

Report From Agency

REPORT TO LEGISLATURE

NR 404 and 484, Wis. Adm. Code
Ambient air quality standards for nitrogen dioxide (NO₂) and sulfur dioxide (SO₂).

Board Order Number: AM-08-11
Clearinghouse Rule Number: CR 15-0333

BASIS AND PURPOSE OF THE PROPOSED RULE

The U.S. Environmental Protection Agency (EPA) is required by the federal Clean Air Act (CAA) to promulgate NAAQS to protect public health (i.e., primary standards) and public welfare (i.e., secondary standards). The Department is required by state law (s. 285.21, Wis. Stats.) to promulgate by rule a similar, but no more restrictive, air quality standard when the U.S. EPA promulgates a new or revised NAAQS.

On February 9, 2010, the U.S. EPA promulgated a 1-hour primary NAAQS for NO₂ at a level of 0.100 parts per million (100 parts per billion) (75 FR 6474). In addition, the U.S. EPA promulgated a 1-hour primary NAAQS for SO₂ at a level of 0.075 parts per million (75 parts per billion) on June 22, 2010 (75 FR 35520). As a result of these federal actions, the Department is proposing to adopt the NO₂ and SO₂ NAAQS into ch. NR 404, Wis. Adm. Code and to revise ch. NR 484, Wis. Adm. Code, to include references to applicable U.S. EPA data handling conventions for NO₂ and SO₂.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

The Department received written comments from two entities, the Wisconsin Paper Council and Wisconsin Manufacturers & Commerce. Both commenters acknowledge that the Department is obligated by state statute to incorporate ambient air quality standards for NO₂ and SO₂ into the state administrative code similar to those national standards promulgated by the U.S. Environmental Protection Agency, while raising concerns about how these standards will be implemented through the air pollution control permit processes. Specifically, both commenters are concerned that adopting these ambient air quality standards would require additional air dispersion modeling and engineering analyses as a condition for receiving permits. Commenters specifically noted numerous technical and practical concerns with conducting such modeling in support of these standards.

The Department agrees that if the proposed ambient air quality standards were implemented as has been done historically, several practical and technical concerns would arise. Specifically, the Department agrees that modeling is not the only method available to demonstrate that a particular source will not “cause or exacerbate” a violation of these standards when a source is applying for a permit. The Department has flexibility under existing law to demonstrate protection of these proposed standards through its permitting processes in ways other than modeling, and commits to exploring with affected parties how to use this flexibility to identify technically sound alternatives to modeling when implementing these ambient air quality standards.

MODIFICATIONS MADE TO THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENT OR TESTIMONY RECEIVED

No modifications were made to the proposed rule as a result of public comments received. No testimony was made at the public hearing held on the proposed rule.

PERSONS APPEARING OR REGISTERING AT PUBLIC HEARINGS

The Department held a public hearing on the proposed rule in Madison on May 21, 2015. Mr. David Seitz, representing TRC Environmental Corporation, registered as interest may appear but did not make an oral statement. TRC is a national engineering, consulting, and construction management firm providing integrated services to the energy, environmental, and infrastructure markets. TRC is not a small business.

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes were made to the rule analysis or the fiscal estimate and economic impact analysis that were submitted along with the proposed rule to the Legislative Council Rules Clearinghouse for review.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

No comments or recommended changes were made by the Legislative Council Rules Clearinghouse in its report to the agency.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Small businesses may be minor sources of air pollution and require air pollution control permits and therefore be affected by the adoption of the proposed ambient air quality standards. The Department has adopted simplified permits, for example registration and general permits, to assist smaller sources, including those owned by small businesses, with the permitting process. Through a separate rulemaking (CR 15-005), the Department is in the process of expanding certain exemptions and making other changes that will reduce the number of smaller sources that must obtain a permit or qualify the source for a simplified permit. These recent and other ongoing changes, together with the commitment to explore with affected parties the use of flexibility to identify technically sound alternatives to modeling when implementing these ambient air quality standards will reduce the impact of these standards on small businesses. In addition, the Department's Small Business Environmental Assistance Program is available to provide a comprehensive set of resources and tools to assist small businesses in complying with federal and state air pollution requirements.

No new reporting, recordkeeping, or notification requirements affecting small or other businesses are proposed.