

**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:**

Request authorization for public hearing for Board Order AM-20-08, proposed rules affecting ch. NR 428 pertaining to modifications to address USEPA's concerns relative to SIP approval with the adopted NOx RACT rule and to incorporate minor revisions.

**FOR: OCTOBER, 2008 BOARD MEETING**

**TO BE PRESENTED BY:** Larry Bruss, Regional Pollutant and Mobile Source Section Chief

**SUMMARY:**

As set forth under s. NR 428.20, NOx RACT requirements currently apply based on the total potential to emit of all NOx emissions units at a facility. The US EPA has indicated that the Department's definition for potential to emit is not adequate for the purpose of determining RACT applicability, and therefore cannot approve the NOx RACT rules as part of Wisconsin's State Implementation Plan (SIP). To address this issue, the Department is proposing to define and use the term "maximum theoretical emissions" for NOx RACT applicability. The substance of this proposed definition was used in development of the currently adopted RACT rule requirements. In addition, this definition is consistent with the definition in s. NR 419.02(11) that applies under the state's VOC RACT requirements.

In addition to the concerns raised by US EPA, the DNR is also proposing to revise the NOx RACT rules and associated NR 428 NOx rules to incorporate miscellaneous corrections, simplify rule requirements and address consistency and duplication of requirements between the adopted RACT program and previously existing requirements of ch. NR 428. It is anticipated that specific modifications may be identified through comments to the rule. These proposed revisions are not intended to change emission limit requirements or the sources subject to NOx RACT emission limits.

The current rules apply to stationary sources in the ozone non-attainment counties of southeastern Wisconsin and include electric utility generators and industrial combustion sources.

**RECOMMENDATION:** That the Board authorize the Department to hold hearings on Order AM-20-08.

**LIST OF ATTACHED MATERIALS:**

- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/>            | Fiscal Estimate Required                              | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/>            | Attached |
| No | <input type="checkbox"/>            | Background Memo                                       | Yes | <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

/s/	9/22/08
_____	_____
Bureau Director, John H. Melby, Jr	Date
/s/	9/23/08
_____	_____
Administrator, Al Shea	Date
/s/	10/07/08
_____	_____
Secretary, Matthew J. Frank	Date

DATE: September 22, 2008 FILE REF: 4533

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: Request for public hearing authorization for Board Order AM-20-08, proposed rules affecting ch. NR 428 pertaining to modifications to address USEPA's concerns relative to SIP approval with the adopted NO<sub>x</sub> RACT rule and to incorporate minor revisions.

### **Why are the rule revisions being proposed?**

In April and May 2007, the Natural Resources Board adopted rules establishing NO<sub>x</sub> emission limits which constitute a Reasonably Available Control Technology (RACT) program for meeting Clean Air Act requirements for major sources in ozone non-attainment areas. These rules were submitted to US EPA for approval as part of Wisconsin's State Implementation Plan (SIP) for ozone control. The US EPA is proposing conditional approval of these rules. The conditional approval requires DNR to make modifications to the NO<sub>x</sub> RACT rules in ch. NR 428 prior to final federal approval.

In conjunction with revisions required for US EPA approval, a number of revisions are being proposed to address miscellaneous issues identified by the Department and affected sources during implementation of the rules in ch. NR 428.

### **Summary of the rule revisions**

#### Revisions for SIP approval

As stated in s. NR 428.20, NO<sub>x</sub> RACT requirements are applicable to facilities which have potential NO<sub>x</sub> emissions equal to or greater than 100 tons per year. These facilities under the Clean Air Act are known as major sources. In proposing conditional federal approval, the US EPA requires the term "potential to emit" used in identifying major sources under s. NR 428.20, to be defined as the amount of NO<sub>x</sub> which can be theoretically emitted from emissions units at the facility on an uncontrolled basis over the year. This theoretical emissions total may consider a restriction on operational capacity or hours, if it is federally enforceable.

The proposed rule revisions incorporate the required EPA definition for identifying major sources. Additionally, this proposed revision, replaces the terminology of "potential to emit" in the existing rule with "maximum theoretical emission". This rule change does not change the sources subject to NO<sub>x</sub> RACT emission limits.

#### Revisions for Clarifications and Implementation

There are a number of miscellaneous revisions proposed in the rule package consistent with the intent of the existing rules. However, there are no changes proposed to emission limitations or the sources subject to the emission limitations. The rule revisions simplify implementation and clarify requirements. These revisions include:

- The existing NO<sub>x</sub> RACT rule identifies electric utility owned units as those subject to the federal CAIR rule. The proposed rule revision amends these provisions to account for the vacatur of the CAIR rule.
- The existing NO<sub>x</sub> RACT rule allows sources to apply for an alternative emission limit or compliance schedule. However, the applications were due by May 1, 2008 even though in some cases requirements are not effective until 2013. The rule revision allows additional time for sources to submit an application for an alternative requirement.
- The existing NO<sub>x</sub> RACT rule prohibits a source with an approved alternative emission limit or compliance schedule from participating in emissions averaging at any time. The rule revision only prohibits participation in the emissions averaging program for purposes of demonstrating compliance with an alternative emission limit of compliance schedule.
- The new source NO<sub>x</sub> limits in s. NR 428.04 are applicable to units that undergo modification. The proposed revision modifies the existing rule to avoid triggering new source NO<sub>x</sub> limits when the modification is made solely to comply with existing NO<sub>x</sub> control requirements.
- Several revisions allow sources subject to monitoring and reporting requirements under different provisions in ch. NR 428 to satisfy all requirements by meeting one set of monitoring and reporting requirements. These revisions also allow certain sources to demonstrate compliance through periodic stack testing instead of more costly continuous emissions monitoring.
- A number of miscellaneous revisions are proposed to clarify monitoring requirements and deadlines.
- The NO<sub>x</sub> limits in s. NR 428.05, established prior to the RACT program, are intended to apply to sources existing prior to February 1, 2001 with no lapse in applicability unless the source becomes subject to the new source limits in s. NR 428.04 due to a major modification. The applicability statement in s. NR 428.05(1) is being revised to remove the reference to "modified" sources to clarify this intent.

**How does this proposal affect existing policy?**

The proposed rule modifications do not alter the existing policy.

**Has the Board dealt with these issues before?**

In 2000, the Board initially established ch. NR 428 and NO<sub>x</sub> emission requirements in order to fulfill Clean Air Act rate-of-progress emission reduction requirements related to 1-hour ozone non-attainment areas.

In April and May 2007, the Board adopted additional rules to ch. NR 428 to establish a Reasonably Available Control Technology (RACT) program as required by the Clean Air Act for control of major sources of nitrogen oxide in 8-hour ozone non-attainment areas.

**Who will be affected by the proposed rule revisions?**

The existing rules in ch. NR 428 apply to large combustion sources in the ozone non-attainment counties of southeast Wisconsin. The proposed revisions are not anticipated to alter the sources currently subject to emission requirements.

### **Information on the environmental analysis**

The existing rules in ch. NR 428 were established to reduce NO<sub>x</sub> emissions in the ozone non-attainment counties in southeast Wisconsin. The development of these rule requirements did not require an environmental analysis. The revisions proposed do not alter the emission limits and controls evaluated in formulating the existing requirements, therefore there is no change in environmental impact or need for an environmental analysis for this rule package

### **Small business analysis**

The existing rule requirements are applicable to large industrial or electric generation sources. Based on the limited nature of the proposed changes to the existing rule there is no impact anticipated to small businesses.

### **Name, Address, Telephone Number and E-mail Address of the Agency Contact**

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Thomas.Karman@wisconsin.gov

cc: Larry Bruss - AM/7  
Robert Eckdale - AM/7  
Tom Karman – AM/7  
Laurel Steffes - CE/6

## Fiscal Estimate — 2008 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated  <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number  Bill Number	Amendment Number if Applicable  Administrative Rule Number AM-20-08
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**Subject**

Proposed rules modifications affecting ch. NR 428 to address USEPA's concerns relative to SIP approval with the adopted NOx RACT rule and to incorporate minor revisions.

**Fiscal Effect**

State:  No State Fiscal Effect

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

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> 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 Summary:** The proposed revisions to ch. NR 428 address criteria for federal approval of the Reasonably Available Control (RACT) Program. Specifically, EPA requires incorporating into rule the basis for identifying major sources subject to the RACT program as those sources with maximum theoretical emissions equal to or greater than 100 tons per year of NOx. Incorporating this concept is not anticipated to change the emissions units subject to NOx emission limitations as the currently adopted RACT program and applicability of emission limitations therein were originally developed on the basis of maximum theoretical emissions.

In general other revisions proposed to ch. NR 428 affect corrections and address implementation issues which also do not change the affected units and intended emission reductions. One proposed revision, however, does address whether an emissions unit is subject to an existing or new source emission limitation under ch. NR 428. Currently, an emissions unit through installation of control equipment to meet a NOx emission limitation may trigger major modification levels and applicability of a more stringent new source NOx emission limitation. The ch. NR 428 rules established emission limitations by source category with no intent of triggering a more stringent emission limit in meeting the original applicable limit. Therefore, this specific modification is consistent with the original intent and emission reductions and cost evaluated in developing the currently adopted rules.

**Fiscal Estimate:** There is no anticipated fiscal impact from these rule revisions. Since the rule revisions proposed in Board Order AM-20-08 do not change the overall NOx emission requirements or the emissions units anticipated to be subject to emission limitations there is no change anticipated due to these rule revisions versus the original fiscal estimates supporting adoption of current ch. NR 428 requirements.

**Long-Range Fiscal Implications**

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

## Fiscal Estimate Worksheet — 2008 Session

Detailed Estimate of Annual Fiscal Effect

Original       Updated  
 Corrected       Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number AM-20-08

**Subject**

Proposed rules modifications affecting ch. NR 428 to address USEPA's concerns relative to SIP approval with the adopted NOx RACT rule and to incorporate minor revisions.

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:	
A. State Costs by Category	Increased Costs	Decreased Costs
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	\$	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

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

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 428.04(1) and (3)(b), 428.05(1) and (4)(b)2., 428.07(intro.), (1)(a) and (b)1. and 3., (3) and (4)(c), 428.08(title) and (2)(title), 428.09(2)(a), 428.20(1), 428.22(2)(intro.), 428.23(1)(b)1., 428.24(1)(b)(intro.) and 428.25(1)(a)1.a. and c. and (3)(b) and to **create** NR 428.02(7e), 428.08(2)(f), 428.12, 428.23(1)(b)9. relating to modification of existing rules for control of nitrogen oxide (NO<sub>x</sub>) emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin. The proposed revisions relate to issues for SIP approvability and miscellaneous implementation issues.

**AM-20-08**

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

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

**2. Statutory authority:** s. 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 rule-making authority. Section 285.11(1) Stats., gives the Department the authority to promulgate rules consistent with ch. 285, Stats. Section 285.11(6), Stats., authorizes the Department to develop and revise a state implementation plan for the prevention, abatement and control of air pollution.

**4. Related statute or rule:** The current provisions of ch. NR 428 established nitrogen oxide emission limits for new and existing facilities which are located in ozone nonattainment counties. The primary intent of these provisions is to fulfill Clean Air Act (CAA) requirements for demonstrating rate-of-progress towards attaining the 1-hour ozone standard and establishment of a Reasonably Available Control Technology (RACT) program for major sources of nitrogen oxide emissions (NO<sub>x</sub>) in counties designated as nonattainment under the 8-hour ozone standard. Modifications are proposed to existing portions of ch. NR 428.

**5. Plain language analysis:**

The proposed revisions address two areas: 1) required modifications to the NO<sub>x</sub> RACT program to meet minimum criteria for conditional Federal approval of the program into the State Implementation Plan (SIP); and 2) revisions identified by the department and stakeholders during implementation which clarify and facilitate implementation of requirements within ch. NR 428.

Revisions for SIP approval

As stated in s. NR 428.20, NO<sub>x</sub> RACT requirements are applicable to facilities which have potential NO<sub>x</sub> emissions equal to or greater than 100 tons per year. These facilities under the Clean Air Act are known as major sources. In proposing federal approval, the US EPA requires that the term "potential emissions", used in identifying major sources, be defined as the amount of NO<sub>x</sub> which can be theoretically emitted from emissions units at the facility on an uncontrolled basis over the year. These total potential emissions may consider a restriction on operational capacity or hours, if those restrictions are federally enforceable.

To address EPA's concerns, the proposed rules incorporate a definition of "maximum theoretical emissions" in identifying which sources are subject to NO<sub>x</sub> RACT requirements. This approach is consistent with the use of this term in s. NR 419.02(11) for identifying the applicability of the state's VOC RACT requirements.

#### Revisions for Clarifications and Implementation

There are a number of miscellaneous revisions proposed in the rule package consistent with the intent of the existing rules. These revisions do not change the emission limitations or the sources subject to the emission limitations. The revisions are focused to implementation issues and clarification of requirements. These revisions include:

- The existing NO<sub>x</sub> RACT rule identifies electric utility owned units as those subject to the federal CAIR rule. The proposed rule revision amends these provisions to account for the vacatur of the CAIR rule.
- The existing NO<sub>x</sub> RACT rule allows sources to apply for an alternative emission limit or compliance schedule. However, the applications were due by May 1, 2008 even though in some cases requirements are not effective until 2013. The rule revision allows additional time for sources to submit an application for an alternative requirement.
- The existing NO<sub>x</sub> RACT rule prohibits a source with an approved alternative emission limit or compliance schedule from participating in emissions averaging at any time. The rule revision only prohibits participation in the emissions averaging program for purposes of demonstrating compliance with an alternative emission limit of compliance schedule.
- The new source NO<sub>x</sub> limits in s. NR 428.04 are applicable to units that undergo modification. The proposed revision modifies the existing rule to avoid triggering new source NO<sub>x</sub> limits when the modification is made solely to comply with existing NO<sub>x</sub> control requirements.
- Several revisions allow sources subject to monitoring and reporting requirements under different provisions in ch. NR 428 to satisfy all requirements by meeting one set of monitoring and reporting requirements. These revisions also allow certain sources to demonstrate compliance through periodic stack testing instead of more costly continuous emissions monitoring.
- A number of miscellaneous revisions are proposed to clarify monitoring requirements and deadlines.
- The NO<sub>x</sub> limits in s. NR 428.05, established prior to the RACT program, are intended to apply to sources existing prior to February 1, 2001 with no lapse in applicability unless the source becomes subject to the new source limits in s. NR 428.04 due to a major modification. The applicability statement in s. NR 428.05(1) is being revised to remove the reference to "modified" sources to clarify this intent.

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

The NO<sub>x</sub> emission requirements of NR 428 are in place to fulfill federal ozone requirements in non-attainment areas for demonstrating rate-of-progress towards meeting 1 hour ozone attainment and for implementing a Reasonably Available Control Technology program for major sources of NO<sub>x</sub> emissions (NO<sub>x</sub> RACT). Since there are no direct federal emission limitations, states must meet these requirements through development of control requirements and adoption of them into the State Implementation Plan. Many states have NO<sub>x</sub> emission control programs in place or are in the process of evaluating and developing necessary rules to meet federal ozone non-attainment requirements.

EPA does regulate NO<sub>x</sub> emissions for similar sources and to similar control levels as those contained in ch. NR 428. These EPA regulations include new source performance standards, new source review and prevention of significant deterioration requirements, federal engine standards, the Acid Rain program, the NO<sub>x</sub> State SIP Call and various source specific consent decrees.

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

The need to implement NO<sub>x</sub> emission control requirements in adjacent states differ based on ozone non-attainment designations and the resulting applicable federal requirements. Illinois is in the process of developing NO<sub>x</sub> RACT rules. Ohio, Indiana, and Michigan are evaluating their applicable federal requirements based on attainment status. And Iowa and Minnesota currently do not have to respond to federal requirements for reduction in NO<sub>x</sub> emissions. As in the case of ch. NR 428, all rules developed by these states for ozone related purposes must undergo federal approval for inclusion into their State Implementation Plan.

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

Several proposed revisions are needed to address EPA's concern for approving the RACT rules into the State Implementation Plan. Other proposed revisions address implementation issues and the need for clarifications by the Department staff and stakeholders.

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

The existing rule requirements are applicable to large industrial or electric generation sources. Based on the limited nature of the proposed changes to the existing rule there is no impact anticipated to small businesses.

**10. Agency contact person:**

Thomas Karman

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E-mail: [Thomas.karman@dnr.state.wi.us](mailto:Thomas.karman@dnr.state.wi.us)

**11. Place where comments are to be submitted and deadline for submission:**

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Thomas Karman  
Department of Natural Resources  
Bureau of Air Management  
PO Box 7921  
Madison WI 53707  
Fax: (608) 267-0560  
[Thomas.karman@dnr.state.wi.us](mailto:Thomas.karman@dnr.state.wi.us)

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules

Internet Web site at <https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmoId=4323>.

Hearing dates and the comment submission deadline are to be determined.

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SECTION 1. NR 428.02(7e) is created to read:

NR 428.02(7e) “Maximum theoretical emissions” means the quantity of NO<sub>x</sub> emissions that theoretically could be emitted by a stationary source without consideration of control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. When appropriate, and upon request by the source owner or operator, maximum theoretical emissions may be limited by the imposition of conditions in a federally enforceable permit. The conditions shall be used in place of design capacity or maximum production capacity in calculating the maximum theoretical emissions for the source and may include, among other things, the establishment of production limitations, capacity limitations, or limitations on the hours of operation of any emission source, or a combination of any limitations. Production or capacity limitations shall be established on the basis of no longer than one month and may allow for averaging for up to 12 consecutive months.

SECTION 2. NR 428.04(1) and (3)(b) are amended to read:

NR 428.04(1) APPLICABILITY. The requirements of this section apply to emissions units described in this section that are located in Kenosha, Milwaukee, Ozaukee, Racine, Washington or Waukesha County and that are constructed or that undergo a major modification, as that term is described in ch. NR 405 or 408, after February 1, 2001. When determining whether an emissions unit undergoes a major modification for purposes of this section, any increase in CO emissions resulting from the operation of the emissions unit or operation of NO<sub>x</sub> emissions control equipment for purposes of meeting state or federal NO<sub>x</sub> emission requirements will not be considered in the emissions calculations.

(3)(b) *Specific requirements.* The owner or operator of each NO<sub>x</sub> emissions unit subject to the requirements of sub. (2) shall determine the ~~annual~~ unit's average NO<sub>x</sub> emission rate, ~~in pound per million Btu,~~ using methods and procedures specified in 40 CFR part 60, Appendix B, incorporated by reference in s. NR 484.04(21), or other ~~combustion~~ emissions monitoring methods approved by the department.

SECTION 3. NR 428.05(1) and (4)(b)2. are amended to read:

NR 428.05 (1) **APPLICABILITY.** The requirements of this section apply to emissions units described in this section that are located in Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington or Waukesha County and that were initially constructed ~~or last modified~~ on or before February 1, 2001.

(4)(b)2. The owner or operator of an emissions unit subject to any of the requirements of sub. (3)(b) to (e) shall determine the unit's average NO<sub>x</sub> emission rate, ~~in pounds per million Btu,~~ using methods and procedures specified in 40 CFR part 60, Appendix B, incorporated by reference in s. NR 484.04(21), or other ~~combustion~~ emissions monitoring methods approved by the department.

SECTION 4. NR 428.07(intro.), (1)(a) and (b)1. and 3., (3) and (4)(c) are amended to read:

NR 428.07 **General requirements.** (intro) ~~The~~ Except as provided in s. NR 428.12, the owner or operator of an NO<sub>x</sub> emissions unit subject to the requirements of subch. I shall comply with the monitoring and reporting requirements of this subchapter.

(1)(a) ~~By the dates listed in sub. (2), the~~ The owner or operator of an NO<sub>x</sub> emissions unit shall submit to the department a monitoring plan that describes in detail the systems to be used on the unit to satisfy the monitoring requirements of this subchapter- by the following deadlines:

1. For an emissions unit subject to emission limitations in s. NR 428.05(3), by December 21, 2002.

2. For an emissions unit subject to emission limitations in s. NR 428.04(2), at least 180 days prior

to initial operation.

(b)1. Install all monitoring systems required under ~~this subchapter~~ s. NR 428.08 for monitoring NO<sub>x</sub> ~~mass emissions~~. This includes all systems required to monitor NO<sub>x</sub> emission rate, NO<sub>x</sub> concentration, heat input and flow, in accordance with ~~s. ss. NR 428.08 and~~ NR 439.09.

3. Successfully complete all certification tests and meet all ~~other provisions~~ operating specifications of this subchapter and 40 CFR parts 60 and 75 as applicable to the monitoring systems required for an emissions unit under subds. 1. and 2.

(3) REPORTING DATA PRIOR TO INITIAL CERTIFICATION. The owner or operator of an NO<sub>x</sub> emissions unit under sub. (2) (b) or (c) shall determine, record and report NO<sub>x</sub> ~~mass emissions~~, heat input, if required for purposes of compliance, and any other values required to determine NO<sub>x</sub> ~~mass emissions~~, for example NO<sub>x</sub> emission rate and heat input or NO<sub>x</sub> concentration and stack flow, using the provisions of 40 CFR 75.70(g), from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(4)(c) No owner or operator of an NO<sub>x</sub> emissions unit may disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO<sub>x</sub> ~~mass emissions~~ emitted, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this subchapter.

SECTION 5. NR 428.08(title) and (2)(title) are amended to read:

NR 428.08(title) **Specific provisions for monitoring NO<sub>x</sub> and heat input for the purpose of calculating NO<sub>x</sub> ~~mass emissions~~.**

(2)(title) ~~NON-UTILITY~~ OTHER UNITS.

SECTION 6. NR 428.08(2)(f) is created to read:

NR 428.08(2)(f) An owner or operator of an emissions unit that installs and operates a continuous NO<sub>x</sub> emissions monitoring system according to the requirements of 40 CFR Part 75 satisfies requirements of this subsection.

SECTION 7. NR 428.09(2)(a) is amended to read:

NR 428.09(2)(a) Meet all of the requirements of 40 CFR part 75 related to monitoring and reporting NO<sub>x</sub> mass emissions during the entire year and meet the reporting deadlines specified in sub. (1).

SECTION 8. NR 428.12 is created to read:

NR 428.12 **Alternative monitoring, recordkeeping and reporting.** (1) RACT EMISSIONS UNITS. The owner or operator of an NO<sub>x</sub> emissions unit that is also subject to an emission limitation in s. NR 428.22 may satisfy the NO<sub>x</sub> emissions monitoring and reporting requirements of this subchapter by meeting the applicable NO<sub>x</sub> emissions monitoring requirements in s. NR 428.23(1)(b) and (2) and the recordkeeping and reporting requirements in s. NR 428.24(1).

(2) NON-RACT EMISSIONS UNITS. The owner or operator of an NO<sub>x</sub> emissions unit subject to an emission limitation in s. NR 428.04(2) or 428.05(3) may satisfy the NO<sub>x</sub> emissions monitoring and reporting requirements of this subchapter by meeting, as applicable by source type, the NO<sub>x</sub> emissions monitoring requirements in s. NR 428.23(1)(b) and recordkeeping and reporting requirements in s. NR 428.24(1).

SECTION 9. NR 428.20(1) is amended to read:

NR 428.20(1) APPLICABILITY. The requirements of this subchapter apply to the owner or operator of an NO<sub>x</sub> emissions unit which is in a source category identified in s. NR 428.22 and which is

located at a facility with a combined total ~~potential to emit~~ maximum theoretical emissions for all NO<sub>x</sub> emissions units of 100 tons per year or more of NO<sub>x</sub> and which is in the county of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington or Waukesha.

SECTION 10. NR 428.22(2)(intro.) is amended to read:

NR 428.22(2)(intro.) ELECTRIC UTILITY BOILER COMPLIANCE SCHEDULE. The owner or operator of an electric utility boiler ~~subject to the provisions of 40 CFR part 97~~ shall demonstrate compliance with the following interim NO<sub>x</sub> emission limitations, as applicable, on a 30-day rolling average by May 1, 2009 and with the emission limitations in sub. (1)(a) on and after May 1, 2013:

SECTION 11. NR 428.23(1)(b)1. is amended to read:

NR 428.23(1)(b)1. 'Part 75 continuous emissions monitoring.' The owner or operator of an ~~affected unit as defined under s. NR 400.02(11), or an emissions unit subject to 40 CFR part 97~~ shall ~~monitor NO<sub>x</sub> emissions for requirements of this subsection by installing and operating monitoring equipment and measuring and recording NO<sub>x</sub> emissions data according to methods and specifications~~ electric utility boiler or combustion turbine that is subject to or becomes subject to the requirements of 40 CFR part 75 and 40 CFR part 75, Appendices A to I, incorporated by reference in s. NR 484.04(27), ~~as required of an affected unit or an emissions unit subject to 40 CFR part 97~~ shall use those monitoring methods and specifications for monitoring NO<sub>x</sub> emissions for purposes of this subsection.

SECTION 12. NR 428.23(1)(b)9. is created to read:

NR 428.23(1)(b)9. 'Emissions monitoring preference.' a. The owner or operator of an emissions unit that installs and operates a continuous NO<sub>x</sub> emissions monitoring system according to the requirements of 40 CFR part 75 shall satisfy the applicable monitoring requirements of this section.

b. The owner or operator of an emissions unit that installs and operates a continuous NO<sub>x</sub> emissions monitoring system according to the requirements of 40 CFR part 60 shall satisfy the applicable monitoring requirements of subd. 3.

SECTION 13. NR 428.24(1)(b)(intro.) is amended to read:

NR 428.24(1)(b) *Reporting* (intro.) In either the reports to the department required under s. NR 428.25(1), if applicable, or s. NR 439.03(1)(b), the owner or operator shall submit the following information:

SECTION 14. NR 428.25(1)(a)1.a. and c. and (3)(b) are amended to read:

NR 428.25(1)(a)1.a. The participation of an emissions unit in an emissions averaging program shall be designated for ~~a full~~ each calendar year. Individual emissions units may not be withdrawn from an averaging program, during a calendar year, unless each emissions unit in the averaging program meets its applicable emission limit in s. NR 428.22.

c. An emissions unit for which the department has approved an alternative emission limit or compliance schedule under sub. (3) may not participate in an emissions averaging program under this subsection for the purpose of demonstrating compliance with the approved alternative emission limitation or compliance schedule.

(3)(b) The owner or operator of the emissions unit shall submit the request with the demonstration for an alternative RACT requirement ~~by the later of May 1, 2008 or by May 1 following the calendar year in which an emissions unit first becomes subject to an emission limitation in s. NR 428.22.~~ by the following deadlines:

1. By May 1, 2008 for an emissions unit subject to a compliance date of May 1, 2009.
2. By May 1, 2011 for an emissions unit subject to a compliance date of May 1, 2013.
3. By May 1 of the year following the calendar year in which an emissions unit first becomes

subject to an emission limitation in s. NR 428.22, if the emissions unit first becomes subject to an emission limitation in s. NR 428.22 after December 31, 2007.

SECTION 15. 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 16. 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)