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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2013)

Senate

Record of Committee Proceedings

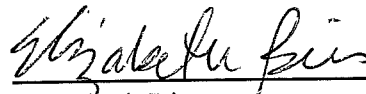
Committee on Environment

Clearinghouse Rule 10-048

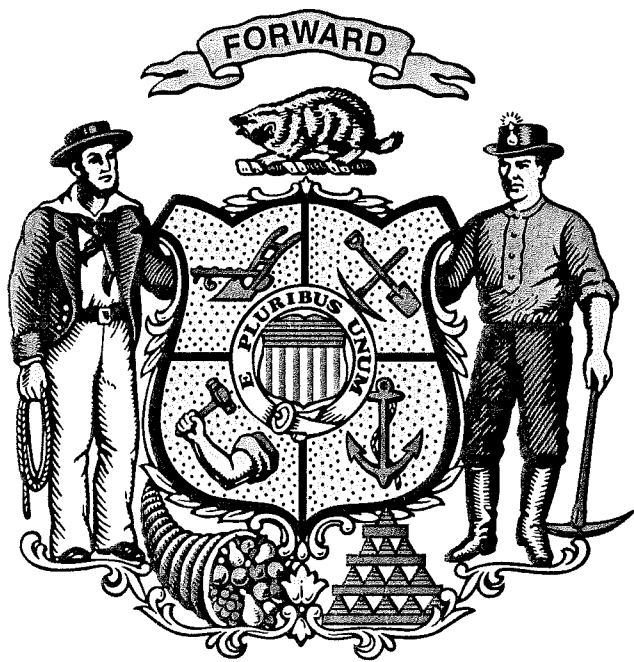
Relating to permit requirements for Class 1 areas and affecting small business.
Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

September 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk



State of Wisconsin
Department of Natural Resources

**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:

Board Order Number: AM-12-10
Clearinghouse Number: CR 10-048
Subject of Rules: A rule-making order to revise Chapters NR 400, 405, and 406, relating to air pollution control permit requirements for Class I areas.
Date of Transmittal: August 18, 2010

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

**Linda Haddix – Department Rules Coordinator
DNR Bureau of Legal Services
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or robert.eckdale@wisconsin.gov

REPORT TO LEGISLATURE

NR 400.02, 405.19, and 406.08, Wis. Adm. Code
Permit requirements for Class I areas, and affecting small business
Board Order Number: AM-12-10
Clearinghouse Rule Number: CR 10-048

BASIS AND PURPOSE OF THE PROPOSED RULE

This rule is being proposed to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community (FCPC) Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the state and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting the National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

The Department is required to keep the air permitting program consistent with federal requirements. This proposed rule change updates the permitting program rules to include the FCPC Class I area that has been approved by US EPA.

Additionally, the rule proposal will aid in the implementation of the Final Agreement reached between the State and the FCPC. In general, this Agreement reduces the number of sources that would have otherwise been required to do additional air quality analyses for the FCPC Class I area in comparison to a Federal Class I area. Thus, these proposed rules will implement existing policy reflected in the Final Agreement.

SUMMARY OF PUBLIC COMMENTS

Public hearings on the proposed rule were held on June 7, 2010 in Madison and on June 9, 2010 in Wausau. One person at the Wausau hearing made an oral statement supporting the proposed rules. Written comments were submitted by the Forest County Potawatomi Community (FCPC) at the Madison hearing in support of the proposed rule.

Written comments were also received from the Wisconsin Paper Council (WPC) and Wisconsin Manufacturers and Commerce (WMC). These comments concerned the dimensions of the "22.25 mile" and "74.25 mile" affected facility circles included in the proposed rule. Both WPC and WMC stated that each of the circles encompass too large of an area and are not consistent with the "10 mile" radius and "62-mile" distance contained in the 1999 Final Agreement between the state and the FCPC. In response to these comments, a change has been made to the final rule to clarify that no facility located further than 62 miles from any portion of the FCPC Class I area will be subject to the requirements of the final rule. In addition, an existing note in the rule was expanded to describe how the Department intended the 74.25 mile affected facility circle is to be used. The Department is not proposing to change the dimensions of the "22.25 mile" circle because a drawing of an essentially identical circle is included in the Final Agreement. Therefore, the Department believes that the "22.25" mile circle included in the final rule is consistent with the terms of the Final Agreement.

Additionally, WPC commented that implementation of the Final Agreement could lead to the Department exceeding permit issuance timelines in state statutes. No portion of the proposed rule allows the

Department to exceed the permit issuance timelines contained in s. 285.61, Wis. Stats. (i.e., WI Act 118). Therefore, all statutory permit issuance deadlines will be met.

MODIFICATIONS MADE

Modifications to the proposed rule made in response to public comments are described in the Summary of Public Comments section above.

APPEARANCES AT THE PUBLIC HEARING

Eight persons filed a hearing appearance as follows:

June 7, 2010 – Madison

In Support:

Art Harrington – Representing the Forest County Potawatomi Community, 780 N Water St, Milwaukee, WI

Bill McClenahan – Representing the Forest County Potawatomi Community, 7 N Pinckney St # 300, Madison, WI 53703

In Opposition:

Cara Kurtenbach – Representing Wausau Paper, 100 Paper Place, Mosinee, WI 54476

As interest may appear:

Steve Lewallen – Representing the Wisconsin Cast Metals Association

June 9, 2010 – Wausau

In Support:

Rob Hughes, 113 Edgar Ave, Rothschild, WI, 54474

Paul Schwanks, 604 Birch St, Rothschild, WI, 54474

Natalene Cummings – Representing the Forest County Potawatomi Community, PO Box 340, Crandon, WI 54520

In Opposition:

None

As interest may appear:

Randy Oswald, PO Box 19001, Green Bay, WI 54307-9001

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes to either the rule analysis or the fiscal estimate were necessary.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Legislative Council Rules Clearinghouse noted an internal reference error in its report, which was corrected.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules apply only to larger sources of air pollution which are not, in general, small businesses. The Department believes it is unlikely any small business would be impacted by these proposed rules.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **create** NR 400.02 (66m), 405.19 and 406.08(4) relating to permit requirements for Class I areas, and affecting small business.

AM-12-10

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 227.11(2)(a) and 285.11(1) and (6) Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for abatement of air pollution in the State. The permitting program, in general, and these regulations specifically, is part of that plan.

These rules are based on federal rules as well as a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community (FCPC).

4. Related statute or rule:

The FCPC Class I area was established as part of a Federal Implementation Plan approved by USEPA in an April 29, 2008 Federal Register Notice.

5. Plain language analysis: This rule is being proposed to amend portions of Department rules to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

6. Summary of, and comparison with, existing or proposed federal regulation: In an April 29, 2008, Federal Register Notice, the United State Environmental Protection Agency (USEPA) established the FCPC Class I area. The Department and the FCPC have agreed to provisions impacting the FCPC Class I area that USEPA stated, in the April 29, 2008, notice, need to be promulgated as part of the State's Implementation Plan for controlling air pollution in order to be effective for federal purposes.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): There are no non-federal Class I areas or non-federal Class I rules in any of these states.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: The proposed rule is based on the federal re-designation of the FCPC Reservation lands to non-federal Class I, and the Final Agreement.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses.

10. Effect on small business: These rules should not have a significant economic impact on small business because major air pollution sources do not generally meet the definition of a small business.

11. Agency contact person: Steven Dunn, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 267-0566; e-mail address: Steven.Dunn@wisconsin.gov

SECTION 1. NR 400.02 (66m) is created to read:

NR 400.02 (66m) "Forest County Potawatomi Community Class I area" or "FCPC Class I area" means those land parcels of the Forest County Potawatomi Reservation that are designated as a non-federal Class I area by EPA under 40 CFR. 52.2581. The FCPC Class I area has a geographic center, as determined by the department, at latitude 45.49978°N, longitude 88.64377°W.

SECTION 2. NR 405.19 is created to read:

NR 405.19 **Forest County Potawatomi Class I area.** (1) For any new major source or major modification of an existing source, the Forest County Potawatomi Community shall have the opportunity to present to the department, within no more than 75 days of receipt of a complete permit application by the department, a demonstration that the emissions from the proposed new major source or major modification would have an adverse impact on the established air quality related values of the FCPC Class I area.

(2) New major sources or major modifications of existing sources wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), are subject to an increment analysis and limited to the maximum allowable increase levels of a Class I area.

(3) New major sources or major modifications of existing sources locating or located

wholly outside the area defined in sub. (2) are subject to an increment analysis and maximum allowable increase levels of a Class II area.

Note: The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. The geographic center of the FCPC Class I area was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. A map developed by the Department and the Forest County Potawatomi Community shows the approximate 22.25-mile radius for the FCPC Class I area. The Final Agreement, map, and information on established air quality related values for the Class I area are available from the Department upon request, or may be found on the Department's web site.

SECTION 3. NR 406.08 (4) is created to read:

NR 406.08 (4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).
2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss.

285.61 and 285.62, Stats.

Note: The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and maps showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)