

Report From Agency

REPORT TO LEGISLATURE

NR 400, 428 and 484, Wis. Adm. Code

Board Order No. AM-05-21
Clearinghouse Rule No. CR 23-017

Basis and Purpose of the Proposed Rule

Nitrogen oxides (NO_x) react with volatile organic compounds in the presence of sunlight to form ground-level ozone. Concentrations of ozone above the National Ambient Air Quality Standards (NAAQS) adversely impact human health and the environment. The U.S. Environmental Protection Agency (EPA) has designated several areas along the Lake Michigan shoreline in eastern Wisconsin as “nonattainment areas” due to ozone concentrations violating the NAAQS. Certain emissions sources located in nonattainment areas are subject to more stringent controls under the Clean Air Act. Chapter NR 428, Wis. Adm. Code, regulates the emissions of NO_x from certain stationary sources located in current ozone nonattainment areas and areas with a history of ozone nonattainment.

Since the last time ch. NR 428, Wis. Adm. Code, was revised in 2007, the department has identified several implementation issues associated with certain parts of the chapter. The department is proposing revisions to the chapter to ensure clear and consistent implementation of this rule.

Summary of Public Comments

See attached “Comments and DNR Responses Natural Resources Board Order AM-05-21.”

Modifications Made

The department modified the proposed rule language in response to two comments from EPA. See attached “Comments and DNR Responses Natural Resources Board Order AM-05-21.”

Appearances at the Public Hearing

Three members of the public attended the public hearing held on May 31, 2023. Bob Greco registered in support of the proposed rule. Mike Kolb, representing WEC Energy Group, and Don Gallo did not register a position (either in support or in opposition) on the proposed rule. None of the attendees provided verbal comments on the proposed rule.

Changes to Rule Analysis and Fiscal Estimate

In response to a comment from Sierra Club, the department modified the rule’s plain language analysis to provide additional explanation for proposed language which would make some emission limitations and monitoring requirements not applicable to a source utilizing a secondary fuel under certain circumstances.

The fiscal estimate and economic impact analysis was not modified as a result of public comments.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on form, style and placement; adequacy of references; and clarity, grammar and punctuation. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

1. *Comment 2.c.(1) recommends that the sub. (2) Alternative Criteria language under s. NR 428.055 be added as a subunit of sub. (1) Alternative Authority if the items in sub. (2) are requirements under sub. (1). The comment recommends that the same should be done for sub. (3) Procedures for Issuance of Alternatives,*

sub. (4) Revocation and Modification of Alternatives, and sub. (5) Effective Date of Alternatives if they are requirements of sub. (1).

DNR Response – The department did not make the recommended changes because subsections (1) – (5) of s. NR 428.055 because the items are not requirements under sub. (1). Each serve a distinct purpose and do not represent or contain requirements for the other subsections.

- 2. Comment 2.c.(2) questions why technological and economic infeasibility language is addressed in both sub. (1) Alternative Authority and sub. (2) Alternative Criteria language under s. NR 428.055.*

DNR Response – The department is retaining the technological and economic infeasibility language under s. NR 428.055 (1) and (2) because the two subsections serve separate purposes. Subsection (1) establishes the department’s authority to issue site-specific emission limit alternatives in instances where requirements under s. NR 428.04 or 428.05 are technologically or economically infeasible. Subsection (2) (c) specifies the criteria that a source must meet to demonstrate that applicable requirements from which variance is sought are technologically or economically infeasible.

- 3. Comment 2.c.(5) questions why EPA approval is needed before an alternative emission limit can be revoked and recommends removing revocation language under s. NR 428.055 (5) if EPA approval is not needed.*

DNR Response – The department is retaining the revocation language under s. NR 428.055 (5) because once alternative emissions limits are approved into the State Implementation Plan (SIP) by EPA, they are made federally enforceable. Any revisions to the SIP, including removal of the alternative emissions limits, shall also be approved by EPA in accordance with section 110(l) of the Clean Air Act.

- 4. Comment 2.d.(1)(d) recommends “ranges” be inserted after “load” or that “load” be changed to “loads” in s. NR 428.08 (2)(g) 4. c.*

DNR Response - The department is not modifying s. NR 428.08 (2) (g) 4. c. “capacity load” language as recommended but did add language to clarify that performance testing is required for the worst case load range as determined by the testing done under NR 428.08 (2) (g) 4. b.

Final Regulatory Flexibility Analysis

Chapter NR 428, Wis. Adm. Code, mainly applies to large NO_x emitting facilities such as those with generators and large industrial boilers. The proposed rule is intended to clarify existing requirements and to ensure clear and consistent application of the department’s longstanding policy of controlling NO_x emissions. The proposed changes to ch. NR 428, Wis. Adm. Code, will not result in any existing facility, small business or otherwise, becoming newly subject to NO_x emissions regulations upon promulgation of this rule.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.