

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT:

Request adoption of Order AM-12-09, proposed rules affecting NR 404 and 438 pertaining to air quality standards for ozone and lead.

FOR: FEBRUARY 2010 BOARD MEETING

TO BE PRESENTED BY: Larry Bruss, Chief Regional and Mobile Sources Section

SUMMARY:

The Department proposes to update the ambient air quality standards for ozone and lead in ch. NR 404 and to incorporate the revised lead reporting requirements into ch. NR 438 to be consistent with the federal national ambient air quality standards (NAAQS). These proposed rule revisions would adopt the 2008 8-hr ozone NAAQS and the EPA's revised NAAQS for lead which will provide greater public health protection. This consistency between federal and state air quality standards is required under s. 285.21(1)(a), Stats.

The Natural Resources Board's last action affecting ch. NR 404 was at its October 2009 meeting when it authorized the Department to hold a public hearing on these proposed rule changes.

A public hearing on AM-12-09 was held on December 1, 2009 in Milwaukee. There were no public comments (written or oral) received. The Wisconsin Legislative Council Rules Clearinghouse commented on the form, style and placement in Administrative Code. The Department revised the proposed rule to address the Legislative Council's comments.

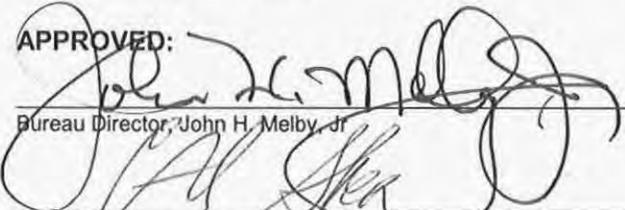
RECOMMENDATION: That the Board adopt Order AM-12-09.

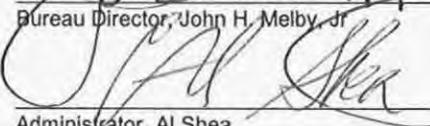
LIST OF ATTACHED MATERIALS:

- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director, John H. Melby, Jr


 Administrator, Al Shea


 Secretary, Matthew J. Frank

2/9/2010
 Date

2/9/10
 Date

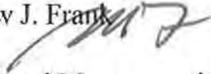
2-12-10
 Date

cc: Laurie Ross - AD/8
Tom Steidl- LS/8

Linda Haddix - LS/8
R. Eckdale - AM/7

DATE: February 9, 2010

TO: Natural Resources Board

FROM: Matthew J. Frank 

SUBJECT: Background Memo on adoption of Order AM-12-09, proposed rules affecting revisions to chs. NR 404 and 438, pertaining to air quality standards for ozone and lead.

1. Why is the rule being proposed?

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as ozone, particular matter, sulfur dioxide and lead. The EPA is required to periodically review the latest scientific information and standards in order to evaluate if and how the existing NAAQS need to be adjusted to more adequately protect human health and welfare.

In 1997, the EPA promulgated a 0.08 parts per million (ppm) 8-hour ozone NAAQS based on its conclusion that the more restrictive 8-hour ozone standard provided greater public health protection than the 1-hour ozone standard. EPA did not however repeal the 1-hour ozone standard, but left it in place. In 2008, EPA significantly strengthened the 8-hour ozone NAAQS for ground-level ozone to 0.075 ppm. Again, EPA left both the previous 1-hour and 8-hour standards in place. The Department is now proposing to adopt the 2008 8-hour ozone NAAQS which will provide even greater public health protection than did the 1997 ozone standard.

In addition, based on its review of the air quality criteria, the EPA has promulgated a new primary and secondary NAAQS for lead set at 0.15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to provide requisite protection for public health and welfare respectively. The older standard of $1.5\mu\text{g}/\text{m}^3$ has been left in place. By adopting the revised standards for lead, Wisconsin's air quality standard for lead will be consistent with the federal NAAQS.

As required by s. 285.21(1)(a), Stats., Wisconsin must promulgate ambient air quality standards similar to the federal NAAQS for the protection of public health and welfare. Consequently, there are no apparent policy alternatives to this proposed action.

2. Summary of the rule.

The proposed rule revisions adopt EPA-promulgated NAAQS for ozone and lead into ch. NR 404, Wis. Adm. Code, and incorporate the revised lead reporting requirements into ch. NR 438, Wis. Adm. Code.

3. How does this proposal affect existing policy?

This proposed rule revision is consistent with existing policy. Under s. 285.21(1)(a) Stats., the Department is required to adopt and enforce the NAAQS in Wisconsin for protection of public health and welfare.

4. Hearing Synopsis

A public hearing on AM-12-09 authorized by the Board was held on December 1, 2009 in Milwaukee, as well as a 30 day comment period on the order. There were no public comments (written or oral) received that directly pertain to Order AM-12-09.

On November 16, 2009, the Wisconsin Legislative Council Rules Clearinghouse issued a report (#09-088) to the Department which included comments on the proposed rule related to Form, Style and Placement in Administrative Code. The Department revised the proposed rule to address the Legislative Council's comments.

5. Information on environmental analysis, if needed.

An environmental analysis of the impact of the proposed rule revisions is not needed because these changes are considered to be a Type III action under s. NR 150.03(3), Wis. Adm. Code. A Type III action is one that normally does not 1) have the potential to cause significant environmental effects, 2) significantly affect energy usage or 3) involve unresolved conflicts in the use of available resources.

6. Final regulatory flexibility analysis.

The proposed rule revisions would modify Wisconsin's ambient air quality standards for ozone and lead. These proposed rules contain no new requirements (compliance, reporting, etc) for any sources, including those classified as small business.

Fiscal Estimate — 2009 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 404 and 438

Subject

Proposed rule revisions to make Wisconsin ambient air quality standards for ozone and lead consistent with federal regulations for these air quality standards.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

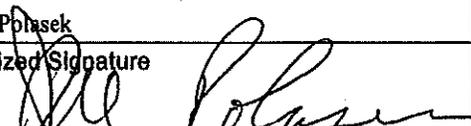
Rule Revision Summary:

The proposed rule revisions are designed to make Wisconsin's ambient air quality standards for ozone and lead consistent with the federal national ambient air quality standards (NAAQS) and to reflect current health science. These proposed rule revisions would adopt the 2008 8-hour ozone NAAQS and EPA's revised NAAQS for lead which will provide greater public health protection and welfare. This consistency between federal and state air quality standards is required under s. 285.21(1)(a), Stats.

Fiscal Estimate:

The proposed rules will have no state or local government fiscal impact. The proposed rules will also not have any direct economic impact on the private sector. If, in the future, EPA were to designate any areas in the state as non-attainment areas for either of the proposed ambient air quality standards, it could become necessary to develop rules to control emissions of ozone precursors or lead. If such rules become necessary, any potential economic impact to the private sector will be evaluated at that time.

Long-Range Fiscal Implications

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 09-10-09

Fiscal Estimate Worksheet — 2009 Session

Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 404 and 438

Subject

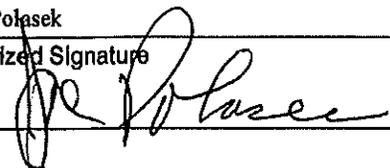
Proposed rule revisions to make Wisconsin ambient air quality standards for ozone and lead consistent with federal regulations for these air quality standards

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ -	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs		-	-
Local Assistance		-	-
Aids to Individuals or Organizations		-	-
Total State Costs by Category		\$ 0	\$ 0
B. State Costs by Source of Funds			
GPR		\$ -	\$ -
FED		-	-
PRO/PRS		-	-
SEG/SEG-S		-	-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ -	\$ -
GPR Earned		-	-
FED		-	-
PRO/PRS		-	-
SEG/SEG-S		-	-
Total State Revenues		\$ 0	\$ 0

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 09-10-09

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 404.04(7); to **amend** NR 438.03(1) Table 1 and 484.04(3) and to **create** NR 404.04(5)(c) and Note, 404.04(7)(a) and (b) and 484.04(6t) and (6v), relating to ambient air quality standards for ozone and lead and new reporting requirements for lead compounds.

AM-12-09

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** s. 285.21(1)(a), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. **Statutory authority:** ss. 285.11(1) and (6) and 285.21(1)(a), Stats.

3. **Explanation of agency authority:**

The Department is required under s. 285.21(1)(a), Stats., to promulgate by rule ambient air standards similar to, but not more restrictive than the national ambient air quality standards (NAAQS). The Department is also authorized under s. 285.11(1) and (6), Stats., to promulgate rules and establish control strategies in order to prepare and implement the State Implementation Plan for the prevention, abatement and control of air pollution in the state.

4. **Related statute or rule:** There are no related statutes that are not identified above.

5. **Plain language analysis:**

Chapter NR 404, Wis. Adm. Code, contains ambient air standards which are intended to be the same as the federal NAAQS promulgated by EPA, as is required under s. 285.21(1)(a), Stats. Chapter NR 438, Wis. Adm. Code, establishes requirements for submission of reports for owners or operators of air contaminant sources related to the ambient air standards that are employed by the Department. The Clean Air Act requires EPA to review the latest scientific information every five years and promulgate NAAQS which are designated to protect public health and public welfare. In 2008, EPA strengthened the 8-hour ozone NAAQS to 0.075 ppm and revised the NAAQS for lead from 1.5 micrograms/cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$.

The Department is proposing to amend chs. NR 404 and 438, Wis. Adm. Code, to maintain consistency with the federal NAAQS. Specifically, the proposed rule revisions would: A) adopt the ozone and lead NAAQS into ch. NR 404, Wis. Adm. Code; and B) incorporate the corresponding lead reporting requirements into ch. NR 438, Wis. Adm. Code.

6. **Summary of, and comparison with, existing or proposed federal regulation:**

The federally-enforced NAAQS are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rules is to make the State-enforced ambient air standards for ozone and lead in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS, as required under s. 285.21(1)(a), Stats.

7. **Comparison with rules in adjacent states:**

These proposed rule revisions are designed to make Wisconsin's ambient air quality standards consistent

with federal NAAQS, which are effective and enforced throughout the United States. Consequently, these proposed rules would be identical to the ambient air standard regulations in effect in the adjacent states.

8. Summary of factual data and analytical methodologies:

The EPA, through its Clean Air Scientific Advisory Committee has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as this order's factual data and analytical methodologies. Information on the federal rule changes are obtained from the federal registers published on March 27, 2008 (Vol. 73, No. 60) for ozone and on November 12, 2008 (Vol. 73, No. 219) for lead.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

In light of the statutory requirement to promulgate by rule new ambient air quality standards similar to but not more restrictive than the federal standards, the Department relies on the federal data and the analytical methodologies EPA used to develop and promulgate the national ambient air quality standards. EPA analysis establishes that NAAQS do not have significant impacts upon small entities, including small businesses because NAAQS themselves impose no regulations upon small entities. Information on the analysis and supporting documents used to determine effects on small entities are contained in the EPA's Regulatory Impact Analysis (RIA) docket EPA-HQ-OAR-2007-0225 for the ozone NAAQS and RIA docket EPA-HQ-OAR-2006-0735 for the lead NAAQS.

An economic impact report was not requested.

10. Effect on small business:

The promulgation of the ozone and lead ambient air quality standards would not have any direct effect on businesses, including those defined as small business. Following the promulgation of the ozone and lead air quality standards, the EPA will determine if any areas in the state should be designated as nonattainment for either of the new air quality standards. The Department is required to develop an air quality management state implementation plan (SIP) to ensure that all ambient air quality standards are attained and maintained in all areas of the state. The future development of that SIP to address ozone and lead may result in emission limitations being developed for specific source categories or implementing emission control technologies which may affect businesses, including small businesses. Any prospective SIP revisions would occur through the development of additional rules, which would include analyses of the rules' potential effects on the private sector, including small businesses.

11. Agency contact person: Larry Bruss, P.O. Box 7921 (AM/7), Madison, WI 53707;
Telephone number: (608) 267-7543; email address: larry.bruss@wisconsin.gov

The consent of the Attorney General will be requested for the incorporation by reference in ch. NR 484 of the federal documents related to the interpretation of the ozone and lead NAAQS.

SECTION 1. NR 404.04(5)(c) and Note are created to read:

NR 404.04(5)(c) 0.075 – maximum 8-hour concentration. The 8-hour primary and secondary ozone ambient air quality standards are attained at an ambient air quality monitoring site when the 3-year

average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P, incorporated by reference in s. NR 484.04(6t).

Note: The Department promulgated the 1-hour and the 8-hour ozone standards, in pars. (a) and (b), respectively, in response to actions by the US EPA. Since the US EPA did not repeal these standards when it promulgated the 8-hour standard reflected in par. (c), the Department has retained them consistent with its statutory obligation under s. 285.21(1)(a), Stats.

SECTION 2. NR 404.04(7) is renumbered NR 404.04(7)(intro.), and as renumbered is amended to read:

NR 404.04(7) LEAD: PRIMARY AND SECONDARY STANDARDS. (intro.) The primary and secondary standards for lead and its compounds, measured as elemental lead, are the following: ~~1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter.~~

SECTION 3. NR 404.04(7) (a) and (b) are created to read.

NR 404.04(7)(a) 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter, as a constituent of suspended particulate matter. The primary and secondary standards for lead and its compounds, measured as elemental lead are attained when the maximum arithmetic mean averaged over a calendar quarter is less than or equal to 1.5 micrograms per cubic meter, as determined in accordance with 40 CFR Part 50, Appendix B, incorporated by reference in s. NR 484.04(3).

(b) 0.15 micrograms per cubic meter – maximum arithmetic mean. The primary and secondary ambient air quality standards for lead are attained when the maximum arithmetic 3-month mean concentration for a 3-year period is less than or equal to 0.15 micrograms per cubic meter, as determined in accordance with 40 CFR part 50, Appendix R, incorporated by reference in s. NR 484.04(6v).

SECTION 4. The entry for Lead compounds in Table 1 of NR 438.03(1) is amended to read:

NR 438.03(1) Table 1

Air Contaminant Name	CAS Number ¹	Reporting Level (lbs/yr)
Lead compounds	7439-92-1 ²	6,000 <u>400</u>

SECTION 5. NR 484.04(3) is amended to read:

NR 484.04

	CFR Appendix Referenced	Title	Incorporated by Reference For
(3)	40 CFR part 50 Appendix B	Reference Method for the Determination of suspended Particulate Matter in the Atmosphere (High Volume Method)	NR 404.02(11) <u>NR 404.04(7)(a)</u>

SECTION 6. NR 484.04(6t) and (6v) are created to read:

NR 484.04

	CFR Appendix Referenced	Title	Incorporated by Reference For
(6t)	40 CFR part 50 Appendix P	Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone	NR 404.04(5)(c)
(6v)	40 CFR part 50 Appendices R	Interpretation of the National Ambient Air Quality Standards for Lead	NR 404.04(7)(b)

SECTION 7. 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 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin
Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

By _____

Matthew J. Frank, Secretary

(SEAL)