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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-016

#### 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 January 2005.]**

#### **1. Statutory Authority**

Under s. 285.11 (6), Stats., rules or control strategies submitted to the federal Environmental Protection Agency under the federal Clean Air Act for control of atmospheric ozone must conform with this Act unless the Governor determines that measures beyond those required by the Act meet either of two specified criteria. The analysis accompanying the rule indicates that the rule is intended to establish reasonably available control technology requirements for major nitrogen oxides stationary sources in the state’s moderate ozone nonattainment area. As such, the analysis should address the requirement in s. 285.11 (6) and indicate whether the proposed requirements in the rule conform with the federal Clean Air Act, and, if they go beyond those required by this Act, that the Governor has made the required determination.

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

a. Several provisions of the rule contain improperly drafted introductory material. See s. 1.03 (8), Manual, for drafting of an (intro.). For example, s. NR 428.23 (intro.) does not end in a colon and lead into the subsequent subsections. It should be drafted as sub. (1) and the other subsections should be renumbered.

b. The text of s. NR 428.24 (1) (b) 2. a. to d. is not drafted as complete sentences, contrary to the preferred drafting style in s. 1.01 (1), Manual.

c. The preferred style for presenting a list of provisions following a colon is to draft each item in the list in the same form, e.g., a complete sentence. This style was not followed in the subdivisions paragraphs following s. NR 428.24 (1) (b) 5. (intro.).

d. Since the other subdivisions in s. NR 428.26 (1) (b) have titles, subd. 4. under par. (b) should also have a title. [See s. 1.05 (1), Manual.]

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

a. The analysis accompanying the rule lists s. 285.11 (6), Stats., as providing statutory authority for the rule. However, since sub. (6) does not explicitly require or permit rule-making, it should not be cited as statutory authority for this rule.

b. The reference in s. NR 428.23 (intro.) to s. NR 428.20 is broad and should be to s. NR 428.20 (1), as s. NR 428.20 (2) deals with purpose rather than applicability.

c. The rule contains a number of broad references to requirements in federal regulations promulgated by the Environmental Protection Agency. The department should review the entire rule to determine if these broad references could be made more specific. See, for example, the reference to the requirements of the Clean Air Interstate Rule under 40 C.F.R. Part 97 in s. NR 428.26 (2). Could the department identify specific sections or subparts in Part 97 that contain the applicable requirements?

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

a. The rule contains a number of undefined terms which may be open to varying interpretations. The department should review the entire rule to ensure that all terms necessary to convey the meaning of the rule in an unambiguous manner are defined. Examples of these undefined terms include the following:

1. “Capacity threshold” and “design output threshold” in s. NR 428.21 (1) (a) (intro.).
2. “Low operating unit” in s. NR 428.21 (1) (b).
3. “Electric utility boiler” in s. NR 428.22 (2) (intro.).
4. “Electric or steam utility generation” in s. NR 428.28 (intro.).
5. “Utility” in s. NR 428.28 (1) and (2) (a) and (b). Is “utility” a public utility, as defined in s. 196.01 (5), Stats., or does it also include affiliates of public utilities or independent power producers?
6. “Major utility” in s. NR 428.28 (3) (intro.).

b. Section NR 428.22 (2) (intro.) does not specify the types of pollutants the interim emission limitation specified in this subsection apply to. Should “NO<sub>x</sub>” be inserted after “interim” in this introduction?

c. In s. NR 428.24 (1) (b) 2. d., the wording of the phrase “use the F-factor method and analysis of as fired fuel heat content ...” seems unclear. Are some words missing?

d. In s. NR 428.25 (2) (b), it appears that “which” should be deleted.

e. The rule should, but does not, use a consistent reference to the term “mass emission caps,” as the rule uses that term, as well as “mass caps” and “emission caps” or the singular version of these terms. For example, see s. NR 428.26 (1) (b) 1. f. 3. g., and 5.

f. The word “receiving” is misspelled in s. NR 428.26 (1) (b) 2.

g. The purpose of the clause in s. NR 428.27 (4) that reads: “nothing in this subchapter limits or supersedes the department’s authority under s. 299.83, Stats.,” is not clear. Can the department either clarify this text or, if it is not needed, delete it?