

Report to
Legislative Council Rules Clearinghouse
NR 462.015, Wis. Adm. Code
Natural Resources Board Order No. AM-37-07

Wisconsin Statutory Authority

ss. 285.11(1) and (2)(a) and 285.27(4), Stats., interpreting s. 285.27(2) and (4), Stats.

Federal Authority

40 CFR 63, Subpart DDDDD

Court Decisions Directly Relevant

Natural Resources Defense Council, et al v. Environmental Protection Agency , Case No. 04-1385, United States Court of Appeals for the District of Columbia Circuit

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

On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated a federal air quality regulation, 40 CFR 63, Subpart DDDDD, the National Emission Standard for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters, also known as the "Boiler MACT". The result of this vacatur is that the standard is no longer in effect at the federal level. The compliance date for existing sources under the now vacated federal rule was September 13, 2007.

As required by s. 285.27(2), Stats., the Department had promulgated a state version of the federal Boiler MACT in ch. NR 462. Our state version of the Boiler MACT was not vacated by the court action. As a result, affected sources in Wisconsin were still required to comply with the ch. NR 462 version of the Boiler MACT by September 13, 2007.

Section 285.27(4), Stats., requires the Department to alter state rules if the corresponding federal rule is relaxed. The proposed rule will stay the implementation of ch. NR 462 to comply with that requirement. There is also no schedule yet for U.S. EPA to promulgate a replacement standard for the vacated Boiler MACT.

An identical rule was published as an emergency rule on September 13, 2007.

Agency Procedures for Promulgation

Public hearing, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

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