

Response to Comments

Regarding the Economic Impact Analysis for Incorporation of the 2012 Annual PM_{2.5} NAAQS into State Administrative Code (Board Order AM-07-15)

June 16, 2016

The Department prepared a draft fiscal estimate and economic impact analysis (EIA) for this rule and made it available for public comment from March 23, 2016 through April 6, 2016. The Department received eight responses from the public: six from representatives of stationary source facilities and two from trade organizations. The responses either did not raise comments or concerns, or agreed with the Department's estimate that there would be no, or minimal, additional economic impact due to adoption of the 2012 annual PM_{2.5} NAAQS into state administrative code. The Department has updated its fiscal estimate and EIA using form DOA-2049 accordingly.

The two trade organizations and one stationary source representative raised a number of issues and questions that either (1) do not affect the assessment of economic impact of the proposed action, or (2) are outside the scope of the proposed rule. This document responds to those questions.

1. *Comment:* If the Department alters the current PM_{2.5} NAAQS permitting guidance applicable to state program permitting actions, the state should reevaluate the economic impact of adopting the rules in Board Order AM-07-15.

Response:

Any change in state permitting policy would be issued in draft form for public comment, which would include the opportunity for the public to comment on the potential economic impact of any changes.

2. *Comment:* The draft EIA does not account for the economic impact of the lower 2012 PM_{2.5} NAAQS on sources that emit PM_{2.5} precursor emissions. The EIA does not address the impact on sources emitting PM_{2.5} precursors of SO₂ and NO_x.

Response: Under current policy and guidance, the Department does not review precursor emissions for compliance with any PM_{2.5} NAAQS when issuing minor construction permits or operation permits. The Department currently only reviews PM_{2.5} precursors for sources obtaining major construction permits (Prevention of Significant Deterioration (PSD)/Nonattainment New Source Review (NSR)) that exceed significant threshold values of 40 tons per year individually of either NO_x or SO₂. This approach is consistent with EPA's policy and will remain unchanged. Therefore, there is no economic impact related to precursor emissions due to adoption of the 2012 annual PM_{2.5} NAAQS into state administrative code.

3. *Comment:* The EIA should address cost incurred by major sources in complying with the NAAQS even though that is due to Federal requirements (PSD/Nonattainment NSR) and not due to state adoption of the NAAQS.

Response: As noted by the commenter, cost to a stationary source obtaining a major construction permit (PSD/Nonattainment NSR) is due to federal promulgation of the 2012 annual PM_{2.5}

NAAQS and not due to the adoption of the NAAQS into state administrative code, as proposed by this rule. In addition, the Department has been reviewing major construction permits for compliance with the 2012 annual standard since federal adoption. The adoption of this NAAQS into the state administrative code would not change this process for major construction permits. Thus, state adoption of the NAAQS does not change the existing economic impact for major construction permits. Any cost directly related to the major construction permit in meeting the federal NAAQS is beyond the scope of this rulemaking and EIA.

4. *Comment:* There is a danger that WDNR's use of the weight-of-evidence approach will create a regulatory environment whereby only the largest of sources will be required to perform dispersion modeling to obtain air permits. The EIA does not make an effort to evaluate the economic impacts that would fall on these larger sources of emissions if this were to occur.

Response: As noted in the EIA, the Department does not anticipate additional economic impact due to the adoption of the 2012 annual PM_{2.5} NAAQS into state administrative code. The Department reviewed minor and major construction permitting actions from 2011 and found that there would be no difference between the 2006 and 2012 annual PM_{2.5} NAAQS, regardless of source size, when it came to permitting preparation and emission control requirements.

The Department did provide an economic impact assessment concerning dispersion modeling for larger sources under the general weight-of-evidence approach in the EIA to Board Order AM-15-14. That EIA stated: "Because of the Department's decision to no longer use individual source dispersion modeling to evaluate increment at minor sources, there may be a slight increase in the time required to prepare a major source application to include information on PM_{2.5} from those nearby minor sources. However, the Department believes this workload would be slight because, aside from combustion units whose emissions are easily estimated, very few sources directly emit PM_{2.5}".

5. *Comment:* The EIA does not address cost for sources affected by a transport rule in response to bringing other out-of-state areas into attainment for the NAAQS.

Response: Any costs to sources affected by such a federal transport rule would be due to federal promulgation of the 2012 annual PM_{2.5} NAAQS and not due to the adoption of the NAAQS into state administrative code.

6. *Comment:* We encourage WDNR to further align itself (and become current) with the entire federal program. The federal program regulates only health based pollutants. With introduction PM_{2.5} about 10 years ago PM (TSP)¹ was no longer a regulated pollutant under the federal program. But the WDNR continues to regulate PM (TSP). The WDNR should further align itself with the federal program and modify ch. NR 415 and 438, for starters, to eliminate PM (TSP) from the Wisconsin Administrative Code.

Response: The EIA estimates the costs of adopting the 2012 annual PM_{2.5} NAAQS into state administrative code, which is the action proposed in this rule. WDNR, like EPA, no longer has a NAAQS for TSP as of December 2011, when it was removed from NR 404. Other potential changes to the state's regulation of particulate matter, as described in this comment, are outside the scope of this rulemaking.

¹ Total suspended particulate.