

**BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES**

**NOTICE OF PUBLIC HEARING**

Natural Resources Board Order AM-12-09

**NOTICE IS HEREBY GIVEN THAT** pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the DNR, will hold a public hearing on proposed revisions to chs. NR 404, 438, and 484, relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds on the date and at the time and location listed below.

The proposed revisions relate to issues for State Implementation Plan approvability, and the State Implementation Plan developed under s. 285.11(6), Stats., will be revised.

**Date and Time**

Tuesday, December 1, 2009 at 1:00 PM

**Location**

DNR Southeast Region Headquarters  
Room 140-141  
2300 N. Dr. Martin Luther King Jr. Drive  
Milwaukee, WI

**Availability of the Proposed Rules and Fiscal Estimate**

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm> . If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Robert B. Eckdale, Bureau of Air Management Rules Coordinator, by e-mail at [robert.eckdale@wisconsin.gov](mailto:robert.eckdale@wisconsin.gov) or by calling (608) 266-2856.

**Submitting Comments**

Comments on the proposed rule must be received on or before Monday, December 14, 2009. Written comments may be submitted by mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Larry Bruss  
Department of Natural Resources  
Bureau of Air Management (AM/7)  
101 S Webster St, Madison, WI 53703

Phone: (608) 267-7543

Fax: (608) 267-0560

E-mail: [Larry.Bruss@wisconsin.gov](mailto:Larry.Bruss@wisconsin.gov)

Internet: Use the Administrative Rules System Web site accessible through the link provided on the Proposed Air Pollution Control Rules Calendar at <http://www.dnr.state.wi.us/air/rules/calendar.htm>

**Fiscal Estimate Summary**

The proposed rules will not have any direct economic impact on the private sector. If, in the future, EPA were to designate any areas in the state as non-attainment areas for either of the proposed ambient air quality standards, it could become necessary to develop rules to control emissions of ozone precursors or lead. If such rules become necessary, any potential economic impact to the private sector will be evaluated at that time.

**Environmental Analysis**

The DNR has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the DNR may prepare an environmental analysis before proceeding. This analysis would summarize the DNR's consideration of the impacts of the proposal and any reasonable alternatives.

## **Americans with Disabilities Act**

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Robert Eckdale in writing at the DNR, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707; by E-mail to [Robert.Eckdale@wisconsin.gov](mailto:Robert.Eckdale@wisconsin.gov) ; or by calling (608) 266-2856. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

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

1. Statute interpreted: s. 285.21(1)(a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: ss. 285.11(1) and (6) and 285.21(1)(a), Stats.

3. Explanation of agency authority:

The Department is required under s. 285.21(1)(a), Stats., to promulgate by rule ambient air standards similar to, but not more restrictive than the national ambient air quality standards (NAAQS). The Department is also authorized under s. 285.11(1) and (6), Stats., to promulgate rules and establish control strategies in order to prepare and implement the State Implementation Plan for the prevention, abatement and control of air pollution in the state.

4. Related statute or rule: There are no related statutes that are not identified above.

5. Plain language analysis:

Chapter NR 404, Wis. Adm. Code, contains ambient air standards which are intended to be the same as the federal NAAQS promulgated by EPA, as is required under s. 285.21(1)(a), Stats. Chapter NR 438, Wis. Adm. Code, establishes requirements for submission of reports for owners or operators of air contaminant sources related to the ambient air standards that are employed by the Department. The Clean Air Act requires EPA to review the latest scientific information every five years and promulgate NAAQS which are designated to protect public and public welfare. In 2008, EPA strengthened the 8-hour ozone NAAQS to 0.075 ppm and revised the NAAQS for lead from 1.5 micrograms/cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ .

The Department is proposing to amend chs. NR 404 and 438, Wis. Adm. Code, to maintain consistency with the federal NAAQS. Specifically, the proposed rule revisions would: A) adopt the ozone and lead NAAQS into ch. NR 404, Wis. Adm. Code; and B) incorporate the corresponding lead reporting requirements into ch. NR 438, Wis. Adm. Code.

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

The federally-enforced NAAQS are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rules is to make the State-enforced ambient air standards for ozone and lead in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(a), Stats.

7. Comparison with rules in adjacent states:

These proposed rule revisions are designed to make Wisconsin's ambient air quality standards consistent with federal NAAQS, which are effective and enforced throughout the United States. Consequently, these proposed rules would be identical to the ambient air standard regulations in effect in the adjacent states.

8. Summary of factual data and analytical methodologies:

The EPA, through its Clean Air Scientific Advisory Committee has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as this order's factual data and analytical methodologies. Information on the federal rule changes are obtained from the federal registers published on March 27, 2008 (Vol. 73, No. 60) for ozone and on November 12, 2008 (Vol. 73, No. 219) for lead.

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

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to but not more restrictive than the federal standards, the Department relies on the federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. EPA analysis establishes that NAAQS do not have significant impacts upon small entities, including small businesses because NAAQS themselves impose no regulations upon small entities. Information on the analysis and supporting documents used to determine effect on small entities are contained in the EPA's Regulatory Impact Analysis (RIA) docket EPA-HQ-OAR-2007-0225 for the ozone NAAQS and RIA docket EPA-HQ-OAR-2006-0735 for the lead NAAQS.

An economic impact report has not been requested.

10. Effect on small business:

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules' potential effects on the private sector, including small businesses.

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

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

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