

Report From Agency

REPORT TO LEGISLATURE

NR 400.02, 405.19, and 406.08, Wis. Adm. Code
Permit requirements for Class I areas, and affecting small business
Board Order Number: AM-12-10
Clearinghouse Rule Number: CR 10-048

BASIS AND PURPOSE OF THE PROPOSED RULE

This rule is being proposed to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community (FCPC) Reservation as a non-Federal Class I area for the prevention of significant deterioration (PSD) of air quality, and to include portions of a 1999 Final Agreement reached between the state and the Forest County Potawatomi Community concerning the Class I area.

A Class I area is defined in ch. NR 405, Wis. Adm. Code. In general, the PSD program is designed to preserve air quality in Class I areas such as national parks and other areas meeting the National Ambient Air Quality Standards. Class I areas are subject to lower allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide.

The Department is required to keep the air permitting program consistent with federal requirements. This proposed rule change updates the permitting program rules to include the FCPC Class I area that has been approved by US EPA.

Additionally, the rule proposal will aid in the implementation of the Final Agreement reached between the State and the FCPC. In general, this Agreement reduces the number of sources that would have otherwise been required to do additional air quality analyses for the FCPC Class I area in comparison to a Federal Class I area. Thus, these proposed rules will implement existing policy reflected in the Final Agreement.

SUMMARY OF PUBLIC COMMENTS

Public hearings on the proposed rule were held on June 7, 2010 in Madison and on June 9, 2010 in Wausau. One person at the Wausau hearing made an oral statement supporting the proposed rules. Written comments were submitted by the Forest County Potawatomi Community (FCPC) at the Madison hearing in support of the proposed rule.

Written comments were also received from the Wisconsin Paper Council (WPC) and Wisconsin Manufacturers and Commerce (WMC). These comments concerned the dimensions of the “22.25 mile” and “74.25 mile” affected facility circles included in the proposed rule. Both WPC and WMC stated that each of the circles encompass too large of an area and are not consistent with the “10 mile” radius and “62-mile” distance contained in the 1999 Final Agreement between the state and the FCPC. In response to these comments, a change has been made to the final rule to clarify that no facility located further than 62 miles from any portion of the FCPC Class I area will be subject to the requirements of the final rule. In addition, an existing note in the rule was expanded to describe how the Department intended the 74.25 mile affected facility circle is to be used. The Department is not proposing to change the dimensions of the “22.25 mile” circle because a drawing of an essentially identical circle is included in the Final Agreement. Therefore, the Department believes that the “22.25” mile circle included in the final rule is consistent with the terms of the Final Agreement.

Additionally, WPC commented that implementation of the Final Agreement could lead to the Department exceeding permit issuance timelines in state statutes. No portion of the proposed rule allows the Department to exceed the permit issuance timelines contained in s. 285.61, Wis. Stats. (i.e., WI Act 118). Therefore, all statutory permit issuance deadlines will be met.

MODIFICATIONS MADE

Modifications to the proposed rule made in response to public comments are described in the Summary of Public Comments section above.

APPEARANCES AT THE PUBLIC HEARING

Eight persons filed a hearing appearance as follows:

June 7, 2010 – Madison

In Support:

Art Harrington – Representing the Forest County Potawatomi Community, 780 N Water St, Milwaukee, WI

Bill McClenahan – Representing the Forest County Potawatomi Community, 7 N Pinckney St # 300, Madison, WI 53703

In Opposition:

Cara Kurtenbach – Representing Wausau Paper, 100 Paper Place, Mosinee, WI 54476

As interest may appear:

Steve Lewallen – Representing the Wisconsin Cast Metals Association

June 9, 2010 – Wausau

In Support:

Rob Hughes, 113 Edgar Ave, Rothschild, WI, 54474

Paul Schwanks, 604 Birch St, Rothschild, WI, 54474

Natalene Cummings – Representing the Forest County Potawatomi Community, PO Box 340, Crandon, WI 54520

In Opposition:

None

As interest may appear:

Randy Oswald, PO Box 19001, Green Bay, WI 54307-9001

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

No changes to either the rule analysis or the fiscal estimate were necessary.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Legislative Council Rules Clearinghouse noted an internal reference error in its report, which was corrected.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules apply only to larger sources of air pollution which are not, in general, small businesses. The Department believes it is unlikely any small business would be impacted by these proposed rules.