

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **amend** NR 433.05(1)(a)4. and NR 433.06(1)(intro.), (b)1. and (c) relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

AM-06-09

Analysis Prepared by the Department of Natural Resources

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

2. Statutory authority: Sections 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., authorizes the Department to develop rules consistent with ch. 285, Stats. Section 285.11(6), Stats., authorizes the Department to develop and revise the State Implementation Plan for prevention, abatement and control of air pollution.

4. Related statute or rule: None.

5. Plain language analysis:

The proposed rule modifications pertain to ch. NR 433 which regulates Best Available Retrofit Technology (BART) for the protection of visibility in mandatory class I federal areas. These BART requirements pertain to controlling emissions of particulate matter (PM), nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from certain stationary sources which cause or contribute to impairment of visibility.

The rules for Best Available Retrofit Technology currently require the owner or operator of a source, which has been determined to be subject to BART controls, to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. The extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

The Department also proposes to clarify and to provide additional flexibility to the averaging provisions in the rule. The additional flexibility allows an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process.

6. Summary of, and comparison with, existing or proposed federal regulation:

The Board initially established ch. NR 433 in January 2008 to satisfy BART requirements set forth by the US Environmental Protection Agency (EPA) under the regional haze regulation published July 6, 2005 Federal Register (70 FR 39104). In that regulation the US EPA required all states to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I Federal Areas resulting from manmade air pollution. The application of Best Available Retrofit Technology (BART) on certain stationary sources is one of the core requirements for the implementation plan for regional haze.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois, Iowa, Michigan and Minnesota have adopted the same approach in meeting BART requirements for industrial sources as Wisconsin. These states have identified BART eligible sources and are moving forward with the determination of applicable control requirements according to US EPA criteria.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The proposed rule modifications are the result of issues identified during the initial implementation of the BART rule requirements in Wisconsin. The Department found that facilities needed extra time to comply with BART requirements, particularly facilities that need multiple control equipment installations and those facilities facing multiple state and federal requirements for the same sources. Additionally, the Department found, during application of the trading requirements, certain provisions to be confusing or needing clarification.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

No small business is subject to BART controls under the existing BART rules. Therefore the proposed rule modifications have no direct effect on small business.

10. Effect on small business:

There is no direct effect on small business.

11. Agency contact person:

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SECTION 1. NR 433.05(1)(a)4. is amended to read:

NR 433.05(1)(a)4. The requirement that the owner or operator of each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than December 31, ~~2013~~ 2015.

SECTION 2. NR 433.06(1)(intro.), (b)1., and (c) are amended to read:

NR 433.06(1)(intro.) The owner or operator of a facility, having at least one boiler subject to BART, may propose an emissions trading program if the program achieves an improvement in visibility in the mandatory class I federal areas greater than would be achieved through the installation and operation of BART on each boiler subject to BART. The owner or operator of a boiler subject to BART who is proposing to use an emissions trading program shall submit an emissions trading plan to the department ~~prior to the department's BART determination~~. The plan shall be subject to department approval and meet the following criteria:

(b)1. For each visibility impairing pollutant ~~subject to the~~ for which compliance is demonstrated through use of a trading plan, an emission reduction of that pollutant at least 10% greater than would be achieved through the installation and operation of BART on each boiler subject to BART.

(c) Trading shall be between all boilers servicing a similar function and located on the same property.

SECTION 3. 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 4. 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)