

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **create** NR 400.02 (66m), 405.19 and 406.08(4) relating to permit requirements for Class I areas, and affecting small business.

CR 10-048 - AM-12-10

Analysis Prepared by the Department of Natural Resources

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

2. Statutory authority: ss. 227.11(2)(a) and 285.11(1) and (6) Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for abatement of air pollution in the State. The permitting program, in general, and these regulations specifically, is part of that plan.

These rules are based on federal rules as well as a 1999 Final Agreement reached between the State and the Forest County Potawatomi Community (FCPC).

4. Related statute or rule:

The FCPC Class I area was established as part of a Federal Implementation Plan approved by USEPA in an April 29, 2008 Federal Register Notice.

5. Plain language analysis: This rule is being proposed to amend portions of Department rules to incorporate the federal re-designation of certain parcels of the Forest County Potawatomi Community 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 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.

6. Summary of, and comparison with, existing or proposed federal regulation: In an April 29, 2008, Federal Register Notice, the United State Environmental Protection Agency (USEPA) established the FCPC Class I area. The Department and the FCPC have agreed to provisions impacting the FCPC Class I area that USEPA stated, in the April 29, 2008, notice, need to be promulgated as part of the State's Implementation Plan for controlling air pollution in order to be effective for federal purposes.

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

There are no non-federal Class I areas or non-federal Class I rules in any of these states.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

The proposed rule is based on the federal re-designation of the FCPC Reservation lands to non-federal Class I, and the Final Agreement.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: An analysis of the effect of the proposed rules on small business was not performed since the proposed rule only impacts major sources of air pollution in the State and conforms to federal requirements. Major sources of air pollution are not typically small businesses.

10. Effect on small business: These rules should not have a significant economic impact on small business because major air pollution sources do not generally meet the definition of a small business.

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SECTION 1. NR 400.02 (66m) is created to read:

NR 400.02 (66m) “Forest County Potawatomi Community Class I area” or “FCPC Class I area” means those land parcels of the Forest County Potawatomi Reservation that are designated as a non-federal Class I area by EPA under 40 CFR. 52.2581. The FCPC Class I area has a geographic center, as determined by the department, at latitude 45.49978°N, longitude 88.64377°W.

SECTION 2. NR 405.19 is created to read:

NR 405.19 **Forest County Potawatomi Class I area.** (1) For any new major source or major modification of an existing source, the Forest County Potawatomi Community shall have the opportunity to present to the department, within no more than 75 days of receipt of a complete permit application by the department, a demonstration that the emissions from the proposed new major source or major modification would have an adverse impact on the established air quality related values of the FCPC Class I area.

(2) New major sources or major modifications of existing sources wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), are subject to an increment analysis and limited to the maximum allowable increase levels of a Class I area.

(3) New major sources or major modifications of existing sources locating or located

wholly outside the area defined in sub. (2) are subject to an increment analysis and maximum allowable increase levels of a Class II area.

Note: The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. The geographic center of the FCPC Class I area was determined by finding the center of a rectangle placed around the outer most portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. A map developed by the Department and the Forest County Potawatomi Community shows the approximate 22.25-mile radius for the FCPC Class I area. The Final Agreement, map, and information on established air quality related values for the Class I area are available from the Department upon request, or may be found on the Department's web site.

SECTION 3. NR 406.08 (4) is created to read:

NR 406.08 (4) (a) The Forest County Potawatomi Community shall have the opportunity to review best available control technology (BACT) or maximum achievable control technology (MACT) determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m).
2. Wholly or partially locating or located within 62 miles of the FCPC Class I area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the Forest County Potawatomi Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act on a permit application according to time period requirements under ss.

285.61 and 285.62, Stats.

Note: The geographic center of the FCPC Class I area, as identified in s. NR 400.02 (66m), was determined by finding the center of a rectangle placed around the outermost portions of the Class I area. The 22.25-mile radius was determined by adding 10 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area.

The Department has determined that any source wholly located outside of a circle with a radius of 74.25 miles from the geographic center of the FCPC Class I area is not within 62 miles of the FCPC Class I area. The 74.25-mile radius was determined by adding 62 miles to the distance of the outermost portion of the FCPC Class I area from the geographic center of the FCPC Class I area. It is the Department's intent that this circle be used as a screening tool for determining applicability of this subsection, and evidence that a source is wholly outside of this circle will be accepted as proof that the source is not within 62 miles of the FCPC Class I area.

The relationship between the State of Wisconsin and the Forest County Potawatomi Community with regard to the FCPC Class I area is established in a 1999 Class I Final Agreement. Dispute resolution follows a process agreed to by the Department and the Forest County Potawatomi Community pursuant to the Final Agreement.

The Final Agreement and maps showing the approximate 22.25-mile and 74.25-mile radii are available from the Department upon request, or may be found on the Department's web site.

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 August 11, 2010.

Dated at Madison, Wisconsin October 5, 2010.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____/S/_____
Matthew J. Frank, Secretary

(SEAL)