

01-002

State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. AM-16-00

Legislative Council Rules Clearinghouse Number 01-002

Subject of Rules Control of particulate matter emissions

Date of Transmittal to Presiding Officers July 10, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

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An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 415, Wis. Adm. Code
Control of particulate matter emissions

Board Order No. AM-16-00
Clearinghouse Rule No. 01-002

Statement of Need

Three areas in Wisconsin (portions of the cities of Beloit, Waukesha and Milwaukee) were designated as particulate matter nonattainment areas in the late 1970s. To protect air quality gains in these areas since then, the Department must modify specific sections and add sections to ch. NR 415 before it can designate any of the three areas to attainment for particulate matter. The rule modification is consistent with the national policy of retaining emission limits (which were imposed because an area did not meet an ambient air quality standard) in place, after an area attains the air quality standard in order to ensure maintenance of the air quality standard.

Review of current monitoring data for each of these three areas reveals that at least one of the areas, Beloit, may meet state redesignation requirements. However, continued attainment of particulate matter standards cannot be assured following redesignation of any current particulate matter nonattainment area, unless current sections of ch. NR 415 are amended. If the areas were redesignated to attainment (and the proposed revisions were not adopted), existing regulations would allow companies to emit at levels that caused the nonattainment problem. This rule change requires the current emission limits on existing particulate matter emitting companies in these areas to remain in effect after the areas are designated to attainment areas.

The rule change will not only affect existing sources but also impacts new or modified sources of particulate matter seeking to locate in or near the three particulate matter nonattainment areas. If the rules are not changed and the areas remain as particulate matter nonattainment areas, these new or modified sources may need to obtain emission offsets from existing particulate matter emitting sources located in the nonattainment area before they could construct or modify their operations.

Modifications as a Result of Public Hearing

No modifications were made as a result of public hearing.

Appearances at the Public Hearing at Their Position

No one appeared at the public hearing.

Response to Legislative Council Rules Clearinghouse Report

Comments were accepted, except for 5.b. This change was not made because the emission limitations contained in several of the affected sections of ch. NR 415 apply to emission sources in or near the designated areas. Therefore, the term "for" will be used.

Final Regulatory Flexibility Analysis

These updated rules will affect any company that emits particulate matter in certain portions of Beloit, Milwaukee and Waukesha. However, the rule will not change applicable emission limits or add any new requirements for such sources.

ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 415.04(5), 415.05(5), and 415.06(5); to amend NR 415.04 (2)(intro.), (3)(intro.), (a), and (4) (intro.) and (b), 415.05(3)(intro.), 415.06(3)(intro.) and (4) and 415.075(3)(title) and (intro.); and to create NR 415.035 relating to control of particulate matter emissions.

AM-16-00

Analysis Prepared by the Department of Natural Resources

Authorizing Statutes: ss. 227.11(2)(a) and 285.11(1), Stats.

Statutes interpreted: s. 285.11(6), Stats. The State Implementation Plan developed under that provision is revised.

The proposed rule revision will change the applicability of certain particulate matter requirements by substituting for the term "nonattainment area" a description of specific geographic areas where the requirements would continue to be in effect. This will allow certain state designated nonattainment areas for total suspended particulates (TSP) to be redesignated to attainment without sacrificing the particulate limits and control requirements which helped to lower particulate matter concentrations in those areas.

Those provisions in ch. NR 415 being repealed pertain to schedules for a facility to achieve compliance with the particulate emission limiting requirements for a nonattainment area. These deadlines have passed, and any future TSP nonattainment designations will be accompanied by rule changes that will include compliance schedules.

Proposed amendments to ch. NR 415 replace the term "nonattainment area" with a reference to a section that contains a description of the specific geographic areas where the particulate matter requirements would continue to be in effect.

The new s. NR 415.035 being created contains the descriptions of the specific geographic areas where the particulate matter requirements currently applicable to nonattainment areas would continue to be in effect. The areas described are identical to the current TSP nonattainment areas.

SECTION 1. NR 415.035 is created to read:

NR 415.035 Specific geographic areas for additional particulate emission control. (1) FUGITIVE DUST CONTROL AREAS. The requirements of s. NR 415.04(2), (3) and (4) apply for the following areas:

(a) A portion of the city of Beloit within a line extending from the intersection of the Chicago and Northwestern railroad tracks and the body of water identified as Lennigan creek, east to the intersection of Washburn avenue and Wisconsin avenue, south on Wisconsin avenue to the intersection of Wisconsin avenue and Grand avenue, continuing southeast on Grand avenue to the intersection of Grand avenue and Dearborn avenue, continuing south on Dearborn avenue to the intersection of Dearborn avenue and the Wisconsin-Illinois border, west along the Wisconsin-Illinois border to the intersection of the Wisconsin-Illinois border and the Chicago and

Northwestern railroad tracks, and north along the Chicago and Northwestern railroad tracks to the body of water identified as Lennigan creek.

(b) A portion of the city of Milwaukee within a line extending from the intersection of 55th street and Center street east on Center street to the shoreline of Lake Michigan, south along the shoreline of Lake Michigan to a point east of Morgan avenue, west to Morgan avenue, continuing west along Morgan avenue to the intersection of Morgan avenue and 6th street, north on 6th street to Oklahoma avenue, west on Oklahoma avenue to 55th street, and north on 55th street to Center street.

(c) A portion of the city of Waukesha within a line extending from the intersection of North street and an extension of Margaret street, east to Margaret street, continuing along Margaret street to the intersection of Margaret street and Highland boulevard, south on Highland boulevard to the intersection of Highland boulevard and Moreland boulevard, southwest on Moreland boulevard to the intersection of Moreland boulevard and Waukesha avenue, south on Waukesha avenue extended to the intersection of Main street and the railroad tracks and Arcadian avenue, west on Arcadian avenue to the intersection of Arcadian avenue and East avenue, north on East avenue to the intersection of East avenue and Buckley street, northwest across the Fox river to Union street, continuing northwest on Union street to the intersection of Union street and North street, and northeast on North street to the extension of Margaret street.

(2) DIRECT OR PORTABLE SOURCE CONTROL AREAS. The requirements of ss. NR 415.05(3), 415.06(3) and (4) and 415.075(3) apply for the following areas:

(a) The portion of the city of Beloit within the boundaries specified in sub. (1)(a).

(b) The portion of the city of Milwaukee within the boundaries specified in sub. (1)(b).

(c) The portion of the city of Waukesha within the boundaries specified in sub. (1)(c).

SECTION 2. NR 415.04 (2)(intro.) is amended to read:

NR 415.04 (2)(intro.) In addition to meeting the requirements of sub. (1), any direct or portable source located in ~~a nonattainment area identified under s. NR 401.025 (1) for suspended particulate matter~~ an area identified in s. NR 415.035(1); and any direct or portable source located near such the areas whose aggregate fugitive dust emissions may cause an impact on the ambient air quality in such the areas equal to or greater than an annual concentration of one microgram per cubic meter (annual concentration) or a maximum 24-hour concentration

of 5 micrograms per cubic meter (~~maximum 24 hour concentration~~), as determined by the analysis under ch. NR 401, shall meet the following RACT requirements:

SECTION 3. NR 415.04(3)(intro.) and (a) are amended to read:

NR 415.04 (3)(intro.) In addition to meeting the requirements of sub. (1), private industrial or commercial trafficable areas, roads and driveways which are located in or within one mile of ~~a nonattainment area identified under s. NR 401.025(1) for suspended particulate matter~~ an area identified in s. NR 415.035(1), are 20,000 square feet or more in total area, are on contiguous property under common ownership or control, and are subject on 3 separate days during any 14 consecutive day period to motor vehicle traffic at any point within the roads, driveways or trafficable areas at a rate equal to or greater than 10 motor vehicles per 60 minute period, shall meet the following RACT emission limitations requirements:

(a) Be paved with asphalt, concrete or other material approved by the department, or use other methods of dust control which the department approves as representing RACT for the particular road, driveway or trafficable area. The other methods of dust control which may be approved by the department include but are not limited to periodic application of water or suitable chemicals. ~~In reviewing and acting upon plans required by sub. (5) for assessing compliance with this subsection, the department shall consider the effects of the use of paving or other methods of dust control upon the rate and volume of surface water runoff and water quality.~~

SECTION 4. NR 415.04(4)(intro.) and (b) are amended to read:

NR 415.04 (4)(intro.) In addition to meeting the requirements of sub.(1), any roadway or public trafficable area which is located in or within one mile of ~~a nonattainment area identified under s. NR 401.025(1) for suspended particulate matter~~ an area identified in s. NR 415.035(1) and which is subject on 3 separate days during any 14 consecutive day period to motor vehicle traffic at any point within the roadway or public trafficable area at a rate equal to or greater than 10 motor vehicles per 60 minute period shall meet the RACT emission limitations requirements of this subsection. For purposes of this subsections, ownership or control of different portions of a roadway or public trafficable area by different municipalities, interstate agencies, state agencies or federal agencies may not be considered in determining the contiguous area of the roadway or public trafficable area.

(b) If unpaved, roadways and public trafficable areas subject to this subsection shall be paved with asphalt, concrete or other material approved by the department, or use other methods of dust control which the department approves as representing RACT for the particular roadway or public trafficable area. The other methods of dust control which may be approved by the department include but are not limited to periodic application of water or suitable chemicals. In reviewing and acting upon plans required by sub. (5) for assessing compliance with this subsection, the department shall consider the effects of the use of paving or other methods of dust control upon the rate and volume of surface water runoff and water quality. This paragraph does not apply to roadways or to public trafficable areas which have less than 20,000 contiguous square feet of unpaved surface area.

SECTION 5. NR 415.04 (5) is repealed.

SECTION 6. NR 415.05 (3) (intro.) is amended to read:

NR 415.05(3) (intro.) In addition to meeting the requirements of subs. (1) and (2), any direct or portable source located in or near a nonattainment area identified under s. NR 401.025 (1) for suspended particulate matter an area identified in s. NR 415.035(2) whose aggregate particulate emissions, (excluding fugitive dust), may cause an impact on the ambient air quality in such the areas equal to or greater than an annual concentration of one microgram per cubic meter (annual concentration) or a maximum 24-hour concentration of 5 micrograms per cubic meter (maximum 24-hour concentration) as determined by the analysis under s. NR 401.025 shall meet the following RACT emission limitations:

SECTION 7. NR 415.05(5) is repealed.

SECTION 8. NR 415.06(3)(intro.) and (4) are amended to read:

NR 415.06(3)(intro.) In addition to meeting the requirements of sub. (1) or (2), all installations located in or near a nonattainment area identified under s. NR 401.025(1) for suspended particulate matter an area identified in s. NR 415.035(2) whose aggregate particulate emissions, (excluding fugitive dust), may cause an impact on the ambient air quality in such the areas equal to or greater than an annual concentration of one microgram per cubic meter (annual concentration) or a maximum 24-hour concentration of 5 micrograms per cubic meter (maximum 24-

hour concentration) as determined by the analysis under s. NR 401.025 shall meet the following RACT emission limitations:

(4) Notwithstanding sub. (3) (a) or (b), any fuel burning installation of 250 million Btu per hour or less on which construction or modification was commenced on or before April 1, 1972 may emit up to, but not more than, an emission rate defined by the equation

$$E = 0.3 - 0.0006I$$

where I is the heat input in millions of Btu per hour and E is the maximum allowable particulate matter emissions from any stack in pounds per million Btu heat input, if ~~as of March 1, 1980 for installations which may cause an impact on primary or associated secondary nonattainment areas, or as of March 1, 1982 for installations which may cause an impact on any other secondary nonattainment area,~~ the installation has an emission rate based on original design or equipment performance test conditions, which ever is more restrictive, which is less than the limit set by the above equation, and the emission control system of ~~such~~ the installations has not been allowed to degrade more than 0.05 pound per million Btu heat input from original design or acceptance performance test conditions.

SECTION 9. NR 415.06(5) is repealed.

SECTION 10. NR 415.075 (3) (title) and (intro.) are amended to read:

NR 415.075 (3) (title) PARTICULATE EMISSION LIMITATIONS FOR OPERATIONS IN
NONATTAINMENT SPECIFIC GEOGRAPHIC AREAS.

(3) (intro.) In addition to meeting the limitations of sub. (2), the owner or operator of any ledge rock quarry or industrial sand mine located in an area ~~designated as nonattainment for either TSP or PM₁₀~~ identified in s. NR 415.035(1) shall do all of the following:

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 27, 2001.

The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-002

AN ORDER to repeal NR 415.04 (5), 415.05 (5) and 415.06 (5); to amend NR 415.04 (2) (intro.), (3) (intro.) and (a) and (4) (intro.) and (b), 415.05 (3) (intro.), 415.06 (3) (intro.) and (4) and 415.075 (3) (title) and (intro.); and to create NR 415.035, relating to control of particulate matter emissions.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

01-16-01 RECEIVED BY LEGISLATIVE COUNCIL.

02-13-01 REPORT SENT TO AGENCY.

RNS:JES;jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

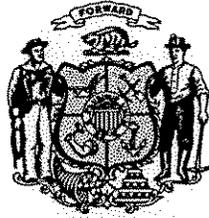
Comment Attached YES NO

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CLEARINGHOUSE RULE 01-002

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The preferred drafting style is to avoid the use of parentheses. [See s. 1.01 (6), Manual.] This style was not followed in a number of provisions in the rule, including ss. NR 415.035 (1) (a) and (c) and 415.06 (3) (intro.)

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 415.035 (1) (intro.) and (2) (intro.) use the phrase "emission limiting requirements." If this phrase is different than "emission limitations," as defined in s. 285.01 (16), Stats., then the department should define the phrase. If it is the same, the department should use "emission limitations." Also, see the reference to "emission limitations of sub. (2), (3) or (4)" in current s. NR 415.04 (5) (intro.).

b. In s. NR 415.035 (1) (intro.) and (2) (intro.), should "for" be replaced by "in"?

1997 Session

LRB or Bill No./Adm. Rule No.
NR 415

Amendment No. if Applicable

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 NIR10/94)

Subject Revising ch. NR 415, Wis. Adm. Code, pertaining to particulate matter

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving At Fiscal Estimate

Air Management seeks to amend and add certain provisions to ch. NR 415, Wis. Adm. Code, regarding particulate matter emissions. Three areas in Wisconsin (portions of the cities of Beloit, Waukesha, and Milwaukee) were designated as particulate matter nonattainment areas in the late 1970s. To protect air quality gains in these areas since then, the Department must modify and add specific sections to ch. NR 415, Wis. Adm. Code, before it can redesignate any of the three areas to attainment for particulate matter.

amendments and additions to certain sections of ch. NR 415, Wis. Adm. Code, do not require additional investment by any of the affected facilities in the three particulate matter nonattainment areas. This rule change keeps the established emission limits for the affected facilities but allows the Department the flexibility to redesignate these areas to attainment when the Department's air quality monitoring data shows that particulate matter air quality standards in these areas are attained and maintained. Because the affected facilities are not required to change any operation by this rule change, there is no fiscal affect.

Long-Range Fiscal Implications

None.

Agency/Prepared by: (Name & Phone No.)

Joe Polasek, 266-2794

Authorized Signature/Telephone No.

Date

10-10-2000