

## **Report From Agency**

### **REPORT TO LEGISLATURE**

NR 400, 405, 408, and 410, Wis. Adm. Code,  
Consistency with federal air pollution control major source permit review requirements and clean-up of rule  
related to the former indirect source permit program.

Clearinghouse Rule Number: CR13-070  
Natural Resources Board Order Number: AM-21-12

#### **BASIS AND PURPOSE OF THE PROPOSED RULE**

The primary objective of this rule package is to revise language in chs. NR 400, 405, and 408 of the air pollution control rules to maintain consistency with federal requirements and definitions. A secondary objective is to remove obsolete provisions of chs. NR 400 and 410 whose only purpose was in support of the indirect source permit program formerly implemented through ch. NR 411.

In May 2006, the Department of Natural Resources (Department) requested approval by the U.S. Environmental Protection Agency (EPA) of rules promulgated by the Department to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The U.S. EPA approved the SIP revisions, but subsequently requested, through a narrow disapproval, changes to language in chs. NR 405 and 408. These changes pertain to the fuel use prohibition that is part of the definition of “major modification”.

Section NR 405.02 (25i) defines “Regulated NSR air contaminant” and specifically identifies volatile organic compounds as a precursor for ozone. U.S. EPA has requested inclusion of nitrogen oxides (NO<sub>x</sub>) in the definition for clarification purposes. Similarly U.S. EPA requires, through its 2008 New Source Review Rule, explicit identification of NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM<sub>2.5</sub>) within the definition of “Regulated NSR air contaminant”. The Department has also amended the definition of “Regulated NSR air contaminant” in s. NR 408.02 (29m) to specifically address precursor pollutants in nonattainment areas. Additionally, the Department will amend the definitions of PM<sub>2.5</sub> and particulate matter with a diameter of 10 micrometers or less (PM<sub>10</sub>) to address a U.S. EPA-identified SIP deficiency. The definitions as currently written do not specifically mention condensables as required in the federal 2008 New Source Review Rule.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see [2011 Wisconsin Act 121](#)), resulted in the repeal of ch. NR 411. The primary purpose of ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore the Department proposes to repeal rules whose only purpose was to support the implementation of ch. NR 411. The rules proposed for repeal are ss. NR 400.02 (101) and (106), and 410.03 (3). Sections NR 400.02 (101) and (106) define ‘modified indirect source’ and ‘new indirect source’ respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source.

#### **SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE**

The Department held one hearing on the proposed rule on November 5, 2013 in Madison. The hearing was conducted by Kendra Fisher of the Department’s Bureau of Legal Services. Gail Good, Monitoring Section

Chief provided an overview of the proposed rule. One person from the public was in attendance and registered as interest may appear. No oral statements or written comments were provided at the hearing. The public comment period for the proposed rule ended on November 8, 2013.

On November 9, 2013, the Department received comment via email from an individual who indicated no affiliation. The commenter made varied requests that did not relate to the specific proposed rules that the Department indicated in the public hearing notice were the subject of the hearing and comment period. The requests made in the comments were outside the limits of the statement of scope, and therefore the Department's authority for this rulemaking.

### **MODIFICATIONS MADE**

No modifications were made in response to public comment received. (See explanation in previous section.)

### **PERSONS APPEARING OR REGISTERING AT PUBLIC HEARING**

One person appeared at the public hearing and registered as follows:

In support:	None
In opposition:	None
As interest may appear:	Kathleen Standen, 22 E. Mifflin St Suite 850, Madison, WI, representing We Energies

### **CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

In section 9 of the rule order analysis the Department removed a statement that an economic impact analysis as required under s. 227.137, Stats., had not been prepared. This was an erroneous statement included in the rule analysis available at the time of the public hearing. An economic impact analysis had in fact been prepared and was available prior to the public hearing. Section 10 of the rule analysis was amended to remove references to an 'economic' impact on small businesses, and instead refers to an effect on small businesses. Section 1.02 (2) (a) of the Administrative Rules Procedures Manual prepared jointly by the Legislative Reference Bureau and Legislative Council staff discusses the content of the rule summary (analysis) and does not limit this section of the analysis to an economic affect.

No changes were made to the fiscal estimate or economic impact analysis.

### **RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

The Legislative Council Rules Clearinghouse submitted comments on form, style, and placement in administrative code and on clarity, grammar, punctuation, and use of plain language. The Department accepted the recommendations of the Legislative Council and made appropriate changes to the proposed rule except for the following:

1. Legislative Council comment 2.c.: This comment notes that in SECTIONS 5 and 8 of the proposed rulemaking order, the Department included text considered to be redundant since the subject text is already included in proposed definitions for terms also being used.

The Department recognized the redundancy identified by the Legislative Council. The goal was to clearly satisfy U.S. EPA concerns regarding approvability of the proposed rules while highlighting the issue the text addresses for the reader. While redundant, the Department believes the proposed text achieves this goal and therefore did not make any changes.

2. Legislative Council comment 2.g.: This comment notes the Department’s use of “the EPA” in various sections of the proposed rule, and that if acronyms are used for names of agencies, they must be defined and used consistently.

The Department has defined the acronym “EPA” in existing rule section NR 400.03 (4) (f) to mean the United States environmental protection agency. This definition applies in the chapters being revised under this rulemaking and the Department uses this acronym consistently throughout the air pollution control rules. No changes were made since the Legislative Council rule drafting requirements stated in their comment were met.

### **FINAL REGULATORY FLEXIBILITY ANALYSIS**

The proposed rule revisions either address U.S. EPA identified SIP deficiencies by codifying current practice, or remove obsolete rule provisions whose only purpose had been to support the indirect source permit program formerly implemented through ch. NR 411, which was previously repealed. Because these revisions do not have an effect on small business, a final regulatory flexibility analysis is not required and was not prepared.

### **RESPONSE TO SMALL BUSINESS REGULATORY REVIEW BOARD REPORT**

The Small Business Regulatory Review Board did not send a report to the Department of any suggested changes or other information or comments on this proposed rule as provided for under s. 227.14 (2g), Stats.