

Report to
Legislative Council Rules Clearinghouse
NR 400, 438 and 484, Wis. Adm. Code
Natural Resources Board Order No. AM-31-19

Wisconsin Statutory Authority

Sections 285.11(11), 285.17, 299.15, Stats.

Federal Authority

Pursuant to its authority under sections 110 and 172 of the CAA, the U.S. Environmental Protection Agency (EPA) requires that State Implementation Plans (SIPs) include inventories containing information regarding criteria pollutant emissions and their precursors. The 2015 amendments to the Air Emissions Reporting Requirements (AERR) rule codified in 40 CFR 51, subpart A, and 40 CFR 51.122 represent current federal emissions reporting requirements. Wisconsin is satisfying SIP requirements related to the AERR rule through this rulemaking.

Comparison of Adjacent States

The States of Illinois, Iowa, Michigan, and Minnesota have incorporated reporting requirements for emissions of particulate matter with an aerodynamic diameter equal to or less than 2.5 μm (PM_{2.5}) into their administrative codes.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

In 2015, EPA finalized amendments to the AERR rule (40 CFR 51, subpart A, and 40 CFR 51.122). This rule updated requirements for state and local agencies to collect and submit emissions data to EPA. Some inconsistencies currently exist between Wisconsin's air emissions reporting requirements codified in ch. NR 438, Wis. Adm. Code, and the AERR rule. The department is proposing to revise ch. NR 438, Wis. Adm. Code, to meet federal requirements in the AERR rule. Updating ch. NR 438, Wis. Adm. Code, will ensure the state has a legally sufficient SIP, required under Section 110(a)(2) of the federal Clean Air Act (CAA), and maintain Wisconsin's approval under Title I of the CAA.

The department is proposing to add an emissions reporting requirement for sources that directly emit PM_{2.5}, which ensures compliance with the AERR rule and maintains an approvable SIP. Related changes include specifying that state reporting requirements for particulate matter apply to primary emissions, where primary emissions are directly emitted to the atmosphere, rather than particulate matter formed through atmospheric chemical reactions ('secondary' emissions). Further, primary particulate emissions are being distinguished from filterable and condensable particulate emissions, which sum to equal the primary particulate emissions. Emissions reporting requirements are included for these filterable and condensable components of primary PM_{2.5} and primary particulate matter with an aerodynamic diameter equal to or less than 10 μm (PM₁₀). The proposed rule also addresses a deficiency in ch. NR 438, Wis. Adm. Code, identified by EPA which requires Type A sources under subpart A of 40 CFR 51 to report annual emissions of all criteria air pollutants and ammonia if the sources emit in excess of any of the thresholds listed in Table 1 of Appendix A of subpart A under 40 CFR 51.30. These proposed changes will ensure ch. NR 438, Wis. Adm. Code, meets federal requirements in the AERR rule (40 CFR 51, subpart A).

Additionally, the department is proposing to make other revisions to ch. NR 438, Wis. Adm. Code, to (1) align state code language with federal emissions reporting terminology, (2) revise outdated ch. NR 438,

Wis. Adm. Code, language and make corresponding updates to chs. NR 400 and 484, Wis. Adm. Code, to reflect the department's current emissions inventory process, and (3) create a list of emission units, operations or activities that a facility may exclude from the annual emission inventory. These proposed changes will clarify and modernize the emissions reporting rule language in ch. NR 438, Wis. Adm. Code.

Agency Procedures for Promulgation

The department will hold a hearing online on October 29, 2021 at 2:00 pm. The hearing will be followed by board adoption, expected in January 2022, followed by a request for the governor's approval and legislative review.

Description of any Forms (attach copies if available)

None.

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