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May 27, 2021

Senator Robert Cowles
Senate Committee on Natural Resources and Energy
Room 118 South
State Capitol
Madison, WI 53707

Representative Joel Kitchens
Assembly Committee on Environment
Room 312 North
State Capitol
Madison, WI 53708

Subject: Proposed State Implementation Plan Submittal – Nonattainment New Source Review (NNSR) Certification for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

Dear Senator Cowles and Representative Kitchens:

This letter is to notify your respective committees that the Department of Natural Resources (DNR) is proposing to submit an update to the Wisconsin State Implementation Plan (SIP) to the U.S. Environmental Protection Agency (EPA). Pursuant to s. 285.14 (2), Wis. Stats., the DNR is required to provide SIPs to the Senate Committee on Natural Resources and Energy and the Assembly Committee on Environment 60 days prior to their submittal for federal approval. The following is provided to assist the committees with their review.

1. Summary for proposed SIP submittal:

The DNR developed the proposed SIP revision to certify to EPA that Wisconsin's existing NNSR program and rules, found in NR 408, Wis. Adm. Code, meet the NNSR SIP requirements of 40 CFR § 51.165, as amended by the final rule "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements". The proposed SIP is a table that includes 40 CFR Part 51.165 requirements necessary to implement the NNSR program and explanations of how Wisconsin's regulations meet those requirements. The EPA previously approved Wisconsin's NNSR Certification SIP revisions required for Wisconsin's nonattainment areas for the 2008 8-hour ozone NAAQS. No changes to Wisconsin's NNSR program or rules are necessary to comply with the 2015 8-hour ozone NAAQS NNSR requirements for areas designated nonattainment under the 2015 ozone NAAQS.


2. Type of SIP action:

- Routine or administrative (e.g., emissions inventories, data updates, motor vehicle emissions budgets, administrative updates)
- Nonroutine (e.g., plans involving control of area emissions, attainment plans, redesignation requests)

3. There is a legal deadline associated with this SIP submittal: Yes, DNR is required to submit this SIP revision no later than 36 months from the effective date of nonattainment designation for the 2015 ozone NAAQS, specifically by August 3, 2021 (40 CFR § 51.1314).
4. Status of public review: The DNR has scheduled a virtual public hearing on June 28, 2021 via Zoom video conference. The public comment period on this proposed SIP will be open through June 29, 2021.
5. Abbreviated review by the committees requested? No.

If you have any questions about this submittal, please contact Sean Kennedy at SeanP.Kennedy@wisconsin.gov or Olivia Salmon at OliviaE.Salmon@wisconsin.gov. Thank you for your consideration in this matter.

Sincerely,

DocuSigned by:
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Gail E. Good
Director
Air Management Program

cc: Sean Kennedy, AD/8
Jason Treutel, AM/7
Olivia Salmon, AM/7
Emma Cleveland, AM/7

Enclosure

Certification of Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standards

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Prepared by the Wisconsin Department of Natural Resources

May 2021



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Nonattainment New Source Review (NNSR) SIP/Regulatory Elements Checklist for Ozone

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
A. 2015 Ozone NAAQS Implementation Final Rule (December 6, 2018).			
(a)(1)(iv)(A)(I) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the Act, according to paragraphs (a)(1)(iv)(A)(I)(i) through (viii) of this section.	NR 408.02(21)	Approved 1/18/1995 60 FR 3538 with revisions to 21(a)1. (intro) on 12/17/2008 (73 FR 76560)	
(a)(1)(iv)(A)(I) (i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.	NR 408.02(21)(a)(1)(b)		
(a)(1)(iv)(A)(I) (ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.	NR 408.02(21)(a)(1)(c)		
(a)(1)(iv)(A)(I) (iii) 25 tons per year of volatile organic	NR 408.02(21)(a)(1)(d)		

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
compounds in any severe ozone nonattainment area.			
(a)(1)(iv)(A)(1) (<i>iv</i>) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.	NR 408.02(21)(a)(1)(e)		
(a)(1)(iv)(A)(2) For the purposes of applying the requirements of paragraph (a)(8) of this section to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in paragraphs (a)(1)(iv)(A)(2)(i) through (vi) of this section shall apply in areas subject to subpart 2 of part D, title I of the Act.	NR 408.02(21)(b)		
(a)(1)(iv)(A)(2)(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.	NR 408.02(21)(b)1.(a)		

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
(a)(1)(iv)(A)(2)(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.	NR 408.02(21)(b)1.(b)		
(a)(1)(iv)(A)(2)(iii) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.	NR 408.02(21)(b)(1)(c)		
(a)(1)(iv)(A)(2)(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.	NR 408.02(21)(b)2		
(a)(1)(iv)(A)(2)(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.	NR 408.02(21)(b)3		
(a)(1)(iv)(A)(2)(vi) 10 tons per year or more of nitrogen oxides in any extreme	NR 408.02(21)(b)4		

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40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
nonattainment area for ozone; or			
(a)(1)(iv)(A)(3) Any physical change that would occur at a stationary source not qualifying under paragraphs (a)(1)(iv)(A)(1) or (2) of this section as a major stationary source, if the change would constitute a major stationary source by itself.	NR 408.02(21)(a)(3)	Approved 1/18/1995 60 FR 3538	
(a)(1)(v)(E) For the purpose of applying the requirements of (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.	NR 408.02(20)(c)	Approved 12/17/2008. 73 FR 76560. State effective date 7/1/2007	
(a)(1)(v)(F) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in	NR 408.02(20)(a)	Approved 1/18/1995. 73 FR 76560 State Effective Date 6/1/1993	

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
<p>emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act.</p>			
<p>(a)(1)(x)(A) <i>Significant</i> means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:</p> <p>Ozone: 40 tpy of volatile organic compounds or Nitrogen oxides</p>	<p>NR 408.02(32)(a) and NR 408.02(32)(a)(6)</p>	<p>Approved 1/18/1995 (60 FR 3538)</p> <p>State Effective Date 6/1/1993</p>	<p>40 CFR 51.165(a)(1)(x)(A) defines the significant emission rate for ozone as 40 tons per year of volatile organic compounds (VOC) or nitrogen oxides (NOx).</p> <p>NR 408.02(32)(f) provides WDNR the authority to apply the significant emission rates for VOC to NOx at major sources of NOx located in ozone nonattainment areas. NR 408.03(5) provides WDNR the authority to apply the NNSR requirements of NR 408.04 to NR 408.10 that apply to major modifications or new major sources of VOC to major modifications or new major sources of NOx.</p> <p>Additionally, NR 408.02(32)(a)(6) defines the significant emission rate for ozone as 40 tons per year of VOC. While the definition of</p>

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
			<p>significant emission rate for ozone does not explicitly include 40 tons per year of NO_x, other provisions in Wisconsin’s SIP provide authority to ensure that nonattainment NSR applicability is defined in accordance with federal requirements. NR 408.02(29m) identifies VOCs and NO_x as precursors to ozone. NR 408.02(32)(a)(2) defines the significant emission rate for NO_x as 40 tons per year. As the significant emission rate for NO_x is 40 tons per year, the same as the 40 tons per year of NO_x significance rate for ozone, an increase in NO_x emissions greater than 40 tons per year would be considered significant for NO_x. If that increase is also a significant net emissions increase and occurs at an existing major source, the change would be considered a major modification as defined at NR 408.02(20). NR 408.03(2) provides that the nonattainment NSR requirements shall apply to any new source or major modification that is major for the pollutant, or precursor of the pollutant, for which the area is designated as nonattainment. Thus, a major modification in an ozone nonattainment area where the pollutant is NO_x, a precursor to ozone, would prompt nonattainment NSR requirements.</p> <p>WDNR interprets these provisions to mean that 40 tons per year of NO_x is significant for ozone, and hereby certifies that its rules</p>

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40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
			contain provisions which are as stringent as the requirements of 40 CFR 51.165(a)(1)(x)(A).
(a)(1)(x)(B) Notwithstanding the significant emissions rate for ozone in paragraph (a)(1)(x)(A) of this section, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.	NR 408.02(32)(c)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(1)(x)(C) For the purposes of applying the requirements of paragraph (a)(8) of this section to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or	NR 408.02(32)(f)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	

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40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
<p>in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs (a)(1)(x)(A), (B), and (E) of this section shall apply to nitrogen oxides emissions.</p>			
<p>(a)(1)(x)(E) Notwithstanding the significant emissions rates for ozone under paragraphs (a)(1)(x)(A) and (B) of this section, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the Act shall be considered a significant net emissions increase.</p>	<p>NR 408.02(32)(d)</p>	<p>Approved 1/18/1995 (60 FR 3538)</p> <p>State Effective Date 6/1/1993</p>	
<p>(a)(3)(ii)(C)(I) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for</p>	<p>NR 408.06(7)(a)</p>	<p>Approved 1/18/1995 (60 FR 3538)</p> <p>State Effective Date 6/1/1993</p>	

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
offsets if they meet the requirements in paragraphs (a)(3)(ii)(C)(1)(i) through (ii) of this section.			
(a)(3)(ii)(C)(1)(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.	NR 408.06(7)(a)(1)		
(a)(3)(ii)(C)(1)(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.	NR 408.06(7)(a)(4)		

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
<p>(a)(3)(ii)(C)(2) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in paragraph (a)(3)(ii)(C)(1)(ii) of this section may be generally credited only if:</p> <p>(a)(3)(ii)(C)(2)(i) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or</p> <p>(a)(3)(ii)(C)(2)(ii) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraph (a)(3)(ii)(C)(1)(i) of this section.</p>	NR 408.06(7)(b)	<p>Approved 1/18/1995 (60 FR 3538)</p> <p>State Effective Date 6/1/1993</p>	
(8) The plan shall provide that the requirements of this section applicable to major stationary sources and major	NR 408.03(5)	Approved 1/18/1995 (60 FR 3538)	

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
<p>modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NOx waiver applying the standards set forth under section 182(f) of the Act and the waiver continues to apply.</p>		<p>State Effective Date 6/1/1993</p>	
<p>(a)(9)(ii) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:</p>	<p>NR 408.06(4)</p>	<p>Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993</p>	

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40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
(a)(9)(ii)(A) In any marginal nonattainment area for ozone—at least 1.1:1;	NR 408.06(4)(a)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(9)(ii)(B) In any moderate nonattainment area for ozone—at least 1.15:1;	NR 408.06(4)(b)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(9)(ii)(C) In any serious nonattainment area for ozone—at least 1.2:1;	NR 408.06(4)(c)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(9)(ii)(D) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and	NR 408.06(4)(d)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(9)(ii)(E) In any extreme nonattainment area for ozone—at least 1.5:1 (except	NR 408.04(e)	Approved 1/18/1995 (60 FR 3538)	

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40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and		State Effective Date 6/1/1993	
(a)(9)(iii) Notwithstanding the requirements of paragraph (a)(9)(ii) of this section for meeting the requirements of paragraph(a)(3) of this section, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that are subject to subpart 2, part D, title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the Act.	NR 408.06(5)	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	
(a)(9)(iv) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section for	NR 408.05(2)(b) fulfills requirements WDNR specifies the required offsets for areas	Approved 1/18/1995 (60 FR 3538) State Effective Date 6/1/1993	To demonstrate reasonable further progress a new or modified source subject to review under this chapter shall obtain offsets in an amount equal to or greater than the amount specified by the applicable offset ratio. If an

40 CFR 51.165 Requirements	Applicable Wisconsin Rule(s)	SIP Approval	Comment
<p>ozone nonattainment areas that are subject to subpart 1, part D, title I of the Act (but are not subject to subpart 2, part D, title I of the Act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.</p>	<p>subject to Title 1, part D, subpart 2, but does not specify anything for Title 1, part D, subpart 1, so therefore NR 408.05(2)(b) would apply</p>		<p>offset ratio is not specified, the offset ratio shall be at least 1 to 1.</p>