



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

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Record of Committee Proceedings

Committee on Environment

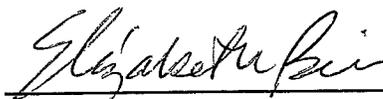
Clearinghouse Rule 10-033

Relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

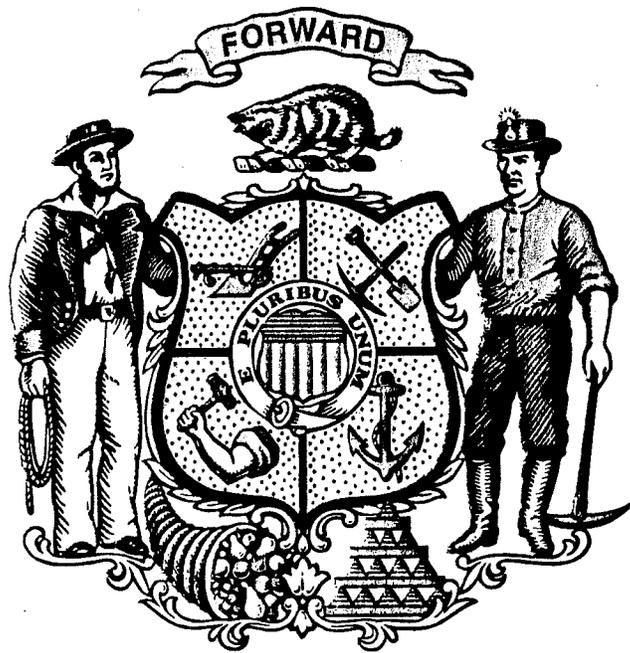
Submitted by Department of Natural Resources.

August 19, 2010 Referred to Committee on Environment.

September 19, 2010 No action taken.



Elizabeth Bier
Committee Clerk



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-06-09
Clearinghouse Number: CR 10-033
Subject of Rules: A rule-making order to revise ss. NR 433.05 and 433.06, relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.
Date of Transmittal: August 18, 2010

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

**Linda Haddix – Department Rules Coordinator
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

REPORT TO LEGISLATURE

NR 433.05 and 433.06, Wis. Adm. Code
Implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas

Board Order Number: AM-06-09
Clearinghouse Rule Number: CR 10-033

BASIS AND PURPOSE OF THE PROPOSED RULE

In January 2008, the Natural Resources Board adopted rules establishing ch. NR 433, requiring Best Available Retrofit Technology (BART) for the protection of visibility. Specifically, the BART requirements pertain to controlling particulate matter, nitrogen oxides and sulfur dioxide emitted from certain stationary sources which cause or contribute to impairment of visibility in mandatory class I federal areas. For Wisconsin, these areas are the Boundary Waters Canoe Area Wilderness and Voyageurs National Park in Minnesota, and the Seney National Wildlife Refuge and Isle Royal National Park in Michigan. The rule sets forth procedures for identifying stationary sources potentially subject to BART and for determining appropriate control levels for each source based on several factors including visibility improvement.

Since the initial creation of BART requirements, the Department and affected stakeholders have identified several implementation issues and the need for certain rule clarifications. The revisions proposed by this rule package are in response to those issues.

Summary of the rule revisions

Compliance Date for BART Controls

The current BART rules require the owner or operator of a source which has been determined to be subject to BART controls to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. This extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

Emissions Averaging

The Department is proposing clarifications to the emissions averaging provisions of the BART rules. One change pertains to the extra 10% emission reduction required in order to qualify for the additional compliance flexibility afforded by emissions averaging under the current rule provisions. The proposed revision clarifies that the additional reduction applies only to the pollutant being offset by other reductions achieved under the averaging plan.

Another proposed revision clarifies the intent that emissions averaging must account for all sources at a facility which can impact the real emission reductions achieved under BART requirements. Due to the nature of the regulation, BART may apply to one emissions unit at a facility but not to other similar emissions units. To avoid simply shifting emissions from one boiler to another, the BART rule currently requires all boilers at a facility to be included in any emissions averaging program. However, this language may unnecessarily include units which cannot be used to offset operational load or emissions of a BART affected boiler. For that reason, a revision is proposed to require only the boilers serving a

similar function at the facility be included in emissions averaging because those boilers can affect the amount of actual emission reductions achieved by BART.

The Department also proposes to modify the emissions averaging program to allow an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process. Determining the best control approach for a source may require significant additional analysis once the BART control levels have been finalized. Therefore, the Department proposes to revise the BART rule to allow for future submittals of an emissions averaging plan. If submitted later, the emissions averaging plan must still show that the necessary emission reductions will be achieved by the compliance date set under the initial BART determination. This approach will also allow sources flexibility for submitting a revised averaging plan as operating conditions at the source change.

SUMMARY OF PUBLIC COMMENTS

Written comments were submitted by Alliant Energy and Georgia Pacific, both of which operate emission sources affected by the proposed rules. The substantive comments and issues, and the Department's associated response, are as follows.

Issue 1) Final Compliance Date

This rule making proposes to extend the final compliance date for requiring operation of BART controls from December 31, 2013 to December 31, 2015. There were several comments related to the final compliance date.

Comment – Both sets of comments supported the change to the compliance date but sought even further extension. Alliant Energy suggested that the additional time would be necessary if EPA changes their Federal Clean Air Interstate Rule (CAIR), which currently allows SO₂ and NO_x BART requirements for electric utilities to be met through complying with CAIR.

Response – The Department extended the compliance date two years, to December 31, 2015, to allow for planning and installation of control equipment for the sources currently affected under the state's BART rule. The 2015 date is sufficient to allow for installation of the most intensive SO₂ and NO_x controls that may require several years for completion. At this time, EPA has not proposed revisions to the CAIR rule. If EPA does promulgate a revised CAIR that changes its interaction with BART, the Department will consider making related changes to the state BART rule. However, at this time the Department does not recommend further delay in reducing the amount of SO₂ and NO_x emitted and achieving the resultant health and environmental benefits.

Issue 2) Existing BART Rule Provisions and Their Effect on Final Compliance Date

Comment - Georgia Pacific suggests sources demonstrating compliance through emissions averaging under the state BART rule are not subject to a compliance date.

Response - The trading provisions are meant to provide flexibility to the source to meet BART emission reduction requirements, not eliminate the compliance date as suggested by Georgia Pacific. The compliance date under an averaging program would not exceed the final compliance date established in the rule which, if adopted, is December 31, 2015.

Comment - Georgia Pacific suggests that NR 433.05(5) in the BART rule allows the Department to consider an extended compliance date.

Response – To clarify, NR 433.05(5) allows the Department to revise BART requirements in a permit if the Department determines that the revision is justified based on safety, health, environment, or excess costs not considered when the Department originally made the BART determination. This provision allows the Department to address conditions that cannot be foreseen through the BART determination process, but it does not allow the Department to generally extend the compliance date farther into the future than is specifically warranted by the known conditions leading to the extension until 2015.

Issue 3) Boilers Required to Participate in an Emissions Trading Program

This rule proposes to modify the boilers required to participate in emissions trading from "all boilers" to "boilers serving a similar function" which are located at the affected facility. This proposed change provides additional compliance flexibility for facilities without jeopardizing the emission reduction requirements of the rule.

Comment – Georgia Pacific suggested that only those boilers at a facility subject to BART be required to participate in emissions trading if that compliance option is utilized.

Response – The original rule established the trading program to provide compliance flexibility to facilities when they are installing control equipment to comply with the BART requirements. The proposed rule change clarifies the scope of boilers used in averaging but not in the same way recommended in the comment. The comment proposal would allow a facility to shift loads to other boilers resulting in less emission reduction and so is not recommended.

MODIFICATIONS MADE

No modifications were made in response to the public comments received.

APPEARANCES AT THE PUBLIC HEARING

The Department held a hearing on April 26, 2010 at the DNR Building located at 101 S. Webster Street in Madison, WI. One person attended as indicated below.

In support: None

In opposition: None

As interest may appear: Kathleen Standen, We Energies, 22 E. Mifflin St., Suite 850, Madison, WI

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes to the fiscal estimate were necessary. The rule analysis was changed to reflect a change in terminology recommended by the Legislative Council Rules Clearinghouse, and discussed in the next section of this report.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Clearinghouse provided a comment on Form, Style and Placement in Administrative Code relating to the use of the term "particulate matter" instead of "particulate" in the analysis section of the Order. The recommended change was made.

FINAL REGULATORY FLEXIBILITY ANALYSIS

The existing rule requirements apply to large industrial sources or electric generation units which are not small businesses. Therefore based on the limited nature of the proposed rule changes there is no impact anticipated to small businesses.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to amend NR 433.05(1)(a)4. and NR 433.06(1)(intro.), (b)1. and (c) relating to implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas.

AM-06-09

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Section 285.11(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., authorizes the Department to develop rules consistent with ch. 285, Stats. Section 285.11(6), Stats., authorizes the Department to develop and revise the State Implementation Plan for prevention, abatement and control of air pollution.

4. Related statute or rule: None.

5. Plain language analysis:

The proposed rule modifications pertain to ch. NR 433 which regulates Best Available Retrofit Technology (BART) for the protection of visibility in mandatory class I federal areas. These BART requirements pertain to controlling emissions of particulate matter (PM), nitrogen oxides (NO_x) and sulfur dioxide (SO₂) from certain stationary sources which cause or contribute to impairment of visibility.

The rules for Best Available Retrofit Technology currently require the owner or operator of a source, which has been determined to be subject to BART controls, to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. The extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

The Department also proposes to clarify and to provide additional flexibility to the averaging provisions in the rule. The additional flexibility allows an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process.

6. Summary of, and comparison with, existing or proposed federal regulation:

The Board initially established ch. NR 433 in January 2008 to satisfy BART requirements set forth by the US Environmental Protection Agency (EPA) under the regional haze regulation published July 6, 2005 Federal Register (70 FR 39104). In that regulation the US EPA required all states to develop programs to assure reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I Federal Areas resulting from manmade air pollution. The application of Best Available Retrofit Technology (BART) on certain stationary sources is one of the core requirements for the implementation plan for regional haze.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

Illinois, Iowa, Michigan and Minnesota have adopted the same approach in meeting BART requirements for industrial sources as Wisconsin. These states have identified BART eligible sources and are moving

forward with the determination of applicable control requirements according to US EPA criteria.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The proposed rule modifications are the result of issues identified during the initial implementation of the BART rule requirements in Wisconsin. The Department found that facilities needed extra time to comply with BART requirements, particularly facilities that need multiple control equipment installations and those facilities facing multiple state and federal requirements for the same sources. Additionally, the Department found, during application of the trading requirements, certain provisions to be confusing or needing clarification.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

No small business is subject to BART controls under the existing BART rules. Therefore the proposed rule modifications have no direct effect on small business.

10. Effect on small business:

There is no direct effect on small business.

11. Agency contact person:

Tom Karman
Thomas.karman@wisconsin.gov
(608) 264-8856

SECTION 1. NR 433.05(1)(a)4. is amended to read:

NR 433.05(1)(a)4. The requirement that the owner or operator of each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than December 31, ~~2013~~ 2015.

SECTION 2. NR 433.06(1)(intro.), (b)1., and (c) are amended to read:

NR 433.06(1)(intro.) The owner or operator of a facility, having at least one boiler subject to BART, may propose an emissions trading program if the program achieves an improvement in visibility in the mandatory class I federal areas greater than would be achieved through the installation and operation of BART on each boiler subject to BART. The owner or operator of a boiler subject to BART who is proposing to use an emissions trading program shall submit an emissions trading plan to the department ~~prior to the department's BART determination~~. The plan shall be subject to department approval and meet the following criteria:

(b)1. For each visibility impairing pollutant ~~subject to the~~ for which compliance is demonstrated through use of a trading plan, an emission reduction of that pollutant at least 10% greater than would be achieved through the installation and operation of BART on each boiler subject to BART.

(c) Trading shall be between all boilers serving a similar function and located on the same property.

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 August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)