

## Clearinghouse Rule 15-033

### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING AND AMENDING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 404.04 (2) (a) 1. and 2.; to **renumber and amend** NR 404.04 (2) (a) (intro.); to **amend** NR 404.04.(2) (a) (title), 404.06 (2), and 484.04; to **repeal and recreate** NR 404.04 (6); and to **create** NR 484.04 (7) and (7m); relating to adopting the National Ambient Air Quality Standards, (NAAQS) for sulfur dioxide, (SO<sub>2</sub>) and nitrogen dioxide, (NO<sub>2</sub>).

#### AM-08-11

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

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

**2. Statutory authority:** Sections 227.11(2)(a), 285.11(1), and 285.21(1)(a), Stats.

**3. Explanation of agency authority:** Section 227.11(2)(a), Stats. expressly confers rule making authority to an agency. Section 285.11(1) and (6) requires that the Department 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. Section 285.21(1)(a) requires that the Department promulgate by rule ambient air quality standards that are similar to, but not more restrictive than the National Ambient Air Quality Standards (NAAQS).

**4. Related statute or rule:** There are no other statutes or rules directly related to the adoption of the NAAQS for sulfur dioxide (SO<sub>2</sub>), and nitrogen dioxide (NO<sub>2</sub>).

**5. Plain language analysis:** The U.S. Environmental Protection Agency (EPA) is required by the federal Clean Air Act (CAA) to promulgate NAAQS to protect public health (i.e., primary standards) and public welfare (i.e., secondary standards). The Department is required by state law (s. 285.21, Wis. Stats.) to promulgate by rule a similar, but no more restrictive, air quality standard when the U.S. EPA promulgates a new or revised NAAQS.

The U.S. EPA has recently promulgated NAAQS for SO<sub>2</sub> and NO<sub>2</sub>. In order to both reflect current air quality health science and to maintain consistency with U.S. EPA-promulgated NAAQS, the Department is proposing to adopt the SO<sub>2</sub> and NO<sub>2</sub> NAAQS into ch. NR 404, Wis. Adm. Code. In addition, the Department is proposing to revise ch. NR 484, Wis. Adm. Code, to include references to applicable U.S. EPA data handling conventions for NO<sub>2</sub> and SO<sub>2</sub>.

**6. Summary of, and comparison with, existing or proposed federal regulation:** On February 9, 2010, the U.S. EPA promulgated a 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion (75 FR 6474). In addition, the U.S. EPA promulgated a 1-hour primary NAAQS for SO<sub>2</sub> at a level of 75 parts per billion on June 22, 2011 (75 FR 35520). The Department is proposing to adopt these same standards.

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** All

adjacent states will adopt SO<sub>2</sub> and NO<sub>2</sub> standards that are the same as Wisconsin's proposed rule. Illinois has not yet proposed a rule to revise the state standards to match the federal NAAQS. Illinois intends to consolidate revisions to SO<sub>2</sub> and NO<sub>2</sub> standards this year with updates to the ozone and fine particulate matter (PM<sub>2.5</sub>) standards. Iowa adopted the NO<sub>2</sub> standard in November, 2010 and intends to begin the rule process to adopt the SO<sub>2</sub> standard in late 2011. The NAAQS become part of Michigan's administrative code through an incorporation by reference provision in its existing rules without further rule changes. Minnesota and Iowa have not yet determined when to adopt SO<sub>2</sub> and NO<sub>2</sub> standards into their administrative rules.

**8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** As required by s. 285.21 (1) (a), Stats., Wisconsin must promulgate ambient air quality standards similar to the NAAQS for the protection of public health and welfare. Because the Department is required by statute to adopt the NAAQS, it did not develop or use data or analytical methodologies to support the proposed adoption of these standards.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact analysis:** Incorporating 1-hour standards for NO<sub>2</sub> and SO<sub>2</sub> into ch. NR 404 will trigger the need to do additional dispersion modeling and engineering analysis in reviews for minor construction and operation permits in order to satisfy s. 285.63(1)(b), Wis. Stats. This will increase the amount of time and cost of applying for and receiving these air pollution control permits for both the private sector and the agency.

Reviewing three years of permit applications reveals that some small businesses that apply for minor source permits (both construction and operation) will be affected by the new NO<sub>2</sub> and SO<sub>2</sub> NAAQS.

An economic impact analysis and final fiscal estimate will be completed prior to the submittal of this rule to the Legislative Council as required under s. 227.137(2), Stats. In addition, public comments will be sought to better define the economic impact of this proposed rule.

**10. Effect on small business:** Private consultant time for technical analysis is expected to raise permit application cost for small business. The compliance costs associated with control measures has not been evaluated at the state level at this point. The potential cost increases will be quantified before proposed rule adoption.

**11. Agency contact person:** Mike Friedlander, WDNR, P.O. Box 7921, Madison, WI 53707-7921; (608) 267-0806; (608) 267-0560 (fax); Michael.friedlander@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:

Jeff Myers  
Department of Natural Resources  
Bureau of Air Management  
PO Box 7921  
Madison WI 53707  
(608) 266-2879  
Fax: (608) 267-0560  
Jeff.Myers@wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative

Rules Internet Web site at <https://health.wisconsin.gov/admrules/public/Rmo?nRmold=10843>.

A public hearing will be held on May 21, 2015 at 1:00PM in Room 713 at the Natural Resources Building, 101 South Webster Street, Madison, Wisconsin. Comment must be received no later than May 28, 2015.

The consent of the Attorney General will be requested for the incorporation by reference of new data handling conventions in ch. NR 484.

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SECTION 1. NR 404.04 (2) (a) (title) is amended to read:

NR 404.04 (2) (a) (title) *Primary ~~standards~~ standard.*

SECTION 2. NR 404.04 (2) (a) (intro.) is renumbered NR 404.04 (2) (a) and amended to read:

NR 404.04 (2) (a) The primary ~~standards~~ standard for sulfur oxides, measured as sulfur dioxide, ~~are: is~~ 0.075 ppm -- maximum 1-hour concentration. The 1-hour primary standard is met at an ambient air quality monitoring site when the 3-year average of the annual (99<sup>th</sup> percentile) of the daily maximum 1-hour average concentrations is less than or equal to 0.075 ppm, as determined by the methodology of 40 CFR part 50, Appendix T, incorporated by reference in s. NR 484.04 (7m).

SECTION 3. NR 404.04 (2) (a) 1. and 2. are repealed.

SECTION 4. NR 404.04 (6) is repealed and recreated to read:

NR 404.04 (6) NITROGEN DIOXIDE. (a) *Primary standards.* The primary standards for nitrogen dioxide are:

1. 0.053 ppm -- primary annual average concentration. The primary annual standard is met when the annual average concentration in a calendar year is less than or equal to 0.053 ppm, as

determined by the methodology of 40 CFR part 50, Appendix S, incorporated by reference in s. NR 484.04 (7).

2. 0.100 ppm -- primary 1-hour average concentration. The primary 1-hour standard is met when the 3-year average of the annual 98<sup>th</sup> percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 ppm, as determined by the methodology of 40 CFR part 50, Appendix S, incorporated by reference in s. NR 484.04 (7).

(b) *Secondary Standard.* The secondary standard for nitrogen dioxide is 0.053 ppm. The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places. Fractional parts equal to or greater than 0.0005 ppm shall be rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that are at least 75% complete or upon data derived from manual methods that are at least 75% complete for the scheduled sampling days in each calendar quarter.

SECTION 5. NR 404.06 (2) is amended to read:

NR 404.06 (2) REFERENCE METHODS. Ambient air quality monitoring which utilizes a reference monitoring method shall use monitoring methods which conform to the federal reference methods which are specified in 40 CFR part 50, Appendices A to N ~~I~~, incorporated by reference in s. NR 484.04 (2), or which have been so designated by the department.

SECTION 6. NR 484.04 is amended to read:

NR 484.04 **Code of federal regulations appendices.** The appendices to federal regulations in effect on ~~March 1, 2006~~ the effective date of this section ... [LRB insert date] listed in the first column of Table 2 are incorporated by reference for the corresponding sections of chs. NR 400 to 439 and 445 to 499 or code of federal regulations appendix method listed in the third column of Table 2. Since some of these materials are incorporated by reference for another appendix of the

code of federal regulations and the other appendix is also incorporated by reference in this section, the materials listed in this section which are incorporated by reference for the other appendix are hereby also incorporated by reference and made a part of this chapter.

SECTION 7. NR 484.04 (7) and (7m) are created to read:

NR 484.04

- |      |                              |  |                   |
|------|------------------------------|--|-------------------|
| (7)  | 40 CFR part 50<br>Appendix S | Interpretation of the National<br>Ambient Air Quality Standards for<br>Nitrogen Dioxide  | NR 404.04 (6) (a) |
| (7m) | 40 CFR part 50<br>Appendix T | Interpretation of the National<br>Ambient<br>Air Quality Standards for Sulfur<br>Dioxide | NR 404.04 (2) (a) |

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as as provided in s. 227.22 (2) (intro.), Stats.

SECTION 9. 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 \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)