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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

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### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

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:

Board Order Number: AM-23-08

Clearinghouse Number: CR08-114

Subject of Rules: Application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry.

Date of Transmittal: March 30, 2009

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

**Tom Steidl  
DNR Bureau of Legal Services  
LS/8, 101 South Webster**

An electronic copy of the proposed rule submittal may be obtained by contacting Robert B. Eckdale at 266-2856 or [robert.eckdale@wisconsin.gov](mailto:robert.eckdale@wisconsin.gov)

## REPORT TO LEGISLATURE

NR 421 and 439, Wis. Adm. Code  
Application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry

Board Order Number AM-23-08  
Clearinghouse Rule Number 08-114

### **BASIS AND PURPOSE OF THE PROPOSED RULE**

Section 182(b)(2) of the federal Clean Air Act [42USC7511a(b)(2)] requires implementation of reasonably available control technology (RACT) for major VOC emission source categories in areas classified as moderate or worse for nonattainment of the ozone national ambient air quality standard (NAAQS). The U.S. Environmental Protection Agency (EPA) has published Control Techniques Guidelines (CTGs) for many of these VOC RACT categories, including reactor, distillation and air oxidation processes at synthetic organic chemical manufacturing industry (SOCMI) facilities. The DNR has promulgated rules to establish VOC RACT emission limits for most of these CTG VOC source categories – applicable in Wisconsin's moderate and worse ozone nonattainment areas.

However, on March 17, 2008, EPA notified DNR that Wisconsin's state implementation plan (SIP) was deficient because DNR had not yet promulgated VOC RACT emission limits that are consistent with several EPA CTGs in Wisconsin's ozone nonattainment areas. The SOCMI air oxidation, distillation and reactor operations comprise three of these CTG VOC source categories for which the DNR has yet to promulgate mandated RACT rules.

The EPA further notified the DNR that federal sanctions may be imposed in Wisconsin if the ozone SIP deficiencies identified in the March 17, 2008 letter are not fully rectified by mid-September, 2009. These potential federal sanctions include withholding of federal highway funds, and implementation of a federal air quality management plan in place of State rules.

In order to avoid these sanctions, the DNR is taking steps to remove these deficiencies from its ozone SIP. These steps include a proposed rule to establish VOC RACT requirements for air oxidation, distillation and reactor operations at applicable SOCMI facilities in Wisconsin's ozone nonattainment areas.

#### **Summary of the proposed rule**

The synthetic organic chemical manufacturing industry (SOCMI) refers to those facilities which produce man-made organic compounds that are created through industrial synthesis. Byproducts of these processes include VOC emissions that can be released to ambient air as precursors to ozone formation.

The proposed rule would require VOC RACT measures (recommended in EPA guidance) to effectively reduce VOC emissions from any applicable SOCMI facility's air oxidation or distillation and reactor operations in Wisconsin's ozone nonattainment areas. These control measures largely involve the destruction of VOC emissions by combustion devices such as boilers, incinerators or flares.

The US EPA has detailed the regulatory criteria that must be followed in developing, promulgating and enforcing VOC RACT rules for SOCMI facilities that have air oxidation, distillation or reactor operations in ozone nonattainment areas. These requirements are contained in the following two US EPA Control Technique Guideline (CTG) documents:

- "Control of Volatile Organic Compounds from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry" (EPA-450/3-84-015), Dec. 1984.

- "Control of Volatile Organic Compounds from Reactor Processes and Distillation Processes in the Synthetic Organic Chemical Manufacturing Industry" (EPA-450/3-91-031), Aug., 1993.

More recently, the US EPA has updated the New Source Performance Standards (NSPS), including VOC emission controls for SOCM I air oxidation, distillation and reactor operations. The Department recently adopted these NSPS requirements into ss. NR 440.675, 440.686 and 440.705, Wis. Adm. Code, respectively.

Many of the VOC RACT requirements for SOCM I facilities that are contained in the above-listed CTG documents are the same as those requirements listed in the NSPS for SOCM I operations. These similar requirements include control requirements, recommended control and recovery devices, monitoring and test methods, reporting and record keeping, equations to calculate emission rates and heating values, as well as many of the exemptions.

The CTGs and NSPS have essentially the same requirements for VOC controls for SOCM I facilities. Consequently, the Department has drafted its proposed VOC RACT rule (s. NR 421.07, Wis. Adm. Code) to reference appropriate portions of the promulgated NSPS SOCM I requirements (i.e., ss. NR 440.675, 440.686 and 440.705, Wis. Adm. Code).

### **SUMMARY OF PUBLIC COMMENTS**

No comments on the proposed rules were received.

### **MODIFICATIONS MADE**

No modification were made.

### **APPEARANCES AT THE PUBLIC HEARING**

The Department held a public hearing on January 28, 2009 at the DNR Southeast Region Headquarters located at 2300 N Dr. Martin Luther King Jr. Drive in Milwaukee. There were no appearances at the hearing.

### **CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

No changes were made to either the rule analysis or the fiscal estimate.

### **RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

All comments received were accepted and the rule revised accordingly.

### **FINAL REGULATORY FLEXIBILITY ANALYSIS**

The DNR does not believe that the proposed rule will have a significant economic impact on a substantial number of small businesses. Due to the 100 ton/year applicability threshold in the rule, it is highly unlikely that a small business, as defined under 227.114(1), Stats., would have a SOCM I operation that triggers the emission reduction requirements in the rule.

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

The Wisconsin Natural Resources Board adopts an order to **amend** NR 439.075(2)(c)3.j. and to **create** NR 421.07 relating to the application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry.

**AM-23-08**

**Analysis Prepared by the Department of Natural Resources**

**1. Statutes interpreted:** Sections 227.11(2)(a), 285.11(1) and (6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

**2. Statutory authority:** Sections 227.11(2)(a) and 285.11(1) and (6), Stats.

**3. Explanation of agency authority:** Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution. With limited exceptions, the rules or control strategies for ozone control must conform to the federal Clean Air Act.

**4. Related statute or rules:** Several sections of the proposed rule references similar federal requirements for the same emission source categories for New Source Performance Standards (NSPS, adopted by the Department in ss. NR 440.675, 440.868 and 440.705, Wis. Adm. Code). These references are used because many of the federal control requirements necessary in the proposed rule are identical to the NSPS requirements.

**5. Plain language analysis:** Section 182(b)(2) of Clean Air Act requires implementation of reasonably available control technology (RACT) for sources of volatile organic compounds (VOC) emissions in moderate and worse ozone nonattainment areas, for which EPA has published Control Technology Guidelines (CTGs – "guidance").

These requirements include that Wisconsin promulgate VOC RACT rules which are based on EPA guidance for facilities classified as synthetic organic chemical manufacturing industry (SOCMI) that have air oxidation or distillation and reactor processes. The DNR is proposing a VOC RACT rule that would regulate these SOCMI VOC emission categories in Wisconsin's ozone nonattainment areas. Several sections of the proposed rule reference identical federal requirements contained in the NSPS for these source categories, which the Department has already adopted into ch. NR 440, Wis. Adm. Code.

**6. Summary of, and comparison with, existing or proposed federal regulation:** The proposed rule will modify the Department's ozone state implementation plan (SIP) to meet the requirements of the federal Clean Air Act and to clarify other state requirements. Portions of the proposed rule references similar federal requirements contained in the NSPS for these source categories, which the Department has adopted in ch. NR 440, Wis. Adm. Code.

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** The proposed rule is based on requirements established in the federal Clean Air Act for states that have ozone nonattainment areas. Iowa and Minnesota have no ozone nonattainment areas. Illinois' requirements are similar to the proposed rule. Michigan has adopted the NSPS for SOCMI source categories into its own regulations.

**8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** The DNR has already adopted federal regulations that

establish VOC emission control requirements for NSPS facilities classified as SOCMI air oxidation, distillation and reactor operations. Much of the EPA guidance that the DNR must follow in its proposed VOC RACT rulemaking for SOCMI facilities is identical to these federal regulations. Consequently, appropriate portions of the proposed SOCMI VOC RACT rule references those portions of Ch. NR 440, Wis. Adm. Code that are identical to EPA RACT guidance.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:** EPA's guidance for the SOCMI VOC controls does not include any discussion on the regulations potential impact on small business. An economic impact report was not requested for the proposed rule.

**10. Effect on small business:** Any SOCMI facility would require a minimum of 100 tons VOC emissions per year (maximum theoretical) in order to be subject to the proposed rule. Any small business that is classified a SOCMI facility would likely not meet this relatively high emissions total criteria. Consequently, the proposed rule will likely have no effect on small businesses.

**11. Agency contact person:** Bill Adamski (608) 266-2660, [William.Adamski@wisconsin.gov](mailto:William.Adamski@wisconsin.gov)

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SECTION 1. NR 421.07 is created to read:

NR 421.07 **Synthetic organic chemical manufacturing industry.** (1) **APPLICABILITY.** (a) This section applies to the owner or operator of any facility that is located in the county of Milwaukee, Waukesha, Washington, Ozaukee, Racine, Kenosha or Sheboygan, and that has maximum theoretical emissions of VOCs greater than or equal to 100 tons per year from air oxidation unit processes or from distillation operations and reactor processes, as those activities are defined in ss. NR 440.675(2)(c), 440.686(2)(e) and 440.705(2)(o), respectively.

(b) For purposes of this section, any references to total organic compounds or TOC in ss. NR 440.675, 440.686 or 440.705 shall be considered to be volatile organic compounds as defined in s. NR 400.02(162).

(2) **AIR OXIDATION UNIT PROCESSES.** (a) Unless exempt under par. (b), the owner or operator of a facility operating air oxidation unit processes subject to this section shall comply with the requirements of s. NR 440.675, subject to the following exceptions:

1. Notwithstanding s. NR 440.675(1)(b)(intro.), for purposes of this section, an affected facility shall be one that is described by the criteria in s. NR 440.675(1)(b)1. to 3., without consideration of the specific date of the construction, modification or reconstruction of the facility.

2. Notwithstanding s. NR 440.675(3)(intro.), for purposes of this section, the owner or operator of an affected facility shall comply with s. NR 440.675(3)(a), (b) or (c) no later than 12 months after the effective date of this section ...[LRB insert date].

3. Notwithstanding s. NR 440.675(6)(a), each owner or operator subject to this section shall notify the department how the facility will comply with the specific provisions of s. NR 440.675(3) no later than 10 months after the effective date of this section...[LRB insert date] or no later than 60 days after becoming subject to this section, whichever is later.

4. Section NR 440.675(7) does not apply.

(b) Exemptions listed in s. NR 440.675(1)(c) shall apply to an owner or operator subject to this subsection.

(3) DISTILLATION OPERATIONS. (a) Unless exempt under par. (b), the owner or operator of a facility with distillation operations subject to this section shall comply with the requirements of s. NR 440.686, subject to the following exceptions:

1. Notwithstanding s. NR 440.686(1)(b)(intro.), for purposes of this section, an affected facility shall be one that is described by the criteria in s. NR 440.686(1)(b)1. to 3., without consideration of the specific date of the construction, modification or reconstruction of the facility.

2. Notwithstanding s. NR 440.686(3)(intro.), for purposes of this section, the owner or operator of an affected facility shall comply with s. NR 440.686(3)(a), (b) or (c) no later than 12 months after the effective date of this section ... [LRB insert date].

3. Notwithstanding s. NR 440.686(6)(a), each owner or operator subject to this section shall notify the department how the facility will comply with the specific provisions of s. NR 440.686(3) no later than 10 months after the effective date of this section...[LRB insert date] or no later than 60 days after becoming subject to this section, whichever is later.

4. Section NR 440.686(7) does not apply.

(b) Exemptions listed in s. NR 440.686(1)(c) shall apply to an owner or operator subject to this subsection.

(4) REACTOR PROCESSES. (a) Unless exempt under par. (b), the owner or operator of a facility with reactor processes subject to this section shall comply with the requirements of s. NR 440.705, subject to the following exceptions:

1. Notwithstanding s. NR 440.705(1)(b)(intro.), for purposes of this section, an affected facility shall be one that is described by the criteria in s. NR 440.686(1)(b)1. to 3., without consideration of the specific date of the construction, modification or reconstruction of the facility.

2. Notwithstanding s. NR 440.705(3)(intro.), for purposes of this section, the owner or operator of an affected facility shall comply with s. NR 440.705(3)(a), (b) or (c) no later than 12 months after the effective date of this section ... [LRB insert date].

3. Notwithstanding s. NR 440.705(6)(a), each owner or operator subject to this section shall notify the department how the facility will comply with the specific provisions of s. NR 440.705(3) no later than 10 months after the effective date of this section...[LRB insert date] or no later than 60 days after becoming subject to this section, whichever is later.

4. Section NR 440.705(7) does not apply.

(b) Exemptions listed in s. NR 440.705(1)(c) shall apply to an owner or operator subject to this subsection.

(5) COMPLIANCE EMISSION TESTING. The owner or operator of a facility subject to this section shall conduct compliance emission testing in accordance with s. NR 439.075(2)(c)3.j.

(6) DELAYED COMPLIANCE. If the owner or operator of a facility employs a VOC emission control device that, on the effective date of this section...[LRB insert date] does not achieve compliance with an emission limitation in s. NR 440.675(3), 440.686(3) or 440.705(3), applicable under this section, the owner or operator is not required to comply with the emission limitation until the control device is replaced for reasons other than compliance, including normal maintenance, malfunction, accident, and obsolescence. A control device is considered to be replaced when either of the following occur:

(a) All of the control device is replaced.

(b) The cost of repair of the control device or the cost of replacement of part of the control device exceeds 50% of the cost of replacing the entire control device with a control device that is capable of complying with the respective requirement of s. NR 440.675(3), NR 440.686(3) or NR 440.705(3),

SECTION 2. NR 439.075(2)(c)3.j. is amended to read:

NR 439.075(2)(c)3.j. Control devices at synthetic organic chemical manufacturing facilities subject to the requirements of s. NR 440.675 or 440.686 or 440.705.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 2009.

Dated at Madison, Wisconsin \_\_\_\_\_.

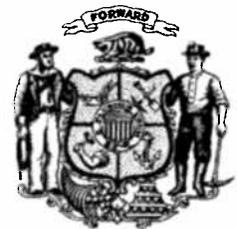
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 **08-114**

AN ORDER to amend NR 439.075 (2) (c) 3. j; and to create NR 421.07, relating to the application of reasonably available control technology for volatile organic compound emissions from certain operations within the synthetic organic chemical manufacturing industry.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-22-2008 RECEIVED BY LEGISLATIVE COUNCIL.

01-26-2009 REPORT SENT TO AGENCY.

RNS:JES

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 08-114

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **2. Form, Style and Placement in Administrative Code**

a. The inclusion of the reference to s. 227.14 (1m) (b), Stats., in the statutes interpreted in the analysis accompanying the rule suggests that the format of the rule is based upon the format of the corresponding federal regulations in the Code of Federal Regulations, as authorized under this provision. If that format was indeed used in the rule, the department should include in the analysis its determination that all or part of the state environmental regulatory program covered by the rule is to be administered according to standards, requirements, or methods which are similar to standards, requirements, or methods that are specified for all or part of corresponding federal and environmental regulatory programs, as required under s. 227.14 (1m) (b), Stats.

If the department has not used the format of the corresponding federal regulation in the rule, then the reference to s. 227.14 (1m) (b), Stats., should be deleted from the list of statutes interpreted in the analysis accompanying the rule.

b. Subdivisions 1. and 2. in s. NR 421.07 (6) should be lettered paragraphs rather than numbered subdivisions.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The analysis accompanying the rule lists s. 285.11 (6), Stats., as providing authority for the rule. Section 285.11 (6), Stats., does not specifically direct or permit the department to

promulgate rules: s. 285.11 (1), Stats., does direct the department to promulgate rules implementing ch. 285, Stats.

b. Should the notwithstanding clause in s. NR 421.07 (3) (b) reference s. NR 440.686 (1) (b) (intro.) rather than s. NR 440.675 (1) (b) (intro.)? Similarly, should s. NR 421.07 (3) (e) reference s. NR 440.686 (7) rather than s. NR 440.675 (7)?

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

The phrase “from air oxidation unit processes or from distillation operations and reactor processes” in s. NR 421.07 (1) (a) implies that distillation operations and reactor processes are regulated together in subsequent provisions in s. NR 421.07. However, s. NR 421.07 (3) and (4) treat distillation operations and reactor processes separately. The department should consider revising s. NR 421.07 (1) (a) to conform the text of that paragraph with the treatment of distillation operations and reactor processes in s. NR 421.07 (3) and (4).