

Report From Agency

REPORT TO LEGISLATURE
NR 400, 419, 421, 422, 423, 425, 439, and 484, Wis. Adm. Code

Board Order No. AM-20-18
Clearinghouse Rule No. CR 20-088

Basis and Purpose of the Proposed Rule

Volatile organic compounds (VOCs) react with nitrogen oxides in the presence of sunlight to form ground-level ozone. Concentrations of ozone above the National Ambient Air Quality Standards (NAAQS) are known to adversely impact human health and the environment. The U.S. Environmental Protection Agency (EPA) has designated several areas in eastern Wisconsin as “nonattainment areas” where ozone concentrations exceed the NAAQS. Emissions sources located in nonattainment areas are subject to more stringent controls under the Clean Air Act (CAA).

Section 182(b)(2) of the CAA requires states to implement VOC reasonably available control technology (RACT) regulations in any ozone nonattainment area classified as “moderate” or above. The State’s VOC RACT program must include regulations that reflect the latest Control Techniques Guidelines (CTGs) issued by EPA for specific source categories.

In 2008, EPA released two updated CTGs that provided recommendations for three source categories: miscellaneous plastic parts coating, miscellaneous metal parts coating, and miscellaneous industrial adhesives. The Department of Natural Resources (the department) started rulemaking around 2009 to incorporate these CTGs into rule. At the time, however, it was unclear whether the 2008 CTGs would be challenged in court and possibly modified. After several years, it became clear that the CTGs would not be litigated and have been in effect since 2008. The AM-20-18 rulemaking effort began in 2018, and the scope statement was published in the Administrative Register on February 4, 2019.

Because Wisconsin has had several ozone nonattainment areas subject to this requirement since the CTGs were issued (Sheboygan County and eastern Kenosha County), the department is proposing to update its existing VOC RACT regulations to reflect the latest EPA CTGs. This will ensure the state remains in compliance with CAA Section 182(b)(2) requirements as they apply to moderate and higher ozone nonattainment areas. Wisconsin’s compliance with all CAA requirements, including ensuring compliance with up-to-date RACT rules, will ensure the state has a legally sufficient state implementation plan (SIP) and allow the state to redesignate eligible ozone nonattainment areas to attainment more quickly.

The department is proposing to revise its existing VOC RACT regulations to reflect these EPA CTGs. The current VOC RACT rules (referred to as “Part I” rules) for metal and plastic parts coatings and adhesive use will continue to apply in the state. The updated VOC RACT requirements (“Part II” rules) will apply in areas of the state that have been, or currently are, designated as nonattainment of the 2008 or 2015 federal ozone standard and classified as moderate (or above). An affected source will either be subject to the Part I rule or the Part II rule for that source category. This will ensure requirements are neither redundant nor conflicting, while still ensuring the state remains in compliance with the CAA’s VOC RACT requirements.

Summary of Public Comments

Comments on the proposed revisions to chs. NR 400, 419, 421, 422, 423, 425, 439, and 484, Wis. Adm. Code, concerning board order AM-20-18, were received on November 4, 2020 from the American Coatings Association (ACA) and on December 15, 2020 from EPA. The following is a summary of comments and the department’s response.

Comment from ACA

1. The ACA urges the department to consider raising the VOC content limit for “Other Substrate Antifoulant Coating” used for marine pleasure craft coatings to 400 g VOC/L or 3.4 lbs VOC/gal.

Response

The proposed rule's maximum VOC content limit for "Other Substrate Antifoulant Coating" under s. NR 422.084 *Plastic parts coating – part 2* is 330 g VOC/L or 2.8 lbs VOC/gal to be consistent with the CTG for Miscellaneous Metal and Plastic Parts Coatings. CTGs presumptively define VOC RACT for their respective source categories. A maximum VOC content limit that is higher than the CTG-recommended limit may preclude EPA approval of this rule section, potentially resulting in a legally insufficient SIP and/or delaying redesignation of an eligible ozone nonattainment area. No change based on this comment has been made.

Comments from EPA

2. "Once in, always in" language should be changed to clarify that the emission restriction cannot be solely on emissions but should be on the "production, hours of operation, and/or capacity utilization" of the source so that the potential to emit is below the applicability threshold.

Response

The department addressed this comment by revising SECTION 4 s. NR 422.01(4) and (Note) to clarify that "maximum theoretical emissions" in ch. NR 422 is defined under s. NR 419.02 (11), which specifies that maximum theoretical emissions may be limited by the imposition of "production, hours of operation, and/or capacity utilization" conditions. The plain language analysis section of the board order was also updated to clarify that permanent and enforceable maximum theoretical emissions restrictions to limit emissions below the applicability threshold(s) must be based on "production, hours of operation, and/or capacity utilization."

3. Existing "once in, always in" language should not be deleted from SECTION 10 s. NR 422.03 (intro.), SECTION 12 s. NR 422.05 (1m), SECTION 13 s. NR 422.06 (1m), SECTION 14 s. NR 422.08 (1m), SECTION 26 s. NR 422.14 (1m), and SECTION 27 s. NR 422.145 (1m) because the language specifies that a source will not be exempt from VOC RACT regulations if subsequent emissions levels exceed the exemption levels.

Response

The proposed "once in, always in" language in SECTION 4 s. NR 422.01(3), (4), and (Note) clarifies the department's longstanding interpretation and application of VOC RACT "once in, always in" applicability for all of ch. NR 422. The proposed SECTION 4 language supersedes the fragmented "once in, always in" language currently under ss. NR 422.03 (intro.), 422.05 (1m), 422.06 (1m), 422.08 (1m), NR 422.14 (1m), and 422.145 (1m). No change based on this comment has been made.

Modifications Made

No public comments or testimony were received at the public hearing.

Appearances at the Public Hearing

The following people attended the public hearing: Mike Cassidy, Kohler; April Greene, Kestrel Tellevate; Curtis Hedman, Wisconsin Department of Health Services; Matt Johnston, Worthington Industries; Mike Kelm, Kohler; Doug Raymond, Raymond Regulatory Resources; and Renee Smits, Spectrum Engineering Inc. None of the public hearing attendees indicated support or opposition to the proposed rule.

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the plain language rule analysis, economic impact analysis, or fiscal estimate as a result of public comments or testimony, as none were received.

Response to Legislative Council Rules Clearinghouse Report

Comments received from the Wisconsin Legislative Council Rules Clearinghouse (LCRC) were related to form, style and placement in administrative code; adequacy of references to related statutes, rules and forms; and clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse, except for those discussed below.

Comment 5.a., In the rule summary's comparison with rules in adjacent states, the State of Indiana is listed, but not the State of Iowa. This should be corrected to describe any rules in Iowa, rather than Indiana.

Response

Per the LCRC's comment, the rule summary was updated to include a comparison with Iowa's rules. However, the comparison to Indiana rules is being retained. A sentence was added explaining that portions of Wisconsin, Illinois, and Indiana comprise a tri-state nonattainment area for the 2008 and the 2015 ozone standards, making the comparison to the state of Indiana appropriate.

Final Regulatory Flexibility Analysis

The department anticipates that the total cost to the single small business as a result of this rule will be approximately \$13,440. More specific cost estimates are provided below.

Miscellaneous metal and plastic parts coating (ss. NR 422.151 and 422.084, Wis. Adm. Code)

The department estimates that one small business may be impacted by the proposed miscellaneous metal and plastic parts coating rules in ss. NR 422.151 and 422.084, Wis. Adm. Code. The department estimates that 23 facilities in Wisconsin's ozone nonattainment areas conduct activities related to miscellaneous metal and plastic parts coating; however, only a small percentage of facilities will have emissions above the applicability threshold for VOC RACT in any given year. Of these 23 facilities, only one facility that is considered a small business, based on the definition in s. 227.114 (1), Stats., is known to the department to emit VOCs related to miscellaneous metal and plastic parts coating in excess of the threshold.

In its 2008 CTG, EPA estimated the national average cost of this RACT control is an annualized cost of \$10,500/facility in 2007 dollars. Updated for 2020, the cost for RACT control is an annualized cost of \$13,440/facility. This gives a total estimated annualized cost to implement RACT control for small businesses using the updated CTG limits for miscellaneous metal and plastic parts coating processes of \$13,440.

Miscellaneous industrial adhesives (s. NR 422.128, Wis. Adm. Code)

The department does not anticipate small businesses to be impacted by the proposed adhesive use rule in s. NR 422.128, Wis. Adm. Code. The department estimates that nine facilities in Wisconsin's ozone nonattainment areas currently conduct activities involving miscellaneous industrial adhesives applications; however, in the past five years, none of the facilities have had emissions above the applicability threshold for VOC RACT in any given year.

Given that no facilities considered small businesses are known to the department to currently be emitting VOCs related to adhesive use in excess of the threshold, the total estimated annualized cost to implement RACT control for small businesses using the updated CTG limits for miscellaneous industrial adhesives applications is \$0.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.