Report From Agency

REPORT TO LEGISLATURE

NR 463, Wis. Adm. Code
National Emission Standards for Hazardous Air Pollutants
For Iron and Steel Foundries

Board Order No. AM-29-06
Clearinghouse Rule No. 06-110

Basis and Purpose of the Proposed Rule

Section 112 of the Clean Air Act, as amended In 1990, requires that the U.S. Environmental Protection Agency promulgate emission standards for all categories of major sources of hazardous air pollutants. The U.S. EPA promulgated the final national emission standard for hazardous air pollutants (NESHAP) for iron and steel foundries on April 22, 2004 and amended the rule on May 20, 2005. Section 285.27(2), Stats., requires the Department to promulgate by rule any federal NESHAP promulgated under section 112 of the Clean Air Act.

The proposed rule will regulate the emissions of hazardous air pollutants from those iron and steel foundries which are major sources of federal HAPs (affected sources). The proposed rule specifies particulate matter, total metal HAP, volatile organic HAP (VOHAP) and triethylamine (TEA) emission limits for various foundry processes, including scrap preheating, metal melting and pouring, and mold making. The rule also specifies operating limits for emission control devices, work practice standards for scrap selection and preheating, and includes operation and maintenance requirements that apply to control devices and capture systems.

Existing affected sources have until April 23, 2007 to achieve compliance. New or reconstructed affected sources must achieve compliance by April 22, 2004 (if initial startup is before that date) or the date of initial startup. Sources have until their final compliance date to reduce HAP emission below the major source level and thereby avoid the rule. Sources may also become a synthetic minor HAP source to avoid the rule by obtaining and complying with a federally enforceable permit that restricts HAP emissions prior to the final compliance date.

Affected sources are required to use performance testing to demonstrate compliance with the emission limits and operating limits. Sources may instead use continuous monitoring systems to track and document emissions and operating parameters. Visual inspections, documented periodic preventive maintenance, and other methods are specified in the rule to demonstrate compliance with work practice standards and operation and maintenance requirements. Affected sources must maintain continuous compliance and with the emission limits, work practice standards and operating limits.

Affected sources must notify the Department that they are affected sources. Affected sources must submit semiannual compliance reports, including any deviations from emission limits, operating limits or work practice standards. Affected sources must also develop a startup, shutdown and malfunction plan.

The proposed rule is identical to the federal NESHAP, except for punctuation, capitalization, numbering, and non-substantive wording and organizational changes made to accommodate state rule form and style requirements and, in some cases, to improve clarity. The substance of the proposed rule is identical to the rule already in effect at the federal level.

Summary of Public Comments

There were no public comments.

Modifications Made

No modifications were made as a result of public comment.

Appearances at the Public Hearing

There were no appearances.

Changes to Rule Analysis and Fiscal Estimate

No changes were required.

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted, except for:

2.b. Comment: "Volatile organic hazardous air pollutant (VOHAP) should be defined in s. NR 463.22." This term is used in the rule but is not defined.

Response: The rule drafter has notified the EPA about his deficiency in the federal rule. They seem to recognize the need for a definition. They are currently developing a technical amendment package for this rule, and they are considering whether to include a VOHAP definition in that package. It is not appropriate nor advisable for Wisconsin to develop a state-only VOHAP definition, since state statute requires the adoption of the federal rule as written. When the federal rule is amended to include a VOHAP definition, then the state rule will be amended to include that definition.

2.b. Comment: The term "triethylamine (TEA)" should be defined.

Response: Triethylamine is the name of a chemical compound, and, as such, does not need to be defined. Information on chemical compounds is readily available from many sources.

5.a. Comment: "In s. NR 463.21(4)(f), it is unclear what types of sources are required to meet the notification and schedule requirements."

Response: The wording of s. NR 463.21(4)(f) was not changed. A definition of "you" or "your" was added in s. NR 463.22(31) to clarify the types of sources required to meet the requirements.

5.b. Comment: "In s. NR 463.21(2)(a), the term "charge make-up" is vague; can this term be clarified in the rule?"

Response: The original wording in the sentence referred to was: "You may have certain scrap subject to part. (b) and other scrap subject to par. (c) at your facility, provided the scrap remains segregated until charge make-up." In the revised rule, the phrase "charge make-up" is replaced with "being aggregated to make up the charge for the furnace."

Final Regulatory Flexibility Analysis

The proposed rule will not have a significant economic impact on a substantial number of small businesses. This is primarily because the proposed rule is identical to the existing federal rule, with which all affected sources are already required to comply. Costs to the affected sources are being incurred in response to the federal rule, which has been in effect since April 22, 2004. No additional costs will be incurred in response to the proposed state rule.

Also note that the Department cannot make the proposed rule more stringent or less stringent than the existing federal rule, even for small businesses. Even if the state rule was different from the federal rule, all sources would still be required to comply with the federal rule.

A. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.

1. Less stringent compliance or reporting requirements.

   The federal rule does not provide for less stringent requirements for small sources, and, by statute, the department is prohibited from altering the federal requirements. It should be noted that a variety of compliance options are available within the rule for all sources.

2. Less stringent schedules or deadlines for compliance or reporting requirements.

   Schedules and deadlines for compliance and reporting are identical for all affected sources.

3. Consolidation or simplification of compliance or reporting requirements.

   The proposed rules allow sources with Title V permits to combine their periodic NESHAP compliance reports with their Title V compliance reports.

4. The establishment of performance standards in lieu of design or operational standards.

   The proposed rules establish emission limits, operating limits and work practice standards.

5. The exemption from any or all requirements of the rule.

   The proposed rule applies only to major sources of hazardous air pollutant (HAP) emissions. Major sources are sources which emit, or have the potential to emit, 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs. Applying the rule only to major sources has the same effect as exempting minor sources. Most small businesses are not major sources of HAP emissions, and would thus be exempt from the rule.

B. Summarize the issues raised by small business during the rule hearings, any changes made in the proposed rule as a result of alternatives suggested by small business and the reasons for rejecting any alternatives suggested by small business.

No businesses, small or large, appeared at the public hearing. No issues were raised by small businesses during the public comment period.

C. Identify and describe any reports required by the rule that must be submitted by small business and estimate the cost of their preparation.

<u>Semiannual Compliance Reports</u> - Documentation of ongoing compliance submitted twice per year.

<u>Immediate Startup, Shutdown, and Malfunction Reports</u> – These are required of an affected source only if and when the source has a startup, shutdown, or malfunction and takes actions that are not consistent with the source's startup, shutdown, and malfunction plan. This report must be submitted by telephone or fax within two working days after starting actions inconsistent with the plan and by letter within seven working days after the end of the event.

Recordkeeping and reporting costs have not been estimated. These costs are all incurred while complying with the existing federal regulation. The proposed state regulation will not result in any additional costs to the affected sources beyond what they already pay to comply with the federal regulation.

D. Identify and describe any measures or investments that small business must take to comply with the rule and provide an estimate of the associated cost.

The US EPA has estimated the average annual compliance cost for small entities to be $163,000. However, as stated above, these costs are all incurred while complying with the existing federal regulation. The proposed state regulation will not result in any additional costs to the affected sources beyond what they already pay to comply with the federal regulation.

E. Identify the additional cost, if any, to the state in administering or enforcing a rule which includes any of the methods listed in A.

Some of the methods listed in A are already included in the proposed rule. Also, Wisconsin statutes require the Department to adopt the federal language as is and do not allow significant changes that would make the rules more or less stringent for any sources.

F. Describe the impact on public health, safety and welfare, if any, caused by including in the rule any of the methods listed in A.

Same answer as for E above.