

Report From Agency

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.