

Report to
Legislative Council Rules Clearinghouse
NR 400, 405, 408, and 410, Wis. Adm. Code
Natural Resources Board Order No. AM-21-12

Wisconsin Statutory Authority

Sections 227.11 (2) (a), 285.11 (1), (16), and (17), and 285.60 (11) (b), Wis. Stats., interpreting s. 285.11 (1) and (6), Wis. Stats.

Federal Authority

Not applicable

Court Decisions Directly Relevant

None

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

Reason for the Rule:

The main focus of the proposed rules is to correct deficiencies in chs. NR 405 and 408 identified by the U.S. Environmental Protection Agency (EPA) and which resulted in disapproval of select portions of the Department's State Implementation Plan (SIP). These corrections are required by the U.S. EPA to ensure that the Department implements the major new stationary source review permit programs consistent with the Clean Air Act and U.S. EPA requirements. Failure to maintain consistency may lead to the promulgation of a federal implementation plan (FIP), whereby the U.S. EPA can take back implementation authority for a portion of a state's permit program.

The Department is also proposing to repeal portions of chs. NR 400 and 410 relating to the former indirect source permit program. The Department previously operated an indirect source permit program under ch. NR 411, as previously authorized in s. 285.60, Stats. Chapter NR 411 was repealed through legislative action under 2011 Wisconsin Act 121. The Department is proposing to repeal rules in chs. NR 400 and 410 which previously had the sole purpose of supporting the indirect source permit program.

Rule Effect:

The proposed rules do not affect existing policy. Proposed changes relate to either major new stationary source permit programs for areas designated as attainment or nonattainment, or to an indirect source permit program no longer in effect. Proposed changes related to the major new stationary source permit programs do not represent a change in how the Department implements these permit programs. These changes are being proposed to ensure consistency with federal regulations and approvability by the U.S. EPA.

Rule Summary:

The proposed rule package addresses items identified by U.S. EPA as being deficient with portions of Wisconsin's State Implementation Plans. Specifically, the changes pertain to the fuel use prohibition that is part of the definition of 'major modification' and the clarifications of precursors and condensables in chs. NR 405 and 408.

The need to address the fuel use prohibition that is part of the definition of 'major modification' was brought to the Department's attention in a letter from the U.S.EPA detailing the inadequacy of specific portions chs. NR 405 and 408 because they failed to identify permits issued under federal authority. The letter recommended the insertion of federal citations to ensure recognition of all federally issued permits.

The proposed clarifications of precursors and condensables (both contained in the definition of a 'Regulated NSR air contaminant') were items identified by the U.S. EPA through federal register notices that led to final disapproval to portions of Wisconsin SIPs. The federal register notices required clarification of language in chs. NR 405 and 408 to address the deficiencies. Failure to address the noted deficiencies will likely result in the promulgation of a FIP.

Additionally, the proposed rule package seeks to repeal the definitions and fees in chs. NR 400 and 410 associated with the indirect permit program that Wisconsin is no longer operating. The portion of the proposed rule package related to the indirect source program does not affect existing policy because the Department no longer operates the indirect source program.

Agency Procedures for Promulgation

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

Description of any Forms (attach copies if available)

None

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