

# **Appendix K: DNR Permitting Letters**

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
9531 Rayne Road  
Suite 4  
Sturtevant, WI 53177

Scott Walker, Governor  
Daniel L. Meyer, Secretary  
Telephone 608-266-2621  
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TTY Access via relay - 711



June 26, 2018

Don Gibbs,  
Plant Manager,  
Container Life Cycle Management – St Francis Facility  
3950 S Pennsylvania Avenue  
St. Francis, WI 53235

AM/7

FILE CODE: 4530  
FID NO.: 341158070  
PERMIT NO.: 18-RSG-029

Re: June 7, 2018 revised permit application and request for commence construction waiver for CLCM – St. Francis

Dear Mr. Gibbs:

On June 7, 2018, the Southeast Region Air Program of the Department of Natural Resources received the revised air pollution control permit application and the request for a commence construction waiver regarding the proposed construction/modification of several emission sources at the Container Life Cycle Management (CLCM) facility located in St. Francis, Wisconsin.

The department has reviewed your request and justification for a waiver, and has concluded, based upon the requirements under s. NR 406.03(2), Wis. Adm. Code, that the waiver is denied. The department has determined that, based on the information provided by CLCM in the 18-RSG-029 applications and the amount of VOC emissions emitted post scrubber control during the September 19, 2017 stack test, the facility is a PSD major source. Previous projects undertaken by the source should have been subject to Prevention of Significant Deterioration (PSD) permitting, pursuant to ch. NR 405, Wis. Adm. Code. Under s. NR 406.03(2)(f), Wis. Adm. Code, the department may not grant a waiver for a source that requires a permit under ch. NR 405, Wis. Adm. Code. The department has determined that the CLCM – St. Francis facility requires an after-the-fact PSD permit to address VOC and HAP emissions not previously disclosed to the department as part of the original 14-RSG-142 application for this source.

In addition, the department has reviewed the revised application and finds the application as submitted to be incomplete under s. 285.61(2)(b)2., Wis. Stats.. Please provide or address the following to complete the construction permit application:

(1) The revised construction permit application presents the facility as a single process line controlled by a scrubber and the new RTO. Because the facility is a major PSD source of VOCs, it is important to allocate the total VOC emissions to each emission unit to understand, for each unit, the applicability of permitting under ch. NR 405, Wis. Adm. Code. Please provide maximum theoretical and potential VOC emission calculations for each significant unit at the facility, if this information has not already been provided. This request includes, but is not limited to, a request for calculations on the proposed Poly Rinse Tank System (P82) which will replace several existing emissions sources. The facility should clearly explain all assumptions used in these calculations. Please indicate the approximate date of construction and the date of last modification, as applicable, of all significant emission units, including sources that were purchased by CLCM and moved to the Pennsylvania St. location. For those units that need to be reviewed under ch. NR 405, Wis. Adm. Code, the facility will be expected to provide additional information in support of a BACT determination, as applicable.

(2) The revised construction permit application lists a number of insignificant emission units that are or will be controlled by the scrubber and the new RTO, including but not limited to the single flush tank systems, new pressure washers, and wastewater tanks. Please provide maximum theoretical and potential VOC emission calculations for each unit the source has deemed insignificant that emits VOCs. The emission estimates should clearly explain how the emissions were calculated for each emission unit that the source has deemed insignificant.

(3) The revised construction permit application proposes 90% capture and 95% destruction of VOC emissions from all processes exhausting to the scrubber and new RTO. Please provide additional explanation for each controlled emission unit as to why 100% capture cannot be achieved. Please provide additional explanation as to why the RTO cannot achieve a destruction efficiency of more than 95%.

(4) The revised construction permit application indicates the facility would like to be a synthetic minor for VOC emissions under ch. NR 407, Wis. Adm. Code. The facility is currently proposing an emission limitation equivalent to 99.5 tons per year. The department is concerned that the nature of the operations at the facility do not allow for practical enforceability of this proposed limitation. Please explain how the facility can demonstrate compliance with this limitation, given that a significant portion of VOC emissions from the facility are considered fugitive.

Please be advised that this is not a complete review of the 18-RSG-029 construction permit application request or the operation permit application submitted at the same time as 18-RSG-029. Additional information or revisions of the application materials may be needed as the review proceeds. The CLCM - St. Francis facility is currently working through several enforcement actions including a July 19, 2017 Notice of Violation from the WDNR and a November 27, 2017 Notice and Finding of Violations (FOV) from U.S. EPA that will affect the ultimate outcome of the construction and operation permit applications. To the extent issues raised in these enforcement actions affect decisions made in CLCM - St. Francis facility's construction and operation permits, the department is also noting these issues as incomplete in the application until the enforcement is resolved. If you have any questions regarding this matter, please feel free to contact me at (262) 219-7335.

#### **NOTICE OF APPEAL RIGHTS**

If you believe that you have a right to challenge this construction waiver decision, you should know that Wisconsin statutes establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to § 285.81, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file a petition for a contested case hearing on the Secretary of the Department of Natural Resources. Filing of any such petition must be accomplished in the manner prescribed by Wis. Admin. Code § NR 2.03 for service of contested case hearing requests upon the Secretary<sup>i</sup> and the petition must set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired.

A person other than a permit holder or applicant may file a petition for a contested case hearing if the requirements of § 285.81(2), Wis. Stats., are met.

For judicial review of a decision pursuant to §§ 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department in the manner prescribed by those statutes. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Sincerely,

Kendra Fisher

Kendra Fisher  
Air Program Regional Supervisor,  
Southeast Region, Waukesha Service Center

Cc: Jonathan Wright, Air Management – Green Bay Service Center (via email)  
James Bonar-Bridges – LS/8 (via email)  
Jessica Kramer – Wisconsin DOJ (via email)  
Kody Hansen – Env. Enforcement, Green Bay Service Center (via email)  
Linda Benfield, Foley & Lardner LLP (via email)  
Erik Olson – EPA Region 5 (via email)

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<sup>i</sup> Wis. Admin. Code § NR 2.03 reads:

**Wis. Admin. Code § Service on the department.**

All petitions for hearings, petitions for rules, petitions for declaratory rulings, petitions for review of contested case decisions under § NR 2.20, answers and complaints required by any statute or rule shall be served on the department by personal delivery to the office of the secretary, by mailing to the secretary by certified mail, at the following address: PO Box 7921, Madison, Wisconsin 53707-7921, or by facsimile transmission to the secretary at (608) 266-6983. If the petition is served by facsimile transmission, a copy of the petition shall be mailed to the secretary by regular mail within one week of service. Service by mailing shall be deemed to have been made on the date the petition is received by the department. Service by facsimile received after 4:30 PM shall be deemed to have been made on the following day.

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Scott Walker, Governor  
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December 14, 2018

Don Gibbs, Plant Manager  
Mid-America Steel Drum Company-CLCM  
3950 S. Pennsylvania Avenue  
St. Francis, WI 53235

AM/7

FILE CODE: 4530  
FID NO.: 341158070  
PERMIT NO.: 18-RAB-029

Dear Mr. Gibbs:

The Bureau of Air Management of the Department of Natural Resources (DNR) has received the updated emission calculations and additional application forms submitted by Container Life Cycle Management (CLCM) on November 29, 2018, as well as the technical memorandum prepared by TRC Environmental Corporation on behalf of CLCM dated August 9, 2018. After reviewing the additional information contained in the November 29th submittal and the August 9th memorandum, the department continues to find the application for construction permit 18-RAB-029 incomplete under s. 285.61(2)(b)2., Wis. Stats. For reasons explained in more detail below, the department does not agree with CLCM's assessment that the CLCM – St. Francis facility is not a PSD major source and does not require an after-the-fact Prevention of Significant Deterioration (PSD) permit to address changes originally authorized under construction permit 14-RSG-142. DNR once more requests that CLCM submit Best Available Control Technology (BACT) analyses for the scrubber-controlled wash processes and other modified sources of VOC emissions at the facility that will allow the department to make the required BACT determinations.

***The application for construction permit 18-RAB-029 must consider the after-the-fact PSD evaluation***

In a letter dated June 26, 2018, the department informed CLCM that the St. Francis facility required an after-the-fact PSD permit to address VOC and HAP emissions not previously disclosed to the department in the application for construction permit 14-RSG-142. The department based its conclusions on the PSD regulations codified in chapter NR 405, Wis. Adm. Code, the actual VOC emissions reported in the September 19, 2017 stack testing, and the information provided in the application for construction permit 18-RAB-029. With this better understanding of the current processes at the St. Francis facility and their emissions, and in the absence of conclusive information to the contrary, the department believes that the facility should have been permitted as a major stationary source, pursuant to s. 405.02(22), Wis. Adm. Code. Because the St. Francis facility requires after-the-fact PSD permitting, CLCM must provide additional information to either conclusively demonstrate the potential to emit of the facility at the time of issuance of 14-RSG-142 did not exceed major source thresholds or provide information to support BACT determinations. The BACT information is necessary for all the emissions units at the facility that emit VOCs and that either were new or modified under 14-RSG-142 or that are proposed to be new or modified under construction permit 18-RAB-029, as originally requested in the June 26, 2018 incompleteness letter.

DNR does not accept CLCM's revised potential to emit calculation for the St. Francis facility included in its August 9th technical memorandum and intended to demonstrate that the St. Francis facility is not a PSD major source. The results of the September 19, 2017 stack testing performed at the St. Francis facility clearly demonstrate that the scrubber-controlled wash processes are a large source of VOC emissions. During the testing, the average measured

emission rate of total organic compounds from the scrubber exceeded 53 pounds per hour. To calculate potential emissions from the wash processes, CLCM assumes that the emission rate recorded during the test represents the maximum quantity of VOCs that these processes theoretically could emit in any hour. However, pursuant to s. NR 400.02(127), Wis. Adm. Code, potential to emit means the maximum capacity of an emissions unit to emit an air contaminant under its physical and operational design, where physical or operational limitations that are federally enforceable may be treated as part of the emissions unit's design. The St. Francis facility has never had enforceable limits in its permits that would restrict hourly VOC emissions from the scrubber-controlled wash processes to the actual emission rate recorded during the September 19, 2017 stack testing. Based on the very high actual emission rate already demonstrated from these processes and the department's in-depth analysis of all submittals received to date, CLCM has not demonstrated that the potential to emit from the facility, or of the modification applied for under construction permit 14-RSG-142, are below major PSD thresholds.

On November 12, 2018, DNR staff and representatives of CLCM held a meeting to discuss CLCM's application for construction permit 18-RAB-029. One possible permitting approach discussed during that meeting was whether a facility-wide cap on VOC emissions of 40 tons per year (TPY) could be considered as a PSD-avoidance limit for the proposed capacity increase for the scrubber-controlled wash processes. During this meeting, DNR cautioned CLCM that such a plan was complicated by the unresolved concerns over PSD status of the 2014 project. Upon further consideration, the department has determined that such a permitting approach is not approvable in an after-the-fact PSD situation. In accordance with long-standing US EPA and department policy, DNR cannot issue a construction permit for existing equipment for which a facility failed to obtain a PSD permit without placing BACT or BACT-equivalent controls on the equipment in question.<sup>1</sup> The scrubber-controlled wash processes were clearly modified by construction permit 14-RSG-142 and therefore require BACT or BACT-equivalent controls.

### ***Request for Additional Information***

Based on its review of CLCM's previous application for construction permit 14-RSG-142 and its application for construction permit 18-RAB-029, the department has identified the following emissions units as subject to BACT review:

- P12 – Natural-gas fired 2.0 MMBtu per hour Water Heater
- P13 – Natural-gas fired 2.0 MMBtu per hour Water Heater
- P14 - Natural-gas fired 3.6 MMBtu per hour Water Heater
- P15 - Natural-gas fired 2.0 MMBtu per hour Water Heater and 2,000 Gallon Tank
- P32B – Curing Oven
- P32C – Auto external paint spray booth
- P41 – Drying oven
- P42 – Internal drum washer
- P44 – Plastic drum label stripping
- P45 - Plastic drum wipe cleaning
- P50C – Caustic drum drying oven
- P72 – Exterior wash/soaker for steel drum
- P73 – Exterior rinse for steel drum
- P74 – Internal double split washer for steel drums only
- P75 – Acidizer
- P80A – Caustic preflush
- P80B – Exterior caustic wash

P80C – Exterior rinse with water  
 P82 – Poly rinse tank system  
 P95 – Small plastic drum caustic pre-flush

The department requests again that CLCM provided additional information for the units identified above, as well as any other modified or new emissions units that are sources of VOC emissions, sufficient for the department to make a BACT determination for each unit.

In its June 26, 2018 letter to CLCM, the department requested that CLCM provide additional explanation why 100% capture could not be achieved for each process that would be controlled by the RTO. The June 26, 2018 letter also requested additional explanation as to why the RTO cannot achieve a destruction efficiency of more than 95%. In the same letter, the department requested that CLCM explain how it proposes to demonstrate compliance with its proposal to cap VOC emissions from the St. Francis facility to no more than 99.5 TPY. The department again requests that CLCM provide additional information to explain how it proposes to demonstrate compliance with its proposed VOC cap, which it has now lowered to 40 TPY.

Please be advised that this is not a complete review of the 18-RAB-029 construction permit application or the operation permit application submitted at the same time as 18-RAB-029. Additional information or revisions of the application materials may be needed as the review proceeds. The St. Francis facility is currently working through several enforcement actions including a July 19, 2017 Notice of Violation from DNR and a November 27, 2017 Notice and Finding of Violation from US EPA that may affect the construction and operation permit applications and the extent of additional information needed to complete DNR's review.

The department also reminds you that it provided an exemption from construction permitting for installation and operation of the RTO and once again urges you to begin operating this control device. If you have any questions regarding the additional information the department is requesting, or the RTO exemption determination, please feel free to contact me at (608) 264-9243.

Sincerely,



Ronald Binzley  
 Air Management Engineer  
 Bureau of Air Management

Cc: Kendra Fisher, Field Supervisor – DNR Southeast Region  
 Kristin Hart, Chief - Air Permit and Stationary Source Modeling Section  
 James Bonar-Bridges, Legal Counsel – DNR Air Management Program  
 Jessica Kramer, Legal Counsel – Wisconsin Dept of Justice

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1. For US EPA policy on cases where a source failed to obtain a major NSR permit prior to commencing construction of a major source or major modification, see Eric V. Schaeffer, Director of Regional Enforcement, Guidance on the Appropriate Injunctive Relief for Violations of Major New Source Review Requirements, November 17, 1998 (commonly known as the "Schaeffer Memo").

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December 26, 2018

Linda E. Benfield  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee WI 53202

Subject: Your December 19, 2018 Letter Regarding CLCM - St. Francis

Dear Ms. Benfield:

The department has received your letter of December 19, 2018, regarding the control equipment currently in place at Container Life Cycle Management, LLC's St. Francis Facility (CLCM). At this time, a joint meeting between the department, CLCM, the City of St. Francis, and elected officials would not be a productive discussion as the department has not changed its position regarding CLCM's permitting obligations or the operation of the regenerative thermal oxidizer (RTO).

The department has been consistent and clear regarding the operation of the RTO and how it interacts with applicability of after-the fact permitting at CLCM – St. Francis facility. When CLCM submitted an application in February of 2018, the only new unit being proposed was the RTO, which was intended to control volatile organic compounds and odors from the facility. The department determined that modifying the source to include an RTO—the whole project at that point—was covered under the general permitting exemption in s. NR 406.04(2), Wis. Adm. Code. It is unclear why CLCM was comfortable enough with this position to purchase and install the control equipment, but now questions the legal basis of the state permitting authority's exemption determination.

With regards to the source status of the facility, the department has consistently indicated since June of 2018 that there was reason to believe the facility should have been permitted as a PSD major source since at least 2014. In order to issue a permit containing all legally applicable requirements at this point in time, the department again asks CLCM to submit the information requested in both the June and December letters. If CLCM disputes the department's exemption for the RTO and believes that a permit is necessary, the information requested in the December 14 letter is necessary to keep the permitting process moving forward.

The department has stated that CLCM may begin operating the RTO in every conversation on this matter over the last year, including in the last paragraph of the December 14, 2018 letter. Again, CLCM is free to begin use of the RTO as part of continuing operations at St. Francis to alleviate odor and excess VOC emissions from the facility. Please contact me at 608-266-0014 if you have any additional questions.

Sincerely,

Bart Sponseller  
Deputy Division Administrator  
Division of Environmental Management

Wisconsin Department of Natural Resources

cc: Secretary Dan Meyer, AD/8 (via email)  
James Bridges, LS/8 (via email)  
Bonnie Cosgrove, USDOJ (via email)  
Jessica Kramer, WDOJ (via email)  
Erik Olson, USEPA Region 5 (via email)