



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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Senate

Record of Committee Proceedings

Committee on Environment

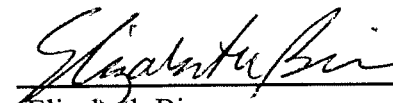
Clearinghouse Rule 10-050

Relating to permit requirements for particulate matter emissions and affecting small business.

Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

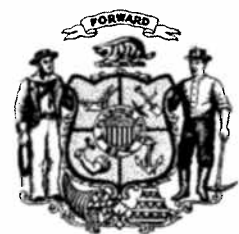
September 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk



WISCONSIN STATE LEGISLATURE



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-16-10
Clearinghouse Number: CR 10-050
Subject of Rules: A rule-making order to revise Chapters NR 400, 404, 405, 406, 407, 408, and 484, relating to permit requirements for particulate matter emissions.
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, 404 to 408, and 484, Wis. Adm. Code
Permit requirements relating to particulate matter emissions and affecting small business

Board Order Number: AM-16-10
Clearinghouse Rule Number: CR 10-050

BASIS AND PURPOSE OF THE PROPOSED RULE

This rule is being proposed to amend portions of Department rules to incorporate federal rule changes as required under s. 285.11(16) and (17), Wis. Stats. The revisions are based on changes in federal permitting regulations and are needed so the Department can retain US EPA's approval of state air permit programs.

Studies have shown significant health effects from exposure to fine particulate matter (PM_{2.5}), including a connection between high PM_{2.5} levels and premature mortality. Adverse health effects also include aggravation of respiratory and cardiovascular disease, lung disease, decreased lung function, asthma attacks, and certain other cardiovascular problems. Children, older adults and those with existing cardiovascular and respiratory diseases are particularly sensitive to the effects of PM_{2.5}.

SUMMARY OF PUBLIC COMMENTS

Hearings on the proposed rule were held on June 7, June 8, and June 9, 2010 in Madison, Milwaukee, and Wausau, respectively.

Two general oral statements in support of the proposed rules were made at the hearing in Wausau.

Written comments were submitted by Pepper Hamilton, Attorneys at Law, Suite 200, 100 Market St, Harrisburg, PA, on behalf of Saint-Gobain Containers, Inc. Saint-Gobain is a producer of glass packaging for the food and beverage industries, and operates a manufacturing facility in Burlington, WI. These comments suggested a minor correction to the rule, three editorial changes, and a recommendation that the Department conduct regional modeling to establish state specific inter pollutant trading ratios for nitrogen oxides and sulphur dioxide. The correction and two of the three editorial changes have been made to the proposed rule. The third editorial change has not been made as it would modify the term PM_{2.5} in a way that has not been defined in administrative code. The Department is also not proposing to conduct the regional modeling as requested, as it is a discretionary action by the state and is very resource intensive with no guarantee of achieving the ends that the commenter claims.

MODIFICATIONS MADE

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

In anticipation of final rulemaking by US EPA, the Department had included placeholder language in the proposed rules for s. NR 405.07(8)(a)3m. US EPA has not, and may not in the near future, complete this rulemaking. Therefore, the Department is now proposing the lowest emissions increase value under consideration by US EPA for s. NR 405.07(8)(a)3m., in lieu of a final promulgated federal value. This value is used to determine if monitoring may be required for a proposed project. In actual practice, the

Department does not require project monitoring to establish pre-construction background concentrations and instead relies on values generated from the existing state monitoring network. Therefore, there should be no impact on proposed projects regardless of whether US EPA promulgates the value proposed by the Department, or a slightly higher value, in the future.

The Department has also removed a proposed amendment to s. NR 405.14(4) related to Class I variances. The proposed amendment would have established a maximum allowable emission increase for PM_{2.5}. The Department had thought that US EPA would promulgate this limitation as part of their overall effort to address PM_{2.5} permitting requirements. The Department does not now anticipate US EPA promulgating this limitation in the near future.

APPEARANCES AT THE PUBLIC HEARING

Six persons filed hearing appearances as indicated below:

June 7, 2010 - Madison

In support:

In opposition:

As interest may appear:

Steve Lewallen Wisconsin Cast Metals Association, 405 East Forest St, Oconomowoc, WI 53066
Kathleen Standen, WE Energies, 22 E Mifflin St, Suite 850, Madison, WI 53703

June 8, 2010 - Milwaukee

In Support: None

In Opposition: None

As interest may appear: None

June 9, 2010 - Wausau

In Support:

Rob Hughes, 113 Edgar Ave, Rothschild, WI 54474
Paul Schwanks, 604 Birch St, Rothschild, WI 54474

In Opposition: None

As interest may appear:

Randy Oswald, Integrys Energy Group, PO Box 19001, Green Bay, WI 54307-9001
Cara Kurtenbach, Wausau Paper, 100 Paper Place, Mosinee, WI

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

Minor changes to sections 6, 7, and 8 of the rule analysis were made consistent with rule changes described in the Modifications Made section above. No changes to the fiscal estimate were necessary.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

Comments submitted by the Legislative Council Rules Clearinghouse were generally of a non-substantive nature. Changes specifically suggested by the Clearinghouse are included except for a suggested change to s. NR 405.02(25k)(intro.). The federal rule on which the proposed definition is based includes a substantive provision, which the Clearinghouse indicated was inappropriate for a definition. The Department believes that it is both appropriate and allowed by s. 227.14(1m)(b), Stats., to maintain the federal format, and therefore has not made the recommended change.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Sources of PM_{2.5} emissions that are currently subject to the federal permitting regulations that are the basis for the proposed rules generally do not qualify as small business under s. 227.114 (1), Wis. Stats. The proposed rules are not expected to have a significant impact on small business.

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
RENUMBERING AND AMENDING, AMENDING AND CREATING RULES**

The Wisconsin Natural Resources Board adopts an order to **renumber and amend** NR 404.02 (4e) and (4m); to **amend** NR 400.02 (40), (70), (79), and (135), 405.02 (25k)(intro.), 406.04 (1) (n) (intro.) and 1. (intro.) and 2., 484.03 (5), and 484.04 (5) and (6g); and to **create** NR 400.02 (123m), 400.03 (4) (ki), 405.02 (27) (a) 5m., 405.07 (8) (a) 3m., 406.04 (2) (cs), 407.03 (2) (be), 408.02 (32) (a) 5m., and 408.06 (1) (cm), relating to permit requirements for particulate matter emissions and affecting small business.

AM-16-10

Analysis Prepared by the Department of Natural Resources

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

2. Statutory authority: ss. 227.11(2)(a), 227.14(1m)(b) and 285.11(1), (16) and (17), Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 227.14(1m)(b), Stats., allows the Department to use the format of federal regulations in preparing a proposed rule if it determines that all or part of a state environmental regulatory program is to be administered according to standards, requirements or methods which are similar to standards, requirements or methods specified for all or part of a federal environmental program. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.11(17) requires the Department to develop and implement rules that define the term modification in a manner consistent with the clean air act.

4. Related statute or rule:

None.

5. Plain language analysis: The proposed rules contained in this order reflect changes made by the United States Environmental Protection Agency (EPA) in their regulations regarding the regulation of particulate matter less than 2.5 microns in size (PM_{2.5}). The Department needs to make this change in order to retain EPA approval of Wisconsin's air permit programs.

PM_{2.5} is proposed to be included as a pollutant used to determine whether a facility is a major source of air pollution. Additionally, increases in PM_{2.5} emissions will potentially trigger the need to obtain an air pollution control construction permit, including requirements to control emissions to levels which represent best available control technology or lowest achievable emission rate.

Additionally, the rule package includes some cleanup changes to otherwise unaffected existing rules. These changes are proposed to include up-to-date test methods and definitions in these existing rules. These changes do not change the effect or intent of these rules.

6. Summary of, and comparison with, existing or proposed federal regulation: The proposed PM_{2.5} rules will make the regulations consistent with the equivalent Federal rules with one exception. That exception is the inclusion of a maximum air quality impact that can be allowed to be exempt from pre-construction monitoring. The proposed value in this order is based on the lowest value proposed by EPA.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): The proposed rule is, with one exception, based on the federal rule changes. Adjacent states will all be

implementing the federal rule changes. Whether they adopt a value for a maximum air quality impact that can be allowed to be exempt from pre-construction monitoring in the absence of a final federal number is indeterminate at this time. Failure to adopt a number increases the stringency of the rule.

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 rule changes and the data and methodologies used by EPA in developing these rules. One portion of the proposed rule has yet to be finalized by the EPA.

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. Additionally, EPA has concluded that this rule will not impact a significant number of small entities.

10. Effect on small business: These rules should not have a significant economic impact on small businesses 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 (40), (70), and (79) are amended to read:

NR 400.02 (40) "Coal" means all solid fuels classified as anthracite, bituminous, subbituminous or lignite by ASTM designation ~~D388-99e~~ D388-99e1 (2004), incorporated by reference in s. NR 484.10 (7).

(70) "Fuel oil" means any petroleum-based fuel, including diesel fuel or petroleum derivatives such as oil tar, as defined in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

(79) "Heat input" means the total gross calorific value per unit of time of all fuels being burned, where gross calorific value of a fuel is measured by ASTM Method D240-02, D1826-94 or ~~D5865-02~~ D5865-04, incorporated by reference in s. NR 484.10 (4), (26) and (55g). Where the test method gives a higher and a lower heating value, heat input is calculated in Btu per hour using the higher heating value of the fuel.

SECTION 2. NR 400.02(123m) is created to read:

NR 400.02(123m) "PM_{2.5} emissions" means PM_{2.5} emitted to the ambient air as measured by an applicable reference method or an equivalent or alternative method specified by the department.

SECTION 3. NR 400.02 (135) is amended to read:

NR 400.02 (135) "Residual fuel oil" means an industrial fuel oil of grade No. 4, 5 or 6, as determined by the specifications in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8).

SECTION 4. NR 400.03 (4) (ki) is created to read:

NR 400.03 (4)(kh) "PM_{2.5}" -- particulate matter with an aerodynamic diameter $\leq 2.5 \mu\text{m}$

SECTION 5. NR 404.02 (4e) and (4m) are renumbered NR 400.02 (123e) and (123s), and as renumbered are amended to read:

NR 400.02 (123e) "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured in the ambient air by a reference method based on Appendix ~~N~~ L of 40 CFR part 50, incorporated by reference in s. NR 484.04(6g), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03(5), or by an equivalent method.

(123s) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in the ambient air by a reference method based on Appendix J of 40 CFR part 50, incorporated by reference in s. NR 484.04 (5), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03 (5), or by an equivalent method.

SECTION 6. NR 405.02 (25k) (intro.) is amended to read:

NR 405.02 (25k) (intro.) "Replacement unit" means an emissions unit for which all the criteria listed in pars. (a) to (d) are met. No creditable emission reductions ~~shall~~ may be generated from shutting down the existing emissions unit that is replaced.

SECTION 7. NR 405.02 (27) (a) 5m. in Table A is created to read:

NR 405.02 (27) (a) 5m. PM_{2.5}: 10 tpy, also 40 tpy of nitrogen oxides or 40 tpy of sulfur dioxide

SECTION 8. NR 405.07 (8) (a) 3m. is created to read:

NR 405.07 (8) (a) 3m. PM_{2.5} – 2.3 µg/m³, 24 hour average

SECTION 9. NR 406.04 (1) (n) (intro.) and 1. and 2. (intro.) are amended to read:

NR 406.04 (1) (n) (intro.) Renovation or demolition operations involving ~~friable asbestos~~ containing regulated asbestos-containing material provided that the provisions of subd. 1. or 2. are met:

1. The amount of ~~asbestos-containing~~ regulated asbestos-containing material is less than 260 linear feet on pipes or 160 square feet on other facility components.

2. If the amount of ~~asbestos-containing~~ regulated asbestos-containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all of the following conditions are met:

SECTION 10. NR 406.04 (2) (cs) is created to read:

NR 406.04 (2) (cs) The maximum theoretical emissions from the source for PM_{2.5} do not exceed 2.2 pounds per hour.

SECTION 11. NR 407.03 (2) (be) is created to read:

NR 407.03 (2) (be) The maximum theoretical emissions from the source for PM_{2.5} do not exceed

2.2 pounds per hour.

SECTION 12. NR 408.02 (32) (a) 5m. is created to read:

NR 408.02 (32) (a) 5m. PM_{2.5}: 10 tpy; 40 tpy for nitrogen oxides; and 40 tpy for sulfur dioxide.

SECTION 13. NR 408.06 (1) (cm) is created to read:

NR 408.06 (1) (cm) PM_{2.5} emission increases may be offset by decreases in nitrogen oxides or sulfur dioxide emissions, that are otherwise creditable, at a ratio of 40 tpy of sulfur dioxide for each ton of direct PM_{2.5} emissions and 200 tpy of nitrogen oxides for each ton of direct PM_{2.5} emissions.

SECTION 14. NR 484.03 (5) in Table 1 is amended to read:

NR 484.03 (5)

Table 1
CFR References

CFR Reference	Title	Incorporated by Reference For
(5) 40 CFR part 53	Ambient Air Monitoring Reference and Equivalent Methods	<u>NR 404.02(4e) and (4m)</u> <u>NR 400.02 (123e) and (123s)</u> NR 404.06(3)(b)

SECTION 15. NR 484.04 (5) and (6g) in Table 2 are amended to read:

NR 484.04 (6g)

Table 2
CFR Appendix References

CFR Appendix Referenced	Title	Incorporated by Reference For
(5) 40 CFR part 50 Appendix J	Reference Method for the Determination of Particulate Matter as PM ₁₀ in the Atmosphere	<u>NR 404.02(4m)</u> <u>NR 400.02 (123s)</u>
(6g) 40 CFR part 50 Appendix L	Reference Method for the Determination of Particulate Matter as	<u>NR 404.02(4e)</u> <u>NR 400.02 (123e)</u>

CFR Appendix Referenced	Title	Incorporated by Reference For
	PM _{2.5} in the Atmosphere	

SECTION 16. 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 17. 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)