



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-076

AN ORDER to repeal and recreate NR 428.06; and to create NR 428.04 (2) (g) 3, relating to emissions averaging provisions and categorical emission limits while controlling nitrogen oxides (NOx).

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-30-2002 RECEIVED BY LEGISLATIVE COUNCIL.

06-26-2002 REPORT SENT TO AGENCY.

RNS:JES

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02-076

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The rule should avoid the use of parentheses, such as in s. NR 428.06 (4) (intro.). [See s. 1.01 (6), Manual.]

b. The department should review the entire rule to ensure that the rule uses abbreviations consistently. For example, s. NR 428.06 (4) (c) 2. refers to the heat input in the emission rate as "million Btu" whereas this heat input is referred to in s. NR 428.06 (4) (e) 2. as "mmBtu."

c. Section NR 428.06 (4) (d) (intro.) should be s. NR 428.06 (4) (d) 1. and the subsequent subdivisions should be renumbered.

d. The provisions in s. NR 428.06 (4) (f) 1. and 2. appear to be misplaced. Whereas the first sentence in par. (f) (intro.) relates to the department's review and determination of completeness of the plan, par. (f) 1. and 2. relate to the content of a plan. Should par. (f) 1. be included in the plan elements in par. (b) and the provisions in par. (f) 2. included either in a separate provision or in par. (d) or (e)?

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis accompanying the rule, the reference to the statutes providing the authority for this rule-making should not include s. 285.11 (6), as sub. (6) does not directly authorize rule-making.

b. The reference to the "applicable ch. NR 428 emission limitation requirement" in s. NR 428.06 (4) (h) 3. is vague. Should this be a reference to applicable emission limitation requirements in s. NR 428.05 (3)?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department should review the following undefined terms and determine whether a definition is necessary to ensure consistent application of the rule:

- 1) "Integrated gasification process" in s. NR 428.04 (2) (g) 3. Should this term be limited to processes that use coal as the input material?
- 2) "Excess emission reductions" that are "enforceable" in s. NR 428.06 (2) (c).
- 3) "Capacity utilization" in s. NR 428.06 (4) (b) 3.
- 4) "Ozone season utilization" in s. NR 428.06 (4) (h) 2.
- 5) "Corrective action" in s. NR 428.06 (4) (i) 2.
- 6) "Energy emergency" in s. NR 428.06 (4) (i) 3.

b. The department should review the entire rule to ensure consistent use of terms. For example, s. NR 428.06 (2) (a) refers to the "NO_x emission averaging program"; whereas s. NR 428.06 (3) refers to the "NO_x ozone season averaging program," and s. NR 428.06 (4) (intro.) refers to an "NO_x averaging program." Another example is the rule's use of a "plan's aggregate mass NO_x emissions limitation" and a "plan's mass emission limit" in s. NR 428.06 (4) (h) 4. and (i) 1.

c. Are there any emission units that were constructed between 1996 and February 1, 2001 which could be included in an NO_x emission averaging program under the rule? If so, the department should review the formula for computing the emission unit's share of the aggregate heat input under s. NR 428.06 (4) (d) 2. to ensure that the formula in par. (d) would still be appropriate for the emission unit.

d. The rule appears to allow for the creation of more than one NO_x emissions averaging plan in the area specified in s. NR 428.05 (1). Under s. NR 428.06 (4) (d) 3., each plan will be subject to the aggregate mass NO_x emissions limitation from all units participating in the plan of 15,912 tons during the ozone season. If the department intends that this aggregate mass NO_x emission limit is the cumulative limit for all NO_x emissions averaging plans which could be submitted under s. NR 428.06, then the department should revise the rule to reflect that intent.

e. In s. NR 428.06 (4) (title), "PROSPECTIVE" is misspelled. In s. NR 428.06 (4) (k), "record keeping" should replace "recordkeeping" and "recordingkeeping."

f. In s. NR 428.06 (4) (g) 1., the phrase "shall provide public notice 60 days prior to the start of the ozone season for which the plan is" is awkward. Should "to which the plan relates" replace "for which the plan is"? Also, should it be *at least* 60 days notice?

Report to
Legislative Council Rules Clearinghouse
NR 428.04 and 428.06, Wis. Adm. Code
Natural Resources Board Order No. AM-35-02

Wisconsin Statutory Authority

ss. 227.11(2)(a) and 285.11(1) and (6), Stats., interpreting s. 285.11(6), Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Chapter NR 428 establishes air emission limits for nitrogen oxides. In December 2000, the Department submitted to U.S. EPA a revision to Wisconsin's Implementation Plan for the one-hour ozone standard. In January 2001, U.S. EPA published guidance on Economic Incentive Programs that were part of state implementation plans. The emissions averaging and trading provisions of ch. NR 428 submitted to U.S. EPA were found to be inconsistent with the new guidance. The Department asked U.S. EPA to defer action on the emissions averaging and trading provisions until the state could work with affected stakeholders to address the inconsistencies between the state rule and U.S. EPA guidance.

During the meetings with stakeholders, a related issue was raised. A relatively new technology, coal-gasification combined cycle combustion turbines, was not addressed in the categorical emission limit section of ch. NR 428. An appropriate categorical emission limit for this relatively new emission category is included in this package.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Dennis Koepke, Bureau of Air Management - 264-8868
Tom Steidl, Bureau of Legal Services - 266-0235
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on May 30, 2002

Fiscal Estimate — 2001 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number AM-35-02

Subject
 Revisions to NR 428 dealing with NOx Emissions Averaging and NOx Emissions Limits

Fiscal Effect
 State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

<input type="checkbox"/> Increase Existing Appropriation	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Decrease Existing Appropriation	<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs	

Local: No Local Government Costs

1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	

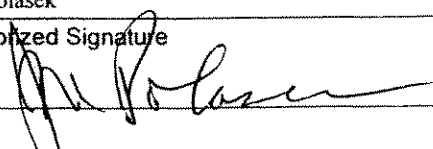
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Chapter 20 Appropriations
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Assumptions Used in Arriving at Fiscal Estimate

Bill Summary:
 The Revisions to NR 428 are needed to make Wisconsin's administrative rule compatible with USEPA guidance on economic incentive programs. The primary rule revisions changes the alternative compliance provisions of NR 428 to achieve that compatibility. A second rule revision creates a new categorical emissions limit for Coal-Gasification Combined Cycle Combustion Turbines. This emerging technology did not have a categorical emissions limit established in NR 428

Fiscal Estimate:
 The rule revisions are administrative changes that have no additional fiscal impact.

Long-Range Fiscal Implications
 none

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 04/22/02

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal and recreate** NR 428.06; and to **create** NR 428.04(2)(g)3., relating to emissions averaging provisions and categorical emission limits while controlling nitrogen oxides (NO_x).

AM-35-02

Analysis Prepared by the Department of Natural Resources

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Authorizing statutes: ss. 227.11(2)(a) and 285.11(1) and (6), Stats. *← doesn't authorize rulemaking*

Statutes interpreted: s. 285.11(6), Stats. The State Implementation Plan developed under that provision is revised.

For the purpose of attaining the 1-hour ambient air quality standard for ozone in southeastern Wisconsin, this rule package modifies emissions averaging provisions as an alternative compliance option for sources required to achieve emission reductions of nitrogen oxides (NO_x). The rules include several provisions that are specifically required under USEPA guidance.

The order establishes a new categorical emission limit on NO_x emissions from an emerging source category with no previous categorical emission limit.

SECTION 1. NR 428.04(2)(g)3. is created to read:

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Municipal Coal
NR 428.04(2)(g)3. 'Units fired by an integrated gasification process.' No person may cause, allow or permit nitrogen oxides to be emitted from a combined cycle combustion turbine that is fired on fuel derived from an (integrated gasification process) in amounts greater than 15 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis.

SECTION 2. NR 428.06 is repealed and recreated to read:

SUBCHAPTER II

NO_x EMISSIONS PERFORMANCE PROGRAM COMPLIANCE PROVISIONS

5-27
NR 428.06 **Determination of compliance.** (1) EMISSIONS UNIT COMPLIANCE. (a) Except as provided in sub. (2), each emissions unit subject to the requirements of s. NR 428.04(2) or 428.05(3) shall demonstrate compliance with the applicable performance standards on a per unit basis. *also Existing*

(2) UNIT NO_x EMISSIONS AVERAGING PROGRAM. (a) Except as provided in par. (b), units

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subject to s. NR 428.05(3) may participate in a NO_x emission averaging program for purposes of demonstrating compliance with an aggregate average ozone season emission limitation.

(b) Excess NO_x emission reductions from emissions units subject to s. NR 428.05 may not be used for demonstrating compliance by an emissions unit with an NO_x emission limit established under ch. NR 405 or 408 or ss. NR 409.065 or 428.04.

(c) Excess NO_x emission reductions for purposes of meeting the requirements of this subchapter shall be in emissions reductions beyond those required to meet all state and federal requirements. In addition, excess emission reductions shall be quantifiable through the monitoring requirements under ss. NR 428.05 and 428.07, and enforceable.

(d) If an emissions unit is subject to multiple ownership or operators, the plan required under sub (4) shall disclose the responsible party for compliance and liability subject to the requirements of this subchapter.

(3) AGGREGATE MASS EMISSION LIMITATION. All units participating in an NO_x ozone season averaging program after December 2007 shall be subject to an aggregate ozone season NO_x mass emission limitation applicable to the averaging program during the ozone season as determined under sub.(4).

(4) PROSPECTIVE EMISSIONS AVERAGING PLAN. An owner or operator of an emissions unit who wishes to participate in an NO_x averaging program shall submit a prospective emissions averaging plan (plan) to notify the department of all emissions units participating in an NO_x averaging program. The plan shall establish compliance requirements for each unit and for all units in the aggregate with respect to emissions rate limitations and mass emissions limitations. The plan shall estimate each participating unit's anticipated operation to meet these requirements.

(a) Plan submission. The plan shall be submitted to the department 90 days prior to the beginning of the ozone season covered by the plan. A revised plan may be submitted to the department no less than 30 days prior to the beginning of the ozone season covered by the plan.

State rules
rules

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emission averaging program

from ozone season (17)

vs. ozone season

at least 90 days before

(b) *Plan elements.* The plan shall include the following information for each emissions unit participating in the averaging program. All information shall be provided by applicable fuel category or details consistent with fulfilling all requirements of this subchapter.

1. The responsible owners or operators.
2. The applicable ch. NR 428 emission limitation.
3. The projected ozone season heat input in million Btu or equivalent units and the unit's capacity utilization.
4. The projected average NO_x emission rate and total mass emissions for the ozone season.

(c) *Plan emission rate limit.* 1. The plan shall establish an ozone season aggregate emission rate limit for all emissions units participating in the averaging program.

2. The aggregate emission rate limit is calculated as the heat input weighted aggregate of the ozone season individual unit emission rate requirements less an environmental benefit factor of 0.01 pounds per million Btu or equivalent for each unit. This calculation is expressed as:

$$\text{Plan Emission Rate} = \frac{\text{Sum [Projected Unit Heat Input} \times (\text{Unit Emission Rate Limit} - 0.01)]}{\text{Sum of Projected Unit Heat Inputs}}$$

(d) *Plan mass limitation.* The plan shall establish an ozone season aggregate mass emission limit for all units participating in an averaging program for ozone seasons after December 2007.

1. The aggregate mass emissions for all units that are eligible to participate in an emissions averaging plan may not exceed the combined allocation of all participating units' mass emissions caps as determined under subd. 2.

2. Each unit participating in an emissions averaging plan shall have a mass emissions cap equal to the aggregate mass emissions cap given in subd. 3. multiplied by that unit's share of the aggregate heat input determined by the unit's average heat input from the 1995, 1996 and 1997 ozone seasons.

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only apply to existing units

5. any sources built after 1996

3. The aggregate mass NO_x emissions from all units participating in an NO_x emissions averaging plan may not exceed 15912 tons during the ozone season.

4. If a unit eligible to participate in a prospective emissions averaging plan is retired and replaced by another emissions unit at the same site, the mass emissions from the retired unit may still be used in a plan provided the replacement unit's mass emissions for that ozone season are subtracted from the retired unit's share of the aggregate mass emissions cap.

(e) *Unit alternative compliance limits.* 1. The plan shall establish an alternative compliance limit for each unit participating in the averaging program.

2. The unit alternative compliance limit consists of both the projected ozone season heat input and the projected ozone season NO_x emission rate in mass/mmBtu.

(f) *Plan review.* The plan shall be subject to department review and determination of completeness. The plan at a minimum shall provide:

1. Information sufficient to determine the emission rate and mass limits and an alternative compliance limit for each unit.
2. Calculations that demonstrate that the projected emissions units operations will not exceed the plan's emission rate and mass limit.

(g) *Public notice.* 1. The owner or operator of emissions units participating in an emissions averaging plan shall provide public notice 60 days prior to the start of the ozone season for which the plan is and shall provide copies of the plan upon request.

2. The notice shall indicate purpose, participating units and how to obtain a copy of the plan.

3. In providing information to the public, the owner or operator shall indicate whether any units participated in prior plans and whether that participation resulted in a violation.

(h) *Compliance demonstration.* 1. The owners or operators of emissions units participating in an averaging plan shall submit a compliance report not later than 60 days after the last day of the ozone season with information sufficient to demonstrate compliance with the plan's emission rate and mass

emissions limit.

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2. The compliance report shall provide for each emissions unit the ozone season utilization, heat input, NO_x emission rate and total NO_x mass emissions. The compliance report shall provide in aggregate for all units the ozone season NO_x mass emissions, heat input in mmBtu or equivalent units, and the average emission rate. The aggregate average ozone season emission rate shall be calculated as the heat input weighted aggregate of the ozone season individual unit actual emission rates. This calculation is expressed as:

$$\text{Aggregate average ozone season emission rate} = [\text{Sum (actual heat input by unit x actual emission rate by unit)}] / (\text{Sum of actual heat inputs})$$

3. Individual units may not be withdrawn from an averaging plan unless it is demonstrated in the compliance report that all units designated in the plan individually met their applicable ch. NR 428.05 (3) emission limitation requirement.

4. If there is a successful demonstration of compliance with the plan's aggregate emissions rate limitation and with the plan's aggregate mass NO_x emissions limitation for the ozone season, then all units in the averaging plan shall be deemed to be in compliance for that ozone season with each participating units' alternative emissions rate limitation and heat input.

(i) *Violations and penalties.* 1. All emissions units participating in an averaging program are considered out of compliance if either the aggregate ozone season NO_x emission rate exceeds the plan emission rate limit or the aggregate ozone season NO_x mass emissions exceed the plan's mass emission limit.

2. Each emissions unit is considered in violation for each day of non-compliance until corrective action is taken to achieve compliance.

3. Unless the department, in consultation with the public service commission, determines that an energy emergency causes the units to exceed the cap on mass emissions, the department shall require

additional emission reductions if there are mass emissions exceeding the plan's mass emissions cap.
Additional emission reductions shall be achieved within the subsequent 3 ozone seasons' allowable mass emission limit for all units participating in the averaging program.

4. All owners or operators of emissions units considered to be out of compliance with a plan emission rate limit or mass limit are liable for each violation and subject to enforcement and penalty provisions under ss. 285.83 and 285.87, Stats. *aggregate*

(j) *Monitoring requirements.* The total mass emissions and heat input shall be quantified by continuous emissions monitoring equipment and procedures required by ss. NR 428.05(4) and 428.07.

sp. (k) *Recordkeeping and reporting requirements.* Owners and operators shall comply with the recordingkeeping and reporting requirements of s. NR 428.05(5).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. AM-35-02

Legislative Council Rules Clearinghouse Number 02-076

Subject of Rules Emissions averaging provisions
and categorical emission limits while
controlling nitrogen oxides (NO_x)

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 428, Wis. Adm. Code Emissions averaging provisions and categorical limits while controlling nitrogen oxides (NO_x)

Board Order No. AM-35-02
Clearinghouse Rule No. 02-076

Statement of Need

In December 2000, the Department submitted to the U.S. Environmental Protection Agency a revision to Wisconsin's Implementation Plan for the 1-hour ozone standard. In January 2001, U.S. EPA published guidance on economic incentive programs that were part of implementation plans. The emissions averaging and trading provisions of ch. NR 428, the NO_x rule submitted as part of Wisconsin's Attainment State Implementation Plan, were found to be inconsistent with the new guidance.

While the Department was working with affected stakeholders to address the inconsistencies between the state rule and U.S. EPA guidance, a related issue was raised. A relatively new technology, integrated coal-gasification combined cycle combustion turbines, was not addressed in the categorical emission limit section of ch. NR 428. An appropriate categorical emission limit for this emission category is included in this proposed rule.

Modifications as a Result of Public Hearing

NR 428.06(4) provisions regarding the aggregate mass emissions cap were modified to remove ambiguities.

The Department modified the location in the rule of the references on units with multiple owners to improve its clarity. The Department also modified the language on how emissions from such units may be allocated among the owners. The new language recognizes that the division of the emissions among multiple owners need not follow ownership shares, provided 100% of the emissions from the units are accounted for.

Clarifying language was added to the rule regarding the use of the term mass emissions. The provisions for units to be withdrawn from alternative compliance plans was also modified.

Appearances at the Public Hearings and Their Position

July 11, 2002 – Milwaukee

In support:

Kathleen Standen, Wisconsin Energy, 22 E. Mifflin Street, Suite 850, Madison, WI 53703
Michele Pluta, Alliant Energy, 4902 Biltmore, Madison, WI 53707

In opposition – none

As interest may appear – none

July 24, 2002 – Waukesha – no appearances

Response to Legislative Council Rules Clearinghouse Report

The recommendations of the Clearinghouse were accepted, except for comment 4.a. Section 285.11(6), Stats., is not only interpreted through this rule, but, in conjunction with s. 227.11(2)(a), Stats., provides the statutory authority for this rule.

Final Regulatory Flexibility Analysis

Small businesses will not be directly affected by the proposed rules for emissions averaging as a compliance option to achieve NOx emission reductions. Stakeholders have indicated that emissions averaging is much more cost effective than unit by unit compliance with the emission reduction requirements in ch. NR 428. Cost effective emission reductions will minimize any potential increase in electric rates for all customers.

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal and recreate** NR 428.06; and to **create** NR 428.02(6m) and 428.04(2)(g)3., relating to emissions averaging provisions and categorical emission limits while controlling nitrogen oxides (NO_x).

AM-35-02

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a) and 285.11(1) and (6), Stats.

Statutes interpreted: s. 285.11(6), Stats. The State Implementation Plan developed under that provision is revised.

For the purpose of attaining the 1-hour ambient air quality standard for ozone in southeastern Wisconsin, this rule package modifies emissions averaging provisions as an alternative compliance option for sources required to achieve emission reductions of nitrogen oxides (NO_x). The rules include several provisions that are specifically required to comply with USEPA guidance.

The order establishes a new categorical emission limit on NO_x emissions from an emerging source category with no previous categorical emission limit.

SECTION 1. NR 428.02(6m) is created to read:

NR 428.02(6m) "Integrated gasification process" means a high temperature process in which gaseous fuel is produced onsite from a carbon-based feedstock.

SECTION 2. NR 428.04(2)(g)3. is created to read:

NR 428.04(2)(g)3. 'Units fired by an integrated gasification process.' No person may cause, allow or permit nitrogen oxides to be emitted from a combined cycle combustion turbine that is fired by fuel derived from an integrated gasification process in amounts greater than 15 parts per million dry volume (ppmdv), corrected to 15% oxygen, on a 30-day rolling average basis.

SECTION 3. NR 428.06 is repealed and recreated to read:

SUBCHAPTER II

NO_x EMISSIONS PERFORMANCE PROGRAM COMPLIANCE PROVISIONS

NR 428.06 Determination of compliance. (1) **EMISSIONS UNIT COMPLIANCE.** Except as provided in sub. (2), each emissions unit subject to the requirements of s. NR 428.04(2) or 428.05(3) shall demonstrate compliance with the applicable performance standards under those provisions on a per unit basis.

(2) **UNIT OZONE SEASON NO_x EMISSIONS AVERAGING PROGRAM.** (a) Except as provided in par. (b), units subject to s. NR 428.05(3) may participate in an ozone season NO_x emission averaging program for purposes of demonstrating compliance with ozone season NO_x emission limitations in NR 428.05(3) during the ozone seasons of calendar years 2003 and later.

(b) Excess NO_x emission reductions from emissions units subject to s. NR 428.05 that are used in an ozone season NO_x emissions averaging program under this subchapter may not be used for demonstrating compliance by an emissions unit with an NO_x emission limitation established under ch. NR 405 or 408 or s. NR 409.065 or 428.04.

(c) Excess NO_x emission reductions, for purposes of meeting the requirements of this subchapter, shall be emissions reductions beyond those required to meet all state and federal requirements. In addition, excess emission reductions shall be quantifiable through the monitoring requirements under ss. NR 428.05 and 428.07, and enforceable.

(3) **AGGREGATE LIMIT ON OZONE SEASON EMISSIONS.** All units participating in an ozone season NO_x emissions averaging program after December 31, 2007 shall be subject to an aggregate limit on the total tons of NO_x which may be emitted during the ozone season as determined under sub. (4)(e).

(4) **PROSPECTIVE EMISSIONS AVERAGING PLAN.** An owner or operator of an emissions unit who wishes to participate in an ozone season NO_x emissions averaging program shall submit a prospective emissions averaging plan to notify the department of all the owner's or operator's emissions units participating in an ozone season NO_x emissions averaging program. This plan shall establish compliance requirements for each unit and for all units in the aggregate with respect to emissions rate limitations and mass emissions limitations. The plan shall estimate each participating unit's anticipated operation to meet these requirements.

(a) *Plan submission.* The emissions averaging plan shall be submitted to the department no later than 90 days prior to the beginning of the ozone season covered by the plan. A revised plan may be submitted to the department no later than 30 days prior to the beginning of the ozone season covered by the plan.

(b) *Plan elements.* The emissions averaging plan shall include the following information for each emissions unit participating in the averaging program. All information shall be provided by applicable fuel category.

1. The responsible owners or operators.
2. The applicable ch. NR 428 emission limitation.
3. The projected ozone season heat input in million Btu or equivalent units.
4. The projected average NO_x emission rate, in pounds per million Btu or equivalent, and total mass emissions for the ozone season.
5. Information sufficient to determine the emission rate and mass emission limit and the alternative compliance limit required under par. (f) for each unit.

(c) *Units with multiple owners.* If an emissions unit has multiple owners, the unit's mass emissions and heat input may be allocated among the owners provided all mass emissions and the entire heat input of the unit are allocated. Alternatively, the operator of a unit with multiple owners shall be allocated all mass emissions and the entire heat input. Each owner may use his or her share of mass emissions and heat input in any ozone season NO_x emissions averaging plan. Each owner shall be the responsible party for compliance and liability for the owner's share of mass emissions and heat input for the requirements of this subchapter.

(d) *Plan emission rate limit.* 1. The emissions averaging plan shall establish an aggregate ozone season NO_x emission rate limit for all of the emissions units participating in the averaging program.

2. The aggregate ozone season NO_x emission rate limit is calculated as the heat input weighted aggregate of the individual units' ozone season emission rate requirements less an environmental benefit factor of 0.01 pounds per million Btu or equivalent for each unit. This calculation is expressed as:

$$\text{Plan Emission Rate} = \{ \text{Sum} [\text{Projected Unit Heat Input} \times (\text{Unit Emission Rate Limit} - 0.01)] \} / (\text{Sum of Projected Unit Heat Inputs})$$

(e) *Plan mass emission limitation.* 1. The emissions averaging plan shall establish an ozone season aggregate mass NO_x emission limitation for all of the units participating in an averaging program during any ozone season after December 31, 2007.

2. The aggregate mass emissions for all units that are eligible to participate in an emissions averaging plan may not exceed the combined allocation of all participating units' mass emissions limitation as determined under subd. 3.

3. Each unit participating in any ozone season NO_x emissions averaging plan shall have a mass emissions limitation equal to 15,912 tons multiplied by that unit's share of the average aggregate heat input of all eligible units of all owners determined by actual heat inputs for these units from the 1995, 1996 and 1997 ozone seasons as determined by the department.

4. If a unit eligible to participate in an ozone season NO_x emissions averaging plan is retired and replaced by another emissions unit at the same site, the mass emissions from the retired unit may still be used in a plan provided the replacement unit's mass emissions for that ozone season are subtracted from the retired unit's mass NO_x emissions limitation determined under subd. 3.

(f) *Unit alternative compliance limits.* 1. The emissions averaging plan shall establish an alternative compliance limit for each unit participating in the averaging program.

2. The unit alternative compliance limit in mass per million Btu shall be determined by dividing the unit's projected ozone season NO_x emissions by its projected ozone season heat input.

3. The plan shall provide calculations that demonstrate that the projected emissions units operations will not exceed the plan's emission rate and mass limit.

(g) *Plan review.* The emissions averaging plan shall be subject to department review and determination of completeness. The department shall make its determination of completeness and inform the owner or operator of any additional information needed in the plan within 30 days of receipt.

(h) *Public notice.* 1. The owner or operator of any emissions unit participating in an emissions averaging plan shall provide public notice of that plan by publication in a local newspaper at least 60 days prior to the start of the ozone season to which the plan relates and shall provide copies of the plan upon request.

2. The notice shall indicate the purpose of the plan, the participating units and how to obtain a copy of the plan.

(i) *Compliance demonstration.* 1. The owners or operators of any emissions units participating in an emissions averaging plan shall submit a compliance report to the department not later than 60 days after the last day of the ozone season with information sufficient to demonstrate compliance with the plan's emission rate and mass emissions limit.

2. The compliance report shall provide, for each emissions unit, the heat input, NO_x emission rate and total NO_x mass emissions for the ozone season. The compliance report shall provide, in aggregate for all units participating in the emissions averaging plan, the ozone season NO_x mass emissions, heat input in million Btu or equivalent units, and the average emission rate. The aggregate ozone season NO_x emission rate shall be calculated as sum of the actual heat input of each unit times the individual unit's actual emission rate divided by the sum of the actual heat inputs of all units. This calculation is expressed as:

Aggregate average ozone season emission rate = [Sum (actual heat input by unit x actual emission rate by unit)] / (Sum of actual heat inputs)

3. Individual units may not be withdrawn from an ozone season NO_x emissions averaging plan unless it is demonstrated in the compliance report that the withdrawn units individually met their applicable s. NR 428.05(3) emissions limitation requirements and the remaining units in the plan demonstrate compliance with an ozone season NO_x emissions averaging plan after excluding the withdrawn units.

4. If there is a successful demonstration of compliance with the plan's aggregate emissions rate limitation and with the plan's aggregate mass NO_x emissions limitation for the ozone season, all units in the averaging plan shall be deemed to be in compliance for that ozone season with each participating units' alternative emissions rate limitation and heat input.

(j) *Violations and penalties.* 1. All emissions units participating in an ozone season NO_x emissions averaging program may be considered out of compliance if either the aggregate ozone season NO_x emission rate exceeds the emissions averaging plan's emission rate limitation or the aggregate mass NO_x emissions for the ozone season exceeds the plan's aggregate mass NO_x emissions limitation for the ozone season.

2. Each emissions unit is considered in violation for each day of non-compliance until corrective action is taken to reduce emissions and achieve compliance.

3. The department may require additional emission reductions if there are mass emissions exceeding the plan's limit on tons of mass emissions. The department may waive the additional emission reductions if, in consultation with the public service commission, the department determines that the excess emissions were the result of an extraordinary event and that the excess emissions were an unavoidable outcome of a necessary action taken by the source to maintain electric system reliability. Additional emission reductions shall be achieved within the subsequent 3 ozone seasons' allowable mass emission limit for all units participating in the emissions averaging plan. If there is no subsequent averaging plan for the source, the department may require a reduction in the source's emission rate that achieves an equivalent aggregate mass emission reduction.

4. All owners or operators of emissions units considered to be out of compliance with a plan emission rate limit or mass tons limit are liable for each violation and subject to enforcement and penalty provisions under ss. 285.83 and 285.87, Stats.

(k) *Monitoring requirements.* The total mass emissions and heat input shall be quantified by continuous emissions monitoring equipment and procedures required by ss. NR 428.05(4) and 428.07.

(L) *Recordkeeping and reporting requirements.* Owners and operators shall comply with the recordkeeping and reporting requirements of s. NR 428.05(5).

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)