previous Requirements Superseded by this Agreement: Requirement to obtain a construction permit prior to construction, reconstruction, replacement, relocation of modification of a minor stationary source that is not otherwise exempt under section Natural Resources (NR) 406.04, Wisconsin Administrative (Wis. Adm.) Code. (NR 406.03, Wis. Adm. Code)

New Requirement

a. *New Equipment Construction and Modification:* The permittee may commence construction or modification (but not operation) of new process equipment prior to obtaining a construction permit, provided the following conditions are met. These conditions do not apply if a proposed project is exempt from the requirement to obtain a construction permit, pursuant to section NR 406.04, Wis. Adm. Code. (section 299.80(2)(h) and (4)(b), Wisconsin Statutes (Wis. Stats.))

(1) The permittee shall submit the following information to the Department of Natural Resources, La Crosse Area Office, 3550 Mormon Coulee Road,

Room 104, La Crosse, WI 54601 or other location specified by the Department:

(a) Two copies of a complete construction and operating permit application describing the proposed equipment;

(b) An application fee of \$1,350 or other amount as required by section NR 410.03(1)(d), Wis. Adm. Code; and

(c) Information describing how the interested persons group was notified of the proposed project. (sections 299.80(10) and (11)(b), Wis. Stats.)

(2) The Department shall process the permit application in accordance with sections 285.60 through 285.69, Wisconsin Statutes and sections NR 406 and NR 407, Wis. Adm. Code, however, the permittee need not wait for permit issuance to commence construction.

The Department shall process the permit application as both a construction permit and a significant revision to the operation permit, and issue both permits simultaneously to reduce the administrative burden of issuing a construction permit that expires 18 months after issuance followed by an operation permit. The Department shall send an invoice outlining the fees required for processing the construction permit for the proposed project, including the fees for an expedited permit review authorized under section NR 410.03(o), Wis. Adm. Code, less the \$1,350 permit application fee. (sections 299.80(2)(h), (4)(b), (10) and (11)(b), Wis. Stats.)

(3) The permittee shall pay the total amount of the fee invoice within 30 days of receipt.¹ (s. 299.80(10), Wis. Stats.)

(4) The permittee shall continue to comply with all the requirements of Part I.A. of the permit so long as the cooperative agreement is in effect.² (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

¹ Pursuant to s. 299.80(10), Wis. Stats., a participant in a cooperative agreement shall pay the same fees required under chs. 280 to 295, Wis. Stats. that it would be required to pay if it had not entered into a cooperative agreement. Therefore, while the requirement to obtain a construction permit prior to installation is waived, the permittee is still required to pay the fees that would have been assessed had a construction permit been issued under ch. NR 406, Wis. Adm. Code.

² By continuing to comply with the facility wide emission limitations outlined in Part I.A., the net emissions increase from any new sources or relocation of any existing sources from other facilities will not exceed the major stationary source levels of s. NR 405.02(22)(a), Wis. Adm. Code triggering Prevention of Significant Deterioration (PSD) Requirements. The existing facility potential emissions of all criteria pollutants are less than 250 tons per year and the facility is not included in the source categories listed in s. NR 405.07(4), Wis. Adm. Code. Therefore, the existing facility is a synthetic minor source for PSD purposes. Note: This facility is not located in an area designated nonattainment. Also, by continuing to comply with

(5) Nothing in this section or in any Cooperative Agreement between the Department and the permittee shall be construed as a guarantee that the Department will issue an air pollution control construction and operation permit for a proposed project. The decision on whether to approve a permit application will be made according to the requirements of chapters NR 400 through NR 499, Wis. Adm. Code and s. 285.60 through 285.69, Wis. Stats. If the Department denies a permit application pursuant to ss 285.61 through 285.64, Wis. Stats. all costs and risks associated with installing and operating the proposed equipment shall be incurred solely by the permittee. In the event that the construction and operation permit application for the proposed project is denied, the permittee shall cease construction of the equipment in question immediately.

b. *New Equipment Operation:* The permittee may operate new process equipment, provided one of the following alternate scenarios are met. The conditions do not apply if a proposed project is exempt from the requirement to obtain a construction permit, pursuant to s. NR 406.04, Wis. Adm. Code. (s. 299.80(2)(h) and (4)(b), Wis. Stats.)

(1) *Alternate Scenario #1:* The permittee may operate new process equipment provided the permittee submits a complete construction and operation permit application as required by the conditions of I.A.5.a. and the Department issues a construction permit pursuant to ss. 285.60 through 285.69, Wis. Stats and ss. NR 406 and NR 407, Wis. Adm. Code. The permittee shall operate the new process equipment in compliance with the conditions contained in any construction permit issued by the Department. (s. NR 406.03, Wis. Adm. Code)

(2) *Alternate Scenario #2:* The permittee may initially operate new process equipment prior to obtaining a construction permit provided the permittee submits a complete

the facility wide emissions limitations, the potential emissions increase from any new sources or relocated existing sources will not exceed 100 tons per year after controls for any criteria pollutant. Therefore none of the changes will be considered a Type II action requiring an environmental assessment. Finally, by continuing to comply with the facility wide emission limitations, the facility will not become a major source for the Operating Permits Program under 40 CFR Part 70 (Part 70) purposes for either volatile organic compound or hazardous air pollutant emissions. Requirement I.A.5.a.(1)(g) of the permit requires that any changes that result in potential facility wide emissions of particulate matter, sulfur dioxide, nitrogen oxide or carbon monoxide emissions exceeding 100 tons per year, must follow permit issuance requirements of chs. NR 406 and NR 407, Wis. Adm. Code.