

Report to
Legislative Council Rules Clearinghouse
NR 400, 428 and 484, Wis. Adm. Code
Natural Resources Board Order No. AM-05-21

Wisconsin Statutory Authority

Sections 227.11(2)(a), 285.11(1) and (6), Wis. Stats.

Federal Authority

Several provisions of the Clean Air Act (CAA) provide the federal statutory basis for this rule. Sections 172(c)(2) and 182(b)(1) of the CAA require the state to provide Reasonable Further Progress (RFP) plans for ozone nonattainment areas. Section 182(f) of the CAA requires Reasonably Available Control Technology (RACT) requirements for nitrogen oxides (NO_x) to be included in the SIP for Moderate (and above) ozone nonattainment areas.

Comparison of Adjacent States

Wisconsin's NO_x emission limits in ch. NR 428, Wis. Adm. Code, were compared to similar rules in the adjacent states of Michigan, Illinois, Iowa and Minnesota, as well as Indiana. Portions of Wisconsin, Illinois, and Indiana comprise a tri-state area currently designated by the U.S. Environmental Protection Agency (EPA) as nonattainment for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This same tri-state area was previously designated as nonattainment for the 2008 ozone NAAQS until being redesignated to attainment in 2022. As such, the three states are federally required to limit emissions of ozone precursors, including NO_x (e.g., CAA Section 182(f) NO_x RACT requirements).

Unlike Wisconsin, Illinois's and Indiana's administrative rules limiting NO_x emissions have not been approved by EPA as meeting CAA section 182(f) NO_x RACT requirements. Illinois has promulgated administrative rules limiting NO_x emissions under Title 35 Part 217 of the Illinois Administrative Code. Overall, ch. NR 428, Wis. Adm. Code, establishes NO_x emission limits based on emissions unit size and fuel type while the Illinois rules generally set NO_x emission limits for broad categories of units (e.g., one emission limit for all solid fuel boilers above a certain maximum heat input). As a result, ch. NR 428, Wis. Adm. Code, sets many emission limits relative to Illinois. For categories of emissions units that are directly comparable, the limits in ch. NR 428, Wis. Adm. Code, are similar to or slightly more stringent than the NO_x emission limits in Illinois. Indiana has promulgated NO_x emission limits under Title 326 Article 10 of the Indiana Administrative Code only for certain types of cement kilns and for a specific energy utility company.

Michigan's emissions limits for NO_x are incorporated under Michigan Administrative Rules 336.1801-336.1834 and are similar to the NO_x rules promulgated by Illinois in that emission limits are set for broad emissions unit categories and are similar to or slightly less stringent than Wisconsin's rules (when direct comparison is possible). Michigan, however, only became subject to CAA Section 182(f) NO_x RACT requirements in November 2022, whereas Illinois, Indiana, and Wisconsin became subject to NO_x RACT requirements in 2004.

Minnesota and Iowa do not have ozone nonattainment areas classified Moderate, and as such, are not required to implement Reasonable Further Progress and NO_x RACT requirements under the Clean Air Act like those in ch. NR 428, Wis. Adm. Code.

Court Decisions Directly Relevant

None.

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

NO_x reacts with volatile organic compounds in the presence of sunlight to form ground-level ozone. Concentrations of ozone above the NAAQS are known to adversely impact human health and the

environment. The EPA has designated several areas along the Lake Michigan shoreline in eastern Wisconsin as “nonattainment areas” due to ozone concentrations violating the NAAQS. Emissions sources located in nonattainment areas are subject to more stringent controls under the CAA.

Chapter NR 428, Wis. Adm. Code, regulates the emissions of NO_x from certain stationary sources located in current ozone nonattainment areas and areas with a history of ozone nonattainment, including the counties of Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. Subchapters I through III were added in January 2001 to fulfill the Rate of Progress/Reasonable Further Progress plans as required by Sections 172(c)(2) and 182(b)(1) of the CAA. Subchapter IV of this rule was added in July 2007 to include CAA Section 182(f) Reasonably Available Control Technology (RACT) requirements for major sources of NO_x located in ozone nonattainment areas classified as Moderate (or above).

Since the promulgation of the 2001 and 2007 revisions to ch. NR 428, Wis. Adm. Code, the department has identified several implementation issues associated with certain parts of the chapter. The department is proposing revisions to the chapter to ensure clear and consistent implementation of this rule. The proposed changes include:

- Correcting the emission limit for certain categories of combined cycle combustion turbines and incorporating a site-specific emission limit alternative. These changes are necessary to ensure that limits are achievable in practice at all times of operation.
- Clarifying emission limits and monitoring requirements that apply when a facility uses more than one type of fuel.
- Combining and streamlining redundant monitoring requirements in s. NR 428.04(3)(a) and (b), Wis. Adm. Code.
- Clarifying monitoring requirements for kilns, furnaces, asphalt plants, process heating units, engines, and other types of units under s. NR 428.08(2), Wis. Adm. Code.
- Providing stationary sources the option to request an alternative time period to the default 180-day waiting period between the compliance monitoring plan submittal deadline and initial operation of a facility.
- Clarifying that the unit exception in s. NR 428.21(3), Wis. Adm. Code, applies only to units constructed before August 1, 2007, as originally intended.
- Updating cross references to federal methods for determining NO_x emissions from stationary sources.

Agency Procedures for Promulgation

The department will hold a virtual hearing on Wednesday, May 31, 2023, at 9:30 AM. The hearing will be followed by board adoption, expected in September 2023, followed by a request for the governor’s approval and legislative review.

Description of any Forms (attach copies if available)

None.

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