

## **VOC RACT Rule Public Comments and DNR Responses Natural Resources Board Order No. AM-20-18**

**April 5, 2021**

This document presents a summary of public comments received on the proposed revisions of Chapters NR 400, 419, 421, 422, 423, 425, 439, and 484, Wisconsin Administrative Code, and the Department of Natural Resources' (DNR's) responses.

### **OVERVIEW**

In the statement of scope for this rule, DNR committed to updating the state's reasonably available control technology (RACT) rules to limit volatile organic compound (VOC) emissions from miscellaneous metal and plastic parts coatings and miscellaneous industrial adhesives in ozone nonattainment areas classified as "moderate" (and above).

The primary objectives of the proposed rules are to meet federal Clean Air Act (CAA) Section 182(b)(2) requirements by updating Wisconsin's existing VOC RACT regulations in ch. NR 422 to reflect the most recent Control Techniques Guidelines (CTGs) for Miscellaneous Metal and Plastic Parts Coatings and Miscellaneous Industrial Adhesives. Adoption of and compliance with up-to-date VOC RACT rules, including applicable CTG control measures, is required for Wisconsin to maintain a legally sufficient state implementation plan. The proposed rules also make several corrections and clarifications to current language within ch. NR 422 to be consistent with federal guidelines and to eliminate redundant or conflicting language.

Stakeholder Process – On November 7, 2019, members of the Air Management Study Group (AMSG), the Air Program's stakeholder working group, were notified of the DNR's AM-20-18 rule work and were invited to contact DNR if they were interested in reviewing the proposed rule changes. On January 7, 2020, DNR provided the AM-20-18 scope statement to AMSG members and again offered to provide the draft rule language to interested stakeholders. No AMSG members requested to review the proposed rule language. At that time, DNR also requested help from AMSG members to identify other stakeholders that would potentially be interested in the proposed rule. The DNR held an informational session on February 20, 2020, to provide stakeholders an opportunity to ask questions about the proposed rule. Three people attended the meeting. From Winter 2019 through Spring 2020, DNR communicated directly with three industrial sources that would be affected by this rule. No changes in operations or controls at these sources would be necessary to comply with the proposed rule, as the sources were already meeting the VOC content limits of the applicable CTG.

Economic Impact Analysis (EIA) – A 30-day public comment period on the Draft EIA occurred from October 5 to November 4, 2020. During this period, DNR received one comment from the American Coatings Association (ACA) related only to the proposed rule language. As such, DNR is responding to the rule language comment in this document.

U.S. Environmental Protection Agency (EPA) Input - EPA provided comments on December 15, 2020, following a courtesy review of the proposed rules. The DNR is documenting its response to EPA's comments in this document.

Public Hearing and Comment - The public comment period for the draft rule occurred from December 21, 2020, to February 1, 2021. No written comments were received during the public

comment period. The public hearing on the draft rule was held on January 25, 2021. Seven people attended the hearing. None of the attendees provided verbal comments.

## **ECONOMIC IMPACT ANALYSIS**

The DNR received no comments related to the economic impact of the proposed VOC RACT rules. One comment related to the proposed rule language was received during the solicitation of comment on the economic impact period and is being addressed in this document.

## **LEGISLATIVE COUNCIL RULES CLEARINGHOUSE (19-015)**

Comments received from the Wisconsin Legislative Council Rules Clearinghouse (LCRC) were related to form, style and placement in administrative code; adequacy of references to related statutes, rules and forms; and clarity, grammar, punctuation and use of plain language. DNR made all requested changes except as follows:

Comment 5.a., In the rule summary's comparison with rules in adjacent states, the State of Indiana is listed, but not the State of Iowa. This should be corrected to describe any rules in Iowa, rather than Indiana.

### **Response**

Per the LCRC's comment, the rule summary was updated to include a comparison with Iowa's rules. However, the comparison to Indiana rules is being retained. A sentence was added explaining that portions of Wisconsin, Illinois, and Indiana comprise a tri-state nonattainment area for the 2008 and the 2015 ozone standards, making the comparison to the State of Indiana appropriate.

## **SUMMARY OF PUBLIC/EPA COMMENTS AND DNR RESPONSE**

Comments on the proposed revisions to chs. NR 400, 419, 421, 422, 423, 425, 439, and 484, Wis. Adm. Code, concerning board order AM-20-18, were received on November 4, 2020, from the American Coatings Association (ACA) and on December 15, 2020, from EPA. The following is a summary of the comments and the DNR's response.

### **Comment from ACA**

1. The ACA urges Wisconsin DNR to consider raising the VOC content limit for "Other Substrate Antifoulant Coating" used for marine pleasure craft coatings to 400 g VOC/L or 3.4 lbs VOC/gal.

### **Response**

The proposed rule's maximum VOC content limit for "Other Substrate Antifoulant Coating" under s. NR 422.084 *Plastic parts coating – part 2* is 330 g VOC/L or 2.8 lbs VOC/gal to be consistent with the CTG for Miscellaneous Metal and Plastic Parts Coatings. CTGs presumptively define VOC RACT for their respective source categories. A maximum VOC content limit that is higher than the CTG-recommended limit may preclude EPA approval of this rule section, potentially resulting in a legally insufficient state implementation plan and/or delaying redesignation of an eligible ozone nonattainment area.

No change based on this comment has been made.

### Comments from EPA

2. "Once in, always in" language should be changed to clarify that the emission restriction cannot be solely on emissions but should be on the "production, hours of operation, and/or capacity utilization" of the source so that the potential to emit is below the applicability threshold.

#### Response

The DNR addressed this comment by revising SECTION 4 s. NR 422.01 (4) and (Note) to clarify that "maximum theoretical emissions" in ch. NR 422 is defined under s. NR 419.02 (11), which specifies that maximum theoretical emissions may be limited by the imposition of "production, hours of operation, and/or capacity utilization" conditions. The plain language section of the board order was also updated to clarify that permanent and enforceable maximum theoretical emissions restrictions to limit emissions below the applicability threshold(s) must be based on "production, hours of operation, and/or capacity utilization."

3. Existing "once in, always in" language should not be deleted from SECTION 10 s. NR 422.03 (intro.), SECTION 12 s. NR 422.05 (1m), SECTION 13 s. NR 422.06 (1m), SECTION 14 s. NR 422.08 (1m), SECTION 26 s. NR 422.14 (1m), and SECTION 27 s. NR 422.145 (1m) because the language specifies that a source will not be exempt from VOC RACT regulations if subsequent emissions levels exceed the exemption levels.

#### Response

The proposed "once in, always in" language in SECTION 4 s. NR 422.01 (3), (4), and (Note) clarifies the DNR's longstanding interpretation and application of VOC RACT "once in, always in" applicability for all of ch. NR 422. The proposed SECTION 4 language supersedes the fragmented "once in, always in" language currently under ss. NR 422.03 (intro.), 422.05 (1m), 422.06 (1m), 422.08 (1m), 422.14 (1m), and 422.145 (1m). Including both Section 4 and the deletions would create unnecessary confusion.

No change based on this comment has been made.