

Clearinghouse Rule 10-050

Report to
Legislative Council Rules Clearinghouse
NR 400, 404 to 408, and 484, Wis. Adm. Code
Natural Resources Board Order No. AM-16-10

Wisconsin Statutory Authority

ss. 227.11(2)(a) and 285.11(1), (16) and (17), Stats., interpreting s. 285.11(1) and (6), Stats.

Federal Authority

42 USC 7410 (a) (2) (C)

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the 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 the US Environmental Protection Agency's (EPA) approval of state air permit programs.

Studies have shown significant health effects from exposure to fine particulate matter, including a connection between high levels of particulate matter with a diameter equal to or less than 2.5 microns (PM_{2.5}) and premature mortality. Adverse health effects 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}.

On May 16, 2008, the US EPA published rules that established new source review requirements for sources that emit PM_{2.5}. These rules also allow states, such as Wisconsin that are approved to operate the major source permitting program, until May, 2011 to submit an updated version of the major source permitting rules to US EPA for approval. In order to meet the May, 2011 submission date, the Department needs to begin the rulemaking process to establish these rules prior to submitting the final rules to US EPA for approval.

Some portions of the proposed rule have yet to be finalized by US EPA but are expected to be finalized in spring, 2010. The Department is proposing to adopt provisions identical to the federal rule into the Department's proposed rule when the federal rule is published. The Department expects that the final federal rule will be within the scope of this proposal.

Furthermore, the final federal rule will be promulgated in advance of public hearings on this proposal, allowing the public to be aware of what the federal requirements will be. The department will make appropriate adjustments in response to both the final federal rule and public comments on this proposal prior to recommending a final state rule.

Currently, PM2.5 is not regulated under the new source review program in PM2.5 air quality attainment areas. Under federal law and this proposed rule, PM2.5 will be regulated for all emission sources, with a permitting threshold at levels comparable to those previously set for larger particulate matter (PM and PM10).

Permitting rules have been in effect in the three-county PM2.5 non-attainment area since that area was designated non-attainment by US EPA in December 2009. This proposal clarifies existing rules by defining a significant increase and establishing emission offset requirements.

The Department is required to update the state new source review rules to keep them consistent with the federal rules to maintain federal approval of Wisconsin's new source review program.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

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