

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

The Wisconsin Natural Resources Board adopts an order to **renumber and amend** NR 404.02 (4e) and (4m); to **amend** NR 400.02 (40), (70), (79), and (135), 405.02 (25k)(intro.), 406.04 (1) (n) (intro.) and 1. (intro.) and 2., 484.03 (5), and 484.04 (5) and (6g); and to **create** NR 400.02 (123m), 400.03 (4) (k), 405.02 (27) (a) 5m., 405.07 (8) (a) 3m., 406.04 (2) (cs), 407.03 (2) (be), 408.02 (32) (a) 5m., and 408.06 (1) (cm), relating to permit requirements for particulate matter emissions and affecting small business.

**CR 10-050 - AM-16-10**

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

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

**2. Statutory authority:** ss. 227.11(2)(a), 227.14(1m)(b) and 285.11(1), (16) and (17), Stats.

**3. Explanation of agency authority:**

Section 227.11(2)(a), Stats., gives state agencies general rulemaking authority. Section 227.14(1m)(b), Stats., allows the Department to use the format of federal regulations in preparing a proposed rule if it determines that all or part of a state environmental regulatory program is to be administered according to standards, requirements or methods which are similar to standards, requirements or methods specified for all or part of a federal environmental program. Section 285.11(1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(16), Stats., requires the Department to promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source. Section 285.11(17) requires the Department to develop and implement rules that define the term modification in a manner consistent with the clean air act.

**4. Related statute or rule:**

None.

**5. Plain language analysis:** The proposed rules contained in this order reflect changes made by the United States Environmental Protection Agency (EPA) in their regulations regarding the regulation of particulate matter less than 2.5 microns in size (PM<sub>2.5</sub>). The Department needs to make this change in order to retain EPA approval of Wisconsin's air permit programs.

PM<sub>2.5</sub> is proposed to be included as a pollutant used to determine whether a facility is a major source of air pollution. Additionally, increases in PM<sub>2.5</sub> emissions will potentially trigger the need to obtain an air pollution control construction permit, including requirements to control emissions to levels which represent best available control technology or lowest achievable emission rate.

Additionally, the rule package includes some cleanup changes to otherwise unaffected existing rules. These changes are proposed to include up-to-date test methods and definitions in these existing rules. These changes do not change the effect or intent of these rules.

**6. Summary of, and comparison with, existing or proposed federal regulation:** The proposed PM2.5 rules will make the regulations consistent with the equivalent Federal rules with one exception. That exception is the inclusion of a maximum air quality impact that can be allowed to be exempt from pre-construction monitoring. The proposed value in this order is based on the lowest value proposed by EPA.

**7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** The proposed rule is, with one exception, based on the federal rule changes. Adjacent states will all be implementing the federal rule changes. Whether they adopt a value for a maximum air quality impact that can be allowed to be exempt from pre-construction monitoring in the absence of a final federal number is indeterminate at this time. Failure to adopt a number increases the stringency of the rule.

**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 rule changes and the data and methodologies used by EPA in developing these rules. One portion of the proposed rule has yet to be finalized by the EPA.

**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. Additionally, EPA has concluded that this rule will not impact a significant number of small entities.

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

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SECTION 1. NR 400.02 (40), (70), and (79) are amended to read:

NR 400.02 (40) “Coal” means all solid fuels classified as anthracite, bituminous, subbituminous or lignite by ASTM designation ~~D388-99e~~ D388-99e1 (2004), incorporated by reference in s. NR 484.10 (7).

(70) “Fuel oil” means any petroleum-based fuel, including diesel fuel or petroleum derivatives such as oil tar, as defined in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

(79) "Heat input" means the total gross calorific value per unit of time of all fuels being burned, where gross calorific value of a fuel is measured by ASTM Method D240-02, D1826-94 or ~~D5865-02~~ D5865-04, incorporated by reference in s. NR 484.10 (4), (26) and (55g). Where the test method gives a higher and a lower heating value, heat input is calculated in Btu per hour using the higher heating value of the fuel.

SECTION 2. NR 400.02(123m) is created to read:

NR 400.02(123m) "PM<sub>2.5</sub> emissions" means PM<sub>2.5</sub> emitted to the ambient air as measured by an applicable reference method or an equivalent or alternative method specified by the department.

SECTION 3. NR 400.02 (135) is amended to read:

NR 400.02 (135) "Residual fuel oil" means an industrial fuel oil of grade No. 4, 5 or 6, as determined by the specifications in ASTM ~~D396-02~~ D396-02a, incorporated by reference in s. NR 484.10 (8).

SECTION 4. NR 400.03 (4) (ki) is created to read:

NR 400.03 (4)(kh) "PM<sub>2.5</sub>" -- particulate matter with an aerodynamic diameter  $\leq 2.5 \mu\text{m}$

SECTION 5. NR 404.02 (4e) and (4m) are renumbered NR 400.02 (123e) and (123s), and as renumbered are amended to read:

NR 400.02 (123e) "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured in the ambient air by a reference method based on Appendix ~~N~~ L of 40 CFR part 50, incorporated by reference in s. NR 484.04(6g), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03(5), or by an equivalent method.

(123s) "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in the ambient air by a reference method based on Appendix J of 40 CFR part 50,

incorporated by reference in s. NR 484.04 (5), and designated in accordance with 40 CFR part 53, incorporated by reference in s. NR 484.03 (5), or by an equivalent method.

SECTION 6. NR 405.02 (25k) (intro.) is amended to read:

NR 405.02 (25k) (intro.) "Replacement unit" means an emissions unit for which all the criteria listed in pars. (a) to (d) are met. No creditable emission reductions ~~shall~~ may be generated from shutting down the existing emissions unit that is replaced.

SECTION 7. NR 405.02 (27) (a) 5m. in Table A is created to read:

NR 405.02 (27) (a) 5m. PM<sub>2.5</sub>: 10 tpy, also 40 tpy of nitrogen oxides or 40 tpy of sulfur dioxide

SECTION 8. NR 405.07 (8) (a) 3m. is created to read:

NR 405.07 (8) (a) 3m. PM<sub>2.5</sub> – 2.3 µg/m<sup>3</sup>, 24 hour average

SECTION 9. NR 406.04 (1) (n) (intro.) and 1. and 2. (intro.) are amended to read:

NR 406.04 (1) (n) (intro.) Renovation or demolition operations involving ~~friable asbestos-containing~~ regulated asbestos-containing material provided that the provisions of subd. 1. or 2. are met:

1. The amount of ~~asbestos-containing~~ regulated asbestos-containing material is less than 260 linear feet on pipes or 160 square feet on other facility components.

2. If the amount of ~~asbestos-containing~~ regulated asbestos-containing material is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all of the following conditions are met:

SECTION 10. NR 406.04 (2) (cs) is created to read:

NR 406.04 (2) (cs) The maximum theoretical emissions from the source for PM<sub>2.5</sub> do not exceed 2.2 pounds per hour.

SECTION 11. NR 407.03 (2) (be) is created to read:

NR 407.03 (2) (be) The maximum theoretical emissions from the source for PM<sub>2.5</sub> do not exceed 2.2 pounds per hour.

SECTION 12. NR 408.02 (32) (a) 5m. is created to read:

NR 408.02 (32) (a) 5m. PM<sub>2.5</sub>: 10 tpy; 40 tpy for nitrogen oxides; and 40 tpy for sulfur dioxide.

SECTION 13. NR 408.06 (1) (cm) is created to read:

NR 408.06 (1) (cm) PM<sub>2.5</sub> emission increases may be offset by decreases in nitrogen oxides or sulfur dioxide emissions, that are otherwise creditable, at a ratio of 40 tpy of sulfur dioxide for each ton of direct PM<sub>2.5</sub> emissions and 200 tpy of nitrogen oxides for each ton of direct PM<sub>2.5</sub> emissions.

SECTION 14. NR 484.03 (5) in Table 1 is amended to read:

NR 484.03 (5)

**Table 1**  
**CFR References**

<b>CFR Reference</b>	<b>Title</b>	<b>Incorporated by Reference For</b>
(5) 40 CFR part 53	Ambient Air Monitoring Reference and Equivalent Methods	<del>NR 404.02(4e) and (4m)</del> <u>NR 400.02 (123e) and (123s)</u> NR 404.06(3)(b)

SECTION 15. NR 484.04 (5) and (6g) in Table 2 are amended to read:

NR 484.04 (6g)

**Table 2**

**CFR Appendix References**

<b>CFR Appendix Referenced</b>	<b>Title</b>	<b>Incorporated by Reference For</b>
(5) 40 CFR part 50 Appendix J	Reference Method for the Determination of Particulate Matter as PM <sub>10</sub> in the	<del>NR 404.02(4m)</del> <u>NR 400.02 (123s)</u>

CFR Appendix Referenced	Title	Incorporated by Reference For
(6g)	40 CFR part 50 Appendix L	Reference Method for the Determination of Particulate Matter as PM <sub>2.5</sub> in the Atmosphere
		<del>NR 404.02(4e)</del> <u>NR 400.02 (123e)</u>

SECTION 16. 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 17. 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

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