

Report to
Legislative Council Rules Clearinghouse
NR 422, Wis. Adm. Code
Natural Resources Board Order No. AM-20-18

1. Wisconsin Statutory Authority

Sections 285.11(6) and 285.14(1), Stats.

2. Federal Authority

Clean Air Act Section 182(b)(2)(A) requires states to implement Reasonably Available Control Technology (RACT) for volatile organic compound (VOC) sources that are covered by certain Control Techniques Guidelines (CTG) in nonattainment areas. RACT has been defined as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” 44 FR 53726, 53761 (Sep. 17, 1979). The United States Environmental Protection Agency (EPA) published updated Control Techniques Guidelines (CTG) for Miscellaneous Industrial Adhesives and Miscellaneous Metal and Plastic Parts Coatings in 2008. These CTGs provide state air pollution control authorities with guidance for developing RACT for facilities that engage in miscellaneous industrial adhesive or miscellaneous metal and plastic parts coating operations. If the proposed changes are adopted, the requirements in s. NR 422.083 (Plastics parts coating), NR 422.127 ((Use of adhesives), NR 422.15 (Miscellaneous metal parts and products), Wis. Adm. Code, will be consistent with the requirements in EPA’s aforementioned 2008 CTGs.

Clean Air Act Section 183(e) categories (aerosol coatings, architectural coatings, and automobile refinish coatings) are regulated by national VOC rules and are generally not included in the miscellaneous metal parts or plastic parts coating categories. However, if architectural coatings and automobile refinish coatings are used for purposes other than those defined in their respective national VOC rules, the coatings would be covered by the CTG for miscellaneous metal and plastic parts coatings, as well as be subject to the national VOC rules for architectural or automobile refinish coatings.

3. Comparison of Adjacent States

Illinois and Indiana have similar administrative rules that reflect the latest federal Control Techniques Guidelines (CTGs). Minnesota and Michigan do not have any nonattainment areas subject to this requirement and therefore are not required to have updated Reasonably Available Control Technology (RACT) regulations for emissions of volatile organic compounds (VOC).

4. Court Decisions Directly Relevant

EPA’s use of CTGs to implement § 183 of the Clean Air Act has been upheld in federal court. See Citizens for a Better Environment v. Costle, 515 F. Supp. 264, 278-279 (N.D. Ill. 1981) (citing Rubber Manufacturers v. Costle, No. 79-189, slip opinion (D.Del., March 27, 1980)). More recently the D.C. Circuit determined that EPA’s architectural coatings rule was a reasonable exercise of agency authority under § 183, and that the statutory

provision did not violate the Commerce Clause. Allied Local & Reg'l Mfrs. Caucus v. U.S. E.P.A., 215 F.3d 61, 81-82 (D.C. Cir. 2000).

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

VOCs react with nitrogen oxides in the presence of sunlight to form ground-level ozone. High concentrations of ground-level ozone are known to adversely impact human health and the environment. The U.S. Environmental Protection Agency (EPA) has designated several areas in eastern Wisconsin as “nonattainment areas” due to high concentrations of ozone. Emissions sources located in nonattainment areas are subject to more stringent controls under the Clean Air Act (CAA).

Section 182(b)(2) of the CAA requires states to implement VOC RACT regulations in any ozone nonattainment area classified as “moderate” or above. The State’s VOC RACT program must include regulations that reflect the latest (CTGs) issued by EPA for specific source categories.

In 2008, EPA released two updated CTGs that provided recommendations for three source categories: miscellaneous plastic parts coating, miscellaneous metal parts coating, and miscellaneous industrial adhesives. The department started rulemaking around 2009 to incorporate these CTGs into rule. At the time, however, it was unclear whether the 2008 CTGs would be challenged and possibly modified. The CTGs were not litigated and ultimately did not change and have been in effect since 2008. This rulemaking effort began in 2018, and the scope statement was published in the Administrative Register on February 4, 2019.

Because Wisconsin has had several ozone nonattainment areas subject to this requirement since the CTGs were issued (Sheboygan County and eastern Kenosha County), the department is proposing to update its existing VOC RACT regulations to reflect the latest EPA CTGs. This will ensure the state remains in compliance with CAA Section 182(b)(2) requirements as they apply to moderate and higher ozone nonattainment areas. Wisconsin’s compliance with all CAA requirements, including ensuring compliance with up-to-date RACT rules, will ensure the state has a legally sufficient state implementation plan (SIP) and allow the state to redesignate eligible ozone nonattainment areas more quickly.

6. Agency Procedures for Promulgation

The department will hold a hearing online on January 25, 2021 at 2 p.m. The hearing will be followed by board adoption, expected in summer 2021, followed by a request for the governor’s approval and legislative review.

7. Description of any Forms (attach copies if available)

None.

8. Name and Telephone Number of Agency Contacts

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