WISCONSIN LEGISLATIVE COUNCIL IssueBrief

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Federal and State Regulation of Air Pollution

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The Clean Air Act (CAA), as amended, is a comprehensive federal law that regulates outdoor air pollutants. Much of the state's air pollution program in ch. 285, Stats., implements the CAA. This issue brief highlights some key provisions of the CAA and corresponding provisions in state law.

AIR QUALITY STANDARDS

The CAA requires the Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) for air pollutants that endanger public health or welfare. Under this authority, EPA has established NAAQS for six air pollutants or groups of pollutants: carbon monoxide (CO), nitrogen dioxide (NO_2), ozone, particulate matter, sulfur dioxide (SO_2), and lead. [42 U.S.C. 7409.]

In Wisconsin, if a federal ambient air quality standard is established, the Department of Natural Resources (DNR) must promulgate a similar standard by rule. State law specifies that the state standard may not be more restrictive than the federal standard. If the federal standards in effect on April 30, 1980, are modified, DNR must alter the corresponding state standards unless it finds that the modified standards would not provide adequate protection for public health and welfare; however, DNR may not make this finding unless it is supported by written documentation as specified in statute. If a federal standard has not been promulgated, DNR may promulgate a state standard if DNR finds the standard is needed to provide adequate protection for public health or welfare and supports this finding with specific written documentation as provided in statute. [s. 285.21 (1) and (4), Stats.]

STATE IMPLEMENTATION PLAN

Under the CAA, Wisconsin must adopt a plan that describes how it will implement, maintain, and enforce federal standards in each air quality control region of the state. That state implementation plan, or SIP, includes various components, such as consent decrees, technical information, and administrative rules. A SIP must be submitted to EPA for review and approval. Federal law provides adverse consequences, such as loss of certain federal highway funds or air pollution grants, if a state does not submit a required SIP or submits a SIP that is deemed inadequate. [42 U.S.C. ss. 7410 and 7509.]

State law requires DNR to prepare, develop, revise, and implement plans for the prevention, abatement, and control of air pollution in this state. DNR may not submit a SIP to EPA that includes a control measure or strategy that imposes or may result in regulatory requirements unless DNR has first promulgated the control measure or strategy as an administrative rule. At least 60 days before DNR is required to submit a SIP to EPA, other than a SIP modification relating to an individual source, DNR must provide a report to the Legislature's environmental standing committees that describes the proposed SIP. DNR must respond to any written comments submitted by the chairperson. [ss. 285.11 (6) and 285.14, Stats.]

NONATTAINMENT AREAS

The CAA directs EPA to identify the areas in each state where NAAQS are not met for a given air pollutant, based upon air quality monitoring data collected by the state. Nonattainment areas are classified based on the degree to which the area exceeds the particular standard. A state must develop or revise its SIP to impose additional measures on sources in nonattainment areas in order to attain and maintain the applicable standard by certain deadlines. States may request redesignation of a nonattainment area to an attainment area if certain criteria are met. In Wisconsin, portions of Kenosha, Milwaukee, Ozaukee, Sheboygan, and Manitowoc Counties are currently designated as nonattainment

areas for ozone; a portion of Oneida County is currently designated as a nonattainment area for SO_2. [42 U.S.C. s. 7501 et seq. and 7407.]

State law requires DNR to promulgate, by rule, procedures and criteria to identify and reclassify nonattainment areas. Unless a county must be designated as a nonattainment area under the CAA, state law prohibits DNR from identifying a county as part of a nonattainment area if the concentration of an air contaminant in that county does not exceed a federal ambient air quality standard. When DNR issues documents that define or list specific nonattainment areas, or recommends areas be designated as nonattainment, it must hold a public hearing and follow the procedure required in statute. Before DNR issues these documents and at least 60 days before the Governor makes a submission to EPA on a nonattainment designation, DNR must provide a report to the Legislature's environmental standing committees describing the proposed nonattainment area and supporting documentation. [s. 285.23 Stats.; ch. NR 401, Wis. Adm. Code.]

Reformulated Gasoline and Vehicle Emissions Testing

As required under the CAA, gasoline sold in certain areas of the country must be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. In Wisconsin, the CAA Amendments of 1990 specifically require reformulated gasoline to be used in the six-county Milwaukee area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha) based on the area's population and ozone levels. [42 U.S.C. s. 7545 (k) (5) (A) and (k) (10) (D); 40 C.F.R. s. 80.70 (i).]

Under the CAA amendments of 1990, certain ozone nonattainment areas must adopt vehicle inspection and maintenance (VI/M) programs as one control measure to reach attainment. VI/M programs become part of a state's SIP. Vehicle emissions testing is one component of the VI/M program. Federal law sets forth certain minimum standards by which vehicle performance must be analyzed, and procedures and equipment that must be used for emissions testing. In Wisconsin, DNR determines which counties do not meet or are unable to maintain the federal air quality standard (currently Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha), and the Department of Transportation administers the vehicle emissions testing program in those counties. [42 U.S.C. ss. 7410 and 7511a; 40 C.F.R. Part 51, subpart S; ss. 110.20 and 285.30, Stats.]

Hazardous Emissions

The CAA establishes national emission standards for hazardous pollutants based upon health criteria and requires states to adopt these standards. Under state law, DNR must promulgate a standard for a hazardous air contaminant if such a standard is promulgated pursuant to the CAA. If a federal emission standard for a hazardous air contaminant has not been promulgated, DNR may establish a hazardous air emission standard if it is needed to provide adequate protection for public health or welfare. [42 U.S.C. s. 7412; s. 285.27 (2), Stats.; and ch. NR 445, Wis. Adm. Code.]

Permits for Stationary Sources

Generally, state law, under authority delegated to the state under the CAA, requires a person to obtain an air pollution control permit prior to commencing construction, reconstruction, replacement, or modification of a stationary source ("construction permit"). A separate permit must also be obtained prior to operating a new or modified source of air pollution ("operation permit"). Permits for sources in nonattainment areas generally include more restrictive requirements. State law provides a simplified process for stationary sources with low actual or potential emissions. Under this process, an owner or operator of a stationary source may obtain a "registration permit" in lieu of a construction permit or operating permit, or both, if certain steps are taken, and DNR finds that the stationary source's actual emissions do not exceed 50 percent of any applicable major source threshold. [42 U.S.C. ss. 7502 and 7661 et seq.; and s. 285.60, Stats.]