

Report From Agency

REPORT TO LEGISLATURE

NR 438, Wis. Adm. Code

Board Order No. AM-31-19
Clearinghouse Rule No. 21-072

Basis and Purpose of the Proposed Rule

In 2015 the U.S. Environmental Protection Agency (EPA) finalized amendments to the Air Emissions Reporting Requirements (AERR) rule (40 CFR 51, subpart A, and 40 CFR 51.122). This rule updated requirements for state and local agencies to collect and submit emissions data to the EPA. Currently, some inconsistencies exist between Wisconsin's air emissions reporting requirements codified in ch. NR 438, Wis. Adm. Code, and the federal AERR rule. The Department of Natural Resources (the department) is proposing to revise ch. NR 438, Wis. Adm. Code, to meet federal requirements in the AERR rule. Updating ch. NR 438, Wis. Adm. Code, will ensure the state has a legally sufficient state implementation plan (SIP), required under Section 110(a)(2) of the federal Clean Air Act.

Summary of Public Comments

Two organizations, Wisconsin Manufacturing and Commerce (WMC) and WEC Energy Group, submitted written comments on the economic impact of the proposed rule during the solicitation period of comments on the economic impact of the proposed rule (June 30, 2021 – July 14, 2021). WMC commented that the proposed recordkeeping requirement in s. NR 438.03(4), Wis. Adm. Code, relating to the maintenance of safety data sheets, technical data sheets, **and** [emphasis added] lab testing results would be an administrative burden to facilities, but could be ameliorated by replacing the “and” with “or”. The WEC Energy Group commented that the department had not adequately calculated the cost that would be incurred by sources as a result of the proposed rule to report annual emissions from certain emissions units, operations and activities exempt from operation permit applications under s. NR 407.05(4)(c)10., Wis. Adm. Code.

The Wisconsin Utilities Association (WUA), the Wisconsin Paper Council (WPC), and WMC submitted written comments on the proposed rule during the public comment period (September 27, 2021 – November 5, 2021). The three organizations recommended that the department expand its proposed exemptions list in ch. NR 438, Wis. Adm. Code, to include any emission source, operation, or activity previously identified by the department to be an insignificant source in, or otherwise exempt from, department-issued operation and construction permits. WPC also recommended the inclusion of a “catch-all” provision that would allow an owner or operator of a facility to submit emissions from emissions units, operations, or activities that could be excluded from emissions inventory requirements upon approval of the department.

EPA commented on the board order posted for public comment, that while the proposed applicability thresholds in s. NR 438.03(1)(af), Wis. Adm. Code, for Part 70 major sources aligned with *annual* federal reporting requirements, the department should incorporate the lower applicability thresholds associated with *triennial* years. Additionally, EPA commented that the department should incorporate emission reporting requirements for fugitive releases in s. NR 438.04(5), Wis. Adm. Code.

Modifications Made

In response to WMC's comment on the economic impact of the proposed rule, the department completely removed the requirement to specifically maintain safety data sheets, technical data sheets, and lab testing results, and expanded the proposed rule language to more broadly allow sources to maintain any record that

identifies the **composition and** [emphasis added to new addition] quantities of raw materials and incinerated waste that result in air emissions. The department expects these changes will reduce the administrative effort needed to comply with the proposed rule.

The department did not revise the board order or economic impact analysis based on WEC Energy Group's comments because the proposed rule language clarified existing requirements and would not result in new reporting requirements on the aforementioned emissions units, operations, and activities. Additionally, new exclusion language added to the proposed rule in response to comments received during the public comment period, would result in all emissions units, operations, and activities exempted under s. NR 407.05(4)(c), Wis. Adm. Code, to be excluded from emissions reporting requirements under s. NR 438.03, Wis. Adm. Code. Thus, sources using these exclusions would see a reduction in cost incurred when reporting annual emissions under the proposed rule.

In response to the public comments received, the department contacted WPC, WUA, and WMC individually to better understand the intent of their recommendations. Following these discussions, the department added another emissions reporting exclusion to the initially proposed exclusion list. The new exclusion, added under s. NR 438.03(1)(am)4., Wis. Adm. Code, covers emissions units, operations, and activities that meet the operation permit application exemption criteria in s. NR 407.05(4)(c)9.a., Wis. Adm. Code. This new exclusion addresses the three organizations' common concern regarding reporting emissions from units identified as insignificant in department-issued operation and construction permits but not in the ch. NR 438, Wis. Adm. Code exclusion list. The new exclusion language was also crafted to serve as the catch-all provision requested by WPC. The department would still maintain final review of excluded emissions under this catch-all provision. The department expects this exclusion added to address public comments will reduce the administrative emissions reporting burden for facilities.

In response to EPA's comments, the department revised s. NR 438.03(1)(af), Wis. Adm. Code, to include applicability thresholds associated with triennial inventory years and incorporated emission reporting requirements for fugitive releases in s. NR 438.04(5), Wis. Adm. Code, to ensure the proposed rule changes align state emissions reporting requirements with the federal AERR rule.

Appearances at the Public Hearing

The following members of the public attended the public hearing on October 29, 2021:

- Keith Graper, City of Clintonville
- Andrew Hall
- Lauren Hill, Molson Coors
- Ashely Korrer, WEC Energy Group
- Patrick Stevens, Wisconsin Paper Council

None of the attendees registered for or against the proposed rule, and none of the attendees provided verbal comments at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

No changes to the economic impact analysis were necessary in response to comments received by the department.

The rule analysis in the board order was updated to reflect revisions made to address EPA's comment on the proposed applicability thresholds in s. NR 438.03(1)(af), Wis. Adm. Code.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on statutory authority; form, style and placement in administrative code; and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for the Clearinghouse Report's comment 5.e. Comment 5.e. recommended that the single use of "emissions inventory" in s. NR 438.03 (6) be modified to "emissions inventory summary report" for consistency within the subsection. A source's emissions inventory and emissions inventory summary report are distinct documents, and emissions inventory is intentionally used. The department included additional rule language to provide clarity in this subsection.

Final Regulatory Flexibility Analysis

The proposed rule will not have an economic or fiscal impact on small businesses. The proposed changes will not involve an emission fee increase for sources and will not require sources to install new emissions monitoring equipment or reporting systems. If the proposed emissions reporting requirement for particulate matter with an aerodynamic diameter equal to or less than 2.5 μm (PM_{2.5}) is applicable to a small business, there could be a small administrative impact in the form of time required to report and certify annual PM_{2.5} emissions.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.