

## CR 07-082

### ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 404.02 (11), 404.04 (3) and 484.04 (3) relating to the 24-hour secondary ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and affecting small business.

## AM-23-07B

### Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Section 285.11 (1) and (6), Wis. Stats.
- 2. Statutory authority:** Sections 227.11 (2) (a) and 285.11 (1) and (6), Wis. Stats.
- 3. Explanation of agency authority:** Section 227.11 (2) (a), Wis. Stats., gives state agencies general rule-making authority. Section 285.11 (1), Wis. Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Wis. Stats. Section 285.11 (6), Wis. Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution.
- 4. Related statute or rule:** There are no related statutes that are not identified above.
- 5. Plain language analysis:** Currently, the Department has a secondary 24-hour ambient air quality standard for particulate matter measured as TSP (s. NR 404.04 (3), Wis. Adm. Code). Adopting this Order would satisfy the original intent of AM-23-07, originally presented to the Board on August 15, 2007 for public hearing approval, which also proposed repeal of the TSP standard. The Department held a public hearing on AM-23-07 in Madison on October 12, 2007.

The U.S. Environmental Protection Agency (EPA) established air quality standards for particulate matter in 1971. Particulate matter was originally measured as TSP, which is particulate up to 100 micrometers in diameter. Then in 1987, the U.S. EPA changed the indicator to coarse particulate matter (PM<sub>10</sub>), which is particulate up to 10 micrometers in diameter. The federal PM<sub>10</sub> air quality standards replaced the federal TSP air quality standards. Particulate matter larger than 10 micrometers generally is not inhaled into the lungs and thus PM<sub>10</sub> was found to adequately protect human health. In 1997, the U.S. EPA adopted air quality standards for fine particulate matter (PM<sub>2.5</sub>), which is particulate up to 2.5 micrometers in diameter. PM<sub>2.5</sub> can remain suspended in the air longer and penetrate deeply into the lungs easier than PM<sub>10</sub>. Currently, there are federal air quality standards for both PM<sub>2.5</sub> and PM<sub>10</sub>.

Repeal of the TSP standard was previously considered by the Board in 1989 and 2008 (Board Orders AM-22-88 and AM-23-07). In 1989, the Board was concerned that new federal air quality standards for PM<sub>10</sub> did not provide adequate public welfare protection from potential nuisance concerns, such as fugitive dust and adopted a resolution to retain the TSP standard. Currently, large size particulate matter (i.e., TSP) is regulated under the fugitive dust rule (s. NR 415.04, Wis. Adm. Code) and the Department has adopted more stringent PM<sub>10</sub> and PM<sub>2.5</sub> standards for smaller sized particulate matter. On April 23, 2008, the Board requested that the Department should not move too quickly regarding changes to the TSP standard. On April 27, 2011, the Wisconsin Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending s. NR 404.04 (3), Wis. Adm. Code (TSP standard).

Repeal of the TSP standard, and an associated definition and monitoring requirements, will allow the Department and affected industry to focus resources on smaller particulates, which have been identified as being more harmful than TSP to human health. Additionally, repealing the TSP standard would make the state's air quality standards consistent with the federal air quality standards. This repeal would not have an impact on the fugitive dust rule.

**6. Summary of, and comparison with, existing or proposed federal regulation:** Federal National Ambient Air Quality Standards (NAAQS) are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rule revisions is to make the state ambient air quality standards for particulate matter in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS.

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** These proposed rule revisions make Wisconsin's ambient air quality standards fully consistent with federal NAAQS, which are effective and enforced throughout the United States. Iowa and Michigan both reference the federal NAAQS for their respective state air quality standards. Illinois repealed their TSP standard on May 15, 1992 (Section 243.121, Illinois Adm. Code). Minnesota currently maintains their TSP standard (Section 7009.0080, Minnesota Adm. Rules).

**8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:** The U.S. EPA, through its Clean Air Scientific Advisory Committee (CASAC), 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 adequate factual data and analytical methodologies.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:** The Department relies on the analysis used by the U.S. EPA to support the NAAQS to develop and promulgate changes to the state's air quality standards.

**10. Effect on small business (initial regulatory flexibility analysis):** In repealing the TSP air quality standard, the air permitting process may be shortened since the modeling and analysis for particulate matter impacts would focus solely on emissions of PM<sub>10</sub> and PM<sub>2.5</sub>. Also, this repeal may reduce the cost of installing emission controls for particulate matter. Consequently, this rule revision would have a direct positive effect on businesses, including those defined as small business.

**11. Agency contact person:**

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SECTION 1. NR 404.02(11) is repealed.

SECTION 2. NR 404.04(3) is repealed.

SECTION 3. NR 484.04(3) in Table 2 is repealed.

SECTION 4. 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 5. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 22, 2011.

Dated at Madison, Wisconsin October 6, 2011.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_

Cathy Stepp, Secretary

(SEAL)