

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: AM-05-21

Relating

to: Revisions to nitrogen compound emissions regulations in ch. NR 428

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rule will be proposed as a permanent rule.

2. Detailed description of the objective of the proposed rule:

Chapter NR 428, Wis. Adm. Code, regulates the emissions of nitrogen oxides (NO_x) from certain stationary sources. Subchapters I through III of this rule were added in January 2001 to fulfill the Rate of Progress (ROP)/Reasonable Further Progress (RFP) plans as required by Sections 172 (c)(2) and 182 (b)(1) of the federal Clean Air Act (CAA). Subchapter IV of this rule was added in July 2007 to include CAA Section 182(f) Reasonably Available Control Technology (RACT) requirements for major sources of NO_x located in ozone nonattainment areas classified as “moderate” (or above).

Since the promulgation of the 2001 and 2007 ch. NR 428, Wis. Adm. Code, rule revisions, the department has identified several implementation issues associated with the chapter for certain scenarios. The department is therefore proposing to make changes to ensure clear and consistent implementation of this rule. The proposed changes include clarifying exemption applicability, emission limits for units using more than one type of fuel, and emissions averaging requirements. The proposed rule also revises and clarifies the existing compliance and monitoring requirements.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The department is not proposing any new policies in this rule. This rule is consistent with the department’s longstanding policy of controlling NO_x emissions as a precursor to ground level ozone formation, consistent with federal requirements. An alternative to this proposed rulemaking would be to issue guidance to clarify specific implementation issues. This alternative would not bring the same degree of clarity or long-term certainty to regulated sources.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is required under s. 285.11(1), Wis. Stats., to promulgate and implement air pollution control rules consistent with ch. 285, Wis. Stats. In addition, s. 285.11(6), Wis. Stats., requires the department to prepare and develop comprehensive state implementation plans (SIP) for prevention, control and abatement of air pollution and revise and implement those plans to conform with the CAA.

Several provisions of the CAA provide the federal statutory basis for this rule. Sections 172(c)(2) and 182(b)(1) of the CAA require the state to provide RFP plans for ozone nonattainment areas. Section 182(f) of the CAA requires NO_x RACT to be included in the SIP for moderate (and above) ozone nonattainment areas.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that approximately 600 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

Affected entities include major stationary sources of NO_x emissions (mainly combustion sources) located in Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha counties, as well as such sources located in other areas that are classified as moderate (or above) ozone nonattainment in the future.

In addition, there are organizations that may not be directly affected by the rule but may have an interest in rule development, including business, environmental and public health organizations.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The proposed rule will revise the current RFP and RACT requirements for NO_x emitting units located in former and current ozone nonattainment areas. The CAA requires the state to develop these regulations; there is no existing or proposed federal regulation that addresses the activities to be regulated by the proposed rule.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

Chapter NR 428, Wis. Adm. Code, mainly applies to large NO_x emitting facilities. 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. Therefore, the economic impact of the rule is expected to be minimal and the rule is not anticipated to have a significant economic impact on small businesses.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding a public hearing in Madison, WI, in or around April 2023.

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