

Report From Agency

REPORT TO LEGISLATURE

NR 560 and 469, Wis. Adm. Code
National emission standards for hazardous air pollutants (NESHAP)
for halogenated solvent cleaners and the NESHAP general provisions

Board Order No. AM-31-07
Clearinghouse Rule No. 07-105

Basis and Purpose of the Proposed Rule

U.S. EPA published amendments to the NESHAP general provisions on April 20, 2006 (71 FR 20446) and on May 16, 2007 (72 FR 27437) and amendments to the NESHAP for halogenated solvent cleaning operations on May 5, 1998 (63 FR 24749), December 11, 1998 (63 FR 68397), December 3, 1999 (64 FR 67793), September 8, 2000 (65 FR 54419), December 19, 2005 (70 FR 75345) and May 3, 2007 (72 FR 25138). The proposed action will incorporate all of these federal amendments into the Wisconsin Administrative Code.

Section 285.27(2), Stats., requires the Department to promulgate by rule any federal NESHAP promulgated under section 112 of the Clean Air Act, including amendments. We are proposing incorporation of the federal changes into our state rules in order to maintain consistency with the federal rules.

In the proposed rule, the amendments to the general provisions revise the language relating to startup, shutdown and malfunction plans and add force majeure as a reason for being unable to meet a performance test deadline. A force majeure is any event caused by circumstances beyond the control of the affected facility which prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation.

The amendments to the halogenated solvent cleaning rule add operational and control requirements for continuous web cleaning machines and facility-wide standards and exempt small sources from the requirement to obtain an operating permit.

There are about 45 affected sources in the state with over half of the affected sources located in the Southeast Region. Affected sources typically use halogenated solvents to clean metal parts prior to applying a coating such as paint, adhesives, or other material such as insulation on wire. The standard affects smaller "area sources" as well as major sources of hazardous air pollutants.

Summary of Public Comments

No comments were received from the public.

Modifications Made

No modifications were made as a result of public comments.

Appearances at the Public Hearing

No one appeared at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

None were required.

Response to Legislative Council Rules Clearinghouse Report

The comments from the Rules Clearinghouse dealt with form, style clarity and punctuation and have been incorporated into the order, except a change regarding who has authority to approve alternatives, which is prohibited by 40 CFR 63.470(c)(1), and the use of drafters notes. Drafter notes are instructive comments which are not published with the rule, and were used here to reduce the order length while providing clarity that several tables are not intended to be amended.

Final Regulatory Flexibility Analysis

Since the proposed rule is required by law to be identical to the existing federal rule, the Department has no flexibility to make any substantial changes to the proposed rule. Because all affected sources must comply with the federal rule, the proposed state rule will have no additional adverse economic impact on small businesses or any other affected source.

A. Identify and discuss why the rule includes or fails to include any of the following methods for reducing the impact on small business.

1. Less stringent compliance or reporting requirements.

The federal rule does not provide for less stringent requirements for small sources, and, by statute, the department is prohibited from altering the federal requirements. It should be noted that a variety of compliance options are available within the rule for all sources.

2. Less stringent schedules or deadlines for compliance or reporting requirements.

Schedules and deadlines for compliance and reporting requirements are identical to the US EPA rule for all affected sources.

3. Consolidation or simplification of compliance or reporting requirements.

The proposed changes make the rules identical to the EPA rules. The proposed general provision amendments reduce the reporting requirements for startup and shutdown episodes.

4. The establishment of performance standards in lieu of design or operational standards.

The proposed rules are identical to the EPA requirements as required.

5. The exemption from any or all requirements of the rule.

The existing rules being revised apply only to major sources of hazardous air pollutant (HAP) emissions. Major sources are sources which emit, or have the potential to emit, 10 tons per year or more of any single HAP or 25 tons per year or more of any combination of HAPs. Applying the rule only to major sources has the same effect as exempting minor sources. Most small businesses are not major sources of HAP emissions, and would thus be exempt from the rule.

B. Summarize the issues raised by small business during the rule hearings, any changes made in the proposed rule as a result of alternatives suggested by small business and the reasons for rejecting any alternatives suggested by small business.

No businesses, small or large, appeared at the public hearing. No issues were raised by small businesses during the public comment period.

- C. Identify and describe any reports required by the rule that must be submitted by small business and estimate the cost of their preparation.

The amendments to the halogenated solvent cleaning rule add operational and control requirements for continuous web cleaning machines. Otherwise, the proposed amendments add no additional compliance or reporting requirements beyond what is already in the existing rules.

- D. Identify and describe any measures or investments that small business must take to comply with the rule and provide an estimate of the associated cost.

No compliance costs for small businesses have been estimated by DNR or EPA. Any costs are incurred in order to comply with the existing federal regulation. The proposed state regulation will not result in any additional costs to the affected sources beyond what they already pay to comply with the federal regulation.

- E. Identify the additional cost, if any, to the state in administering or enforcing a rule which includes any of the methods listed in A.

Wisconsin statutes require the Department to adopt the federal language as is and do not allow significant changes that would make the rules more or less stringent for any sources.

- F. Describe the impact on public health, safety and welfare, if any, caused by including in the rule any of the methods listed in A.

The Department is required by statute to adopt the EPA rule changes without significant changes. Consequently, no changes to the rule resulted from "A" above, and there is no impact on public health, safety or welfare.