

US EPA ARCHIVE DOCUMENT

Addendum to the Project XL Final Project Agreement

FOR THE PROJECT XL PILOT AT THE

Andersen Corporation

Bayport, Washington County, Minnesota

I. Purpose

This Addendum¹ explains how the Andersen Project XL pilot will proceed using EPA's recently promulgated New Source Review Reform (NSR reform, see 67 FR 80186-01 (December 31, 2002)) as the pilot's legal mechanism in lieu of a site specific rule as was contemplated in the June 30, 1999, Final Project Agreement (FPA). Using NSR reform as the legal mechanism will authorize the Andersen Project XL pilot to proceed in substantially the same form as described in the FPA, including the expected environmental benefits, but does require clarifying how certain flexibility will be implemented. The Andersen Corporation, the Minnesota Pollution Control Agency (MPCA), the United States Environmental Protection Agency (EPA) and Washington County (the County), herein referred to as the parties, agree that in the event any part of this Addendum may be inconsistent with any part of the FPA, this Addendum shall control. The Andersen Corporation Community Advisory Committee (CAC) assisted in the development of, and supports, this Addendum.

II. Background

In January 1998, EPA received the Andersen Corporation's formal proposal to develop a Project XL pilot. Over the next 18 months, the Parties and the CAC worked together to develop the FPA and the legal mechanism for the Andersen Project XL pilot. Specifically, EPA published a proposed site specific rule on April 19, 1999, which when made final would have authorized the flexibility necessary for MPCA to issue the Andersen XL permit as described in the FPA. On June 30, 1999, the Parties signed the FPA and, thereafter continuing through the present, the Andersen Corporation

¹ The Parties believe that this document is properly classified as an addendum and not a modification as described in Section V of the FPA since, in the wake of NSR reform, site specific changes to Federal regulations are no longer required to implement the Andersen Project XL pilot. As a result, the Andersen XL permit will fully comply with applicable Federal requirements in the same manner as all other similarly situated regulated entities. In addition, as described in this Addendum, the project is proceeding in substantially the same form as was contemplated in the June 30, 1999, FPA.

and MPCA worked to develop an XL permit. At the time the Parties signed the FPA, the Parties expected that EPA would publish a final site-specific rule just prior to issuance of the XL permit.

EPA's April 19, 1999, proposed site-specific rule for the Andersen Project XL pilot included only limited regulatory changes. Specifically, in order to reduce VOC emissions the Parties wanted to encourage Andersen's use of its waterborne inline wood treatment (versus solvent based) systems. However, Andersen's use of its waterborne inline wood treatment systems is currently restricted by certain VOC "synthetic minor" limits.² The then effective Prevention of Significant Deterioration (PSD) program for the State of Minnesota would have prohibited relaxation of permit operating restrictions that were established for the purpose of limiting potential to emit without first meeting the requirements of the PSD program, which includes the installation of Best Available Control Technology (BACT) and an air quality impacts analysis. In addition, the PSD program for the State of Minnesota would have limited the duration of a plant wide applicability limit (PAL), referred to as an emissions cap in the FPA, to 5 years whereas the expected duration of the Andersen Project XL pilot is 10 years. Therefore, EPA proposed to modify the applicable federally promulgated state plan for Minnesota so that MPCA could issue Andersen a PSD (as EPA's delegate), minor NSR, and Title V permit: (1) eliminating existing synthetic minor VOC limits on certain environmentally superior processes without requiring PSD review and (2) establishing VOC and PM/PM₁₀ PALs based on 10 year contemporaneous periods.

The NSR reform rules became effective in Minnesota on March 3, 2003 (See 68 FR 11316 (March 10, 2003)). Under NSR reform, among other things, a PAL based on actual emissions may eliminate "synthetic minor" limits and must have a 10 year duration. Since these are the same and only changes that EPA had proposed in the site specific rule, the Parties had to consider whether the site specific rule was still necessary or even the best legal mechanism to authorize the project. The Parties determined that with the possible exception of the non-milling PM/PM₁₀ PAL, all of the project flexibility would be authorized under the NSR reform rules. In the FPA, the Parties agreed that Andersen would be subject to a PAL or cap on PM/PM₁₀ emissions from its non-milling sources and that Andersen would perform a PSD analysis and meet all applicable PSD requirements in order to receive a PSD permit for PM/PM₁₀ emissions from its milling equipment. In effect, the PAL contemplated in the FPA would be a partial PAL in that it would not cover all of Andersen's PM/PM₁₀ emissions. However, the NSR reform rules do not provide for partial PALs.

After weighing various options for implementing the PM/PM₁₀ emissions part of the project, including a total facility PM/PM₁₀ PAL, the Parties agreed that the best path forward would include no Federal PM/PM₁₀ PAL. Rather, a combination of Clean Unit designation under NSR Reform and state permit flexibility will be used to accomplish the same result. Specifically, for milling

²"Synthetic minor" limits are operational and control limitations which serve to limit the net emissions increase associated with proposed new or modified units or systems to less than the applicable significance level and thereby keep them out of PSD review.

sources Andersen's PSD analysis will be used by MPCA in order to determine whether Andersen's milling equipment qualifies for treatment under the NSR reform Clean Unit designation. For non-milling sources, the MPCA will modify certain state permit process rule requirements to establish an alternative non-milling PM/PM₁₀ applicability limit to allow changes to non-milling PM/PM₁₀ emission sources that fall below the Federal NSR threshold. Changes to non-milling sources covered by the alternative applicability limit will remain subject to Federal NSR review requirements. The Parties agree that this approach complies with the NSR reform rules and will, as a practical matter, give Andersen substantially the same flexibility described in the FPA. The Parties also acknowledge that if at some later date this approach to PM/PM₁₀ emissions proves inadequate, the Parties can amend the FPA and the Project XL permit, both subject to public notice and comment (See Section V of the FPA).

III. How Andersen will Comply with the Clean Air Act

A. VOC Emissions

With respect to VOC emissions, the MPCA issued XL permit will include a VOC PAL which will comply with the NSR reform PAL rules. For example, the PAL level and duration will be set in accordance with the NSR reform rules and will require no site specific flexibility from Federal rules. In addition, there will be no subcap for VOC emissions from the dip tanks as is described in the FPA. In the FPA, the Parties included the subcap only because the dip tank emissions are currently subject to synthetic minor limits. While the Parties agreed to revise Federal requirements in order to allow greater use of certain environmentally superior processes (e.g., in-line water borne wood preservation), the Parties devised the VOC subcap to limit use of the environmentally less efficient dip tanks. Since NSR reform now allows for the lifting of all synthetic minor limits in favor of a PAL, the Parties agree that Andersen should not be required to comply with a VOC subcap on the dip tanks. However, VOC emissions from the dip tanks will be subject to the overall VOC PAL and therefore, since the dip tanks are less environmentally efficient than water borne wood preservation processes, Andersen will have a strong incentive to limit use of the dip tanks.

Similarly, the Parties devised the per unit of production VOC limit described in the FPA (more specifically, Attachment A) in consideration of anticipated site specific flexibility from Federal requirements. While Andersen has agreed to continue to track and report on an annual basis its per unit of production performance to both the regulators and CAC, the Parties agree that in the absence of site specific flexibility from Federal requirements, Andersen should not be subject to the enforceable element of the per unit of production measure. Therefore, the Parties agree that Andersen is no longer required to comply or report on the enforcement limit described in Attachment A to the FPA and that MPCA will not incorporate such a limit into the Andersen XL permit. Andersen agrees to comply with all remaining FPA requirements concerning the per unit of production limit.

In summary, with respect to VOC emissions, Andersen will receive a PAL which, when coupled with an MPCA issued variance from certain State rules concerning source modifications that fall below the Federal NSR threshold, will authorize Andersen to make changes to VOC sources within its facility without first obtaining a permit modification so long as the VOC PAL and all other applicable permit requirements are met.

B. PM/PM₁₀ Emissions

In the FPA, the Parties included definitions of milling and non-milling PM/PM₁₀ emissions, since each emissions type is treated differently. Milling PM/PM₁₀ emissions were to be controlled through Best Available Control Technology while the non-milling PM/PM₁₀ emissions were to be subject to a PAL. As explained above, the Parties have determined that NSR Reform does not provide for a PAL covering only a portion of Andersen's PM/PM₁₀ emissions. In addition, Andersen has determined that extending a PAL over both milling and non-milling PM/PM₁₀ emissions is not now a practical alternative. Therefore, the Parties agree that PM/PM₁₀ emissions will be regulated as follows:

1. PM/PM₁₀ Milling Emissions

Using the BACT analysis Andersen is conducting as a part of its permit application, MPCA will determine whether Andersen's milling equipment processes qualify for treatment as clean units under NSR reform. If so, Andersen will be allowed to make changes to these processes without going through the PSD process so long as the basis for the clean unit designation is still valid. In addition, in order to ensure that emissions will not increase beyond allowable levels, MPCA will include capacity limits on the milling processes in the Andersen XL permit. As a result, Andersen will be allowed to make changes to the milling processes while still maintaining the clean unit designation without any further PSD or state review. Any new milling processes beyond those covered by the BACT analysis would be subject to all applicable Federal and State permitting requirements. In addition, applicable modeling requirements (e.g., NAAQS and PSD increment) will apply in any event.

2. PM/PM₁₀ Non-Milling Emissions

With respect to changes to PM/PM₁₀ emissions from non-milling equipment, Andersen will be required to assess each such change for NSR applicability. If the change triggers NSR requirements, Andersen will comply with all applicable Federal requirements including NSR reform. For changes that fall below the Federal NSR threshold, MPCA will issue a variance to establish an alternative applicability limit in order to streamline State permit process requirements. The state variance must also be approved by EPA as a modification to the Minnesota State Implementation Plan (SIP). For example, if Andersen proposes to install a new non-milling unit, and if the unit is of a type for which applicable requirements (e.g., record keeping and monitoring) are already in the permit, and if non-milling PM/PM₁₀ emissions from the facility will stay below the applicability limit, the unit must be

assessed for federal NSR applicability only. If Federal NSR applies, Andersen will comply with all applicable NSR reform requirements. If the new non-milling unit emissions fall below Federal NSR threshold, Andersen will be able to install the new unit without first obtaining MPCA approval. The same approach will apply to modifications to non-milling units. In addition, applicable modeling requirements (e.g., NAAQS and PSD increment) will apply in any event.

Permit requirements for such a cap (monitoring and recordkeeping) will be similar to what is already outlined in the draft XL permit for existing types of equipment. As with PM/PM₁₀ emissions from milling equipment, applicable modeling requirements (e.g., PSD increment) will apply in any event.

IV. Miscellaneous Updates and Clarifications

In the course of preparing this Addendum, the Parties identified three other items that require updating or clarification.

A. Andersen West

At the time the FPA was signed, Andersen owned undeveloped property at 4001 Stagecoach Trail in Bayport, Minnesota on which it expected to one day construct additional window manufacturing facilities. Andersen has since sold this property. Consequently, the Parties agree that the Andersen facility covered by the FPA now consists solely of the Andersen property located at 100 Fourth Avenue North, Bayport, Minnesota and that to the extent the FPA identifies any requirements specific to the property defined as Andersen West, such requirements are null and void.

B. Window Recycling Program

The FPA describes Andersen's concept and continuing evaluation of a window recycling program and requires Andersen to report its findings within two years of the effective date of the project, which could be read to mean the date the FPA was signed or the date the XL permit is issued. Elsewhere in the FPA, the Parties refer to the effective date of the XL permit with respect to the milestone dates for other FPA commitments. Since there is no reason to distinguish between the window recycling program commitments and other FPA commitments, the Parties agree that the effective date of the project is the date the XL permit is issued.

C. Incorporation of XL Status Report Requirements into the XL Permit


In the FPA, Andersen agreed to prepare an annual status report to the parties and the CAC. The list of items to be included in the status report is set forth at page 31 of the FPA. The parties agree that this status report, as described in the FPA, was intended to be an FPA commitment and was not intended to be made an enforceable part of the XL permit. Andersen recognizes that in the permit the company will be obligated to report on items necessary to verify compliance with specific permit conditions. Some of those items are included generally in the list on page 31 of the FPA. However,

that list is not considered the basis for those reporting requirements that will be included in the permit and any such requirements will be justified by other applicable requirements. Specifically, the Parties agree that the following items from the list are not required to be incorporated into the XL permit, but will be reported in writing to the CAC, EPA, MPCA, and Washington County by April 30 of each year:

- VOC performance ratio;
- Status of catalytic oxidizer usage (in terms of proposed shutdowns, if applicable, and how cost savings will be reinvested in other VOC pollution prevention projects if the catalytic oxidizer is shutdown);
- Driptank removal, if applicable; and
- Environmental improvements resulting from the EMS.

V. Signatories

Each signatory represents that he or she is fully authorized to enter into this addendum to the June 1999 EPA



Jim Humphrey
President and CEO
Andersen Corporation

Date: 11/12/03



Date: 11/25/03

Sheryl Corrigan
Commissioner
Minnesota Pollution Control Agency

Dennis C. Hegberg

Dennis C. Hegberg
Chair
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Date: 12-2-03

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Recommended for Action:

Mary McGlothlin

Mary McGlothlin
Director
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Date: 11-20-03

Approved as to form:

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D/C
OK