

Clearinghouse Rule 08-114

Report to
Legislative Council Rules Clearinghouse
NR 421 and 439, Wis. Adm. Code
Natural Resources Board Order No. AM-23-08

Wisconsin Statutory Authority

ss. 227.11(2)(a) and 285.11(1) and (6), Stats., interpreting ss. 227.11(2)(a), 227.14(1m)(b), 285.11(1) and (6), Stats.

Federal Authority

Section 182(b)(2) of the Clean Air Act (42USC7511a(b)(2)).

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Section 182(b)(2) of Clean Air Act requires application of reasonably available control technology (RACT) to sources of volatile organic compound (VOC) emissions in moderate and worse ozone nonattainment areas, for which the U.S. EPA has published a Control Techniques Guideline (CTG). Since the U.S. EPA has published CTGs for facilities classified in the synthetic organic chemical manufacturing industry (SOCMI) that have air oxidation or distillation and reactor processes, the DNR is proposing a VOC RACT rule for these SOCMI facilities located in Wisconsin counties designated as moderate ozone nonattainment areas. These counties are Milwaukee, Waukesha, Washington, Ozaukee, Racine, Kenosha and Sheboygan.

The DNR has already adopted federal new source performance standards (NSPS) that establish VOC emission control requirements for these same SOCMI facilities into ss. NR 440.675, 440.686 and 440.705, Wis. Adm. Code. Many of the recommended VOC RACT requirements for SOCMI facilities that are contained in the CTGs are the same as those requirements contained in the corresponding NSPS. These include VOC control requirements, 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. Consequently, the DNR is proposing a VOC RACT rule in s. NR 421.07, Wis. Adm. Code, that is consistent with the NSPS SOCMI requirements in ss. NR 440.675, 440.686 and 440.705, Wis. Adm. Code.

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.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

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Submitted on December 22, 2008

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

The Wisconsin Natural Resources Board proposes 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), 227.14(1m)(b), 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

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

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Bureau of Air Management
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Madison WI 53707
Fax: (608) 267-0560
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Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=4623>.

A hearing has been scheduled for January 28, 2009. Comments must be received on or before February 9, 2009.

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. 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:

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

(b) 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.

(c) 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].

(d) 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.

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

(3) DISTILLATION OPERATIONS. 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:

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

(b) 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 440.686(1)(b)1. to 3., without consideration of the specific date of the construction, modification or reconstruction of the facility.

(c) 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].

(d) 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.

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

(4) REACTOR PROCESSES. 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:

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

(b) 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.

(c) 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].

(d) 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.

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

(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:

1. All of the control device is replaced.
2. 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)