

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board adopt Board Order AM-21-12, proposed rules affecting chs. NR 400, 405, 408, and 410 related to consistency with federal major source permit review requirements and clean-up of rules related to the former indirect source permit program.

**FOR: January 2014 Board meeting**

**PRESENTER'S NAME AND TITLE:** Gail Good, Air Monitoring Section Chief

**SUMMARY:**

The main focus of the proposed rules is to correct deficiencies in chs. NR 405 and 408 identified by the U.S. Environmental Protection Agency (USEPA). These corrections are necessary to ensure that the Department implements its major new source review permit programs consistent with the Clean Air Act and USEPA requirements. These deficiencies have resulted in disapproval of portions of the Department's state implementation plan and could result in the issuance of a Federal Implementation Plan (FIP) by the USEPA if not corrected. A FIP is a plan promulgated by USEPA, used when a state is unable to develop an adequate plan.

The Department is also proposing to make changes of a clean-up nature to chs. NR 400 and 410 relating to the former indirect source permit program. The Department previously operated an indirect source permit program under ch. NR 411, as previously authorized in s. 285.60, Stats. Chapter NR 411 was repealed through legislative action under 2011 Wisconsin Act 121. The Department is proposing to repeal rules in chs. NR 400 and 410 which previously had the sole purpose of supporting the indirect source permit program.

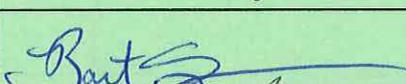
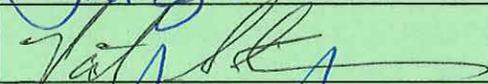
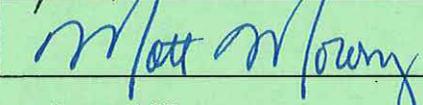
These proposed rules are not expected to be controversial or to have an economic impact on small business. The Board last saw this item in September when it authorized the hearing associated with the proposed rule package.

*12/18/13*

**RECOMMENDATION:** That the Board adopt Board Order AM-21-12.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> background memo   | <input type="checkbox"/> Attachments to background memo               |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary   | <input checked="" type="checkbox"/> Board order/rule                  |

Approved by	Signature	Date
Bart Sponseller, Bureau Director		12/18/13
Pat Stevens, Division Administrator		12/18/13
Cathy Stepp, Secretary		1/6/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: December 17, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order AM-21-12, relating to adoption

**1. Why is the rule being proposed?**

This rule is being proposed to maintain consistency with federal requirements and definitions. Additionally, a portion of the rule package is being proposed to repeal portions of the Wisconsin Administrative Code related to the repealed indirect source program.

**2. Summary of the rule.**

The proposed rule package addresses items identified by USEPA as being deficient with portions of Wisconsin's State Implementation Plans. Specifically, the changes pertain to the fuel use prohibition that is part of the definition of 'major modification' and the clarifications of precursors and condensables in chs. NR 405 and 408. Additionally, the proposed rule package seeks to repeal the definitions and fees in chs. NR 400 and 410 associated with a program that Wisconsin is no longer operating by legislative order.

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

The proposed rules do not affect existing policy because they do not represent a change in operation of Wisconsin's permit program, but rather language changes to ensure consistency with federal definitions. The portion of the proposed rule package related to the indirect source program does not affect existing policy because Wisconsin no longer operates the indirect source program.

**4. Hearing Synopsis**

A hearing for the proposed rule was held on November 5, 2013 in Room 713 of the Natural Resources Building in Madison, Wisconsin. There was one appearance at the meeting from a person representing WE Energies who attended 'as interests may appear'.

The public comment period for the proposed rule ended on November 8, 2013. One comment was received via email during the comment period, but it was not relevant to the rule package proposal.

Comments submitted by the Legislative Council Rules Clearinghouse were generally of a non-substantive nature. Changes specifically suggested by the Clearinghouse to be included in the final rule are included, except for two suggested changes. The first that was not included was addressed in section 2.c. of the report and recommended removal of a reference to a definition created, as part of the proposed rule package, in ch. NR 400. This reference is left in the proposed final rule in chs. NR 405.02 (25i) (ag) and NR 408.02 (29m) (d) to address concerns by USEPA. The second recommended change by the Clearinghouse that was not included in the proposed final rule package is found in section 2.g. of the report and recommended defining the term 'EPA' in the rule language. 'EPA' is defined in ch. NR 400.03 (4) (f) and therefore its usage in the proposed rule language is appropriate.

**5. Information on environmental analysis, if needed.**

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the

potential to cause significant environmental effects, normally does not significantly affect energy usage, and normally does not involve unresolved conflicts in the use of available resources.

**6. Soliciting public input for economic impact analysis.**

In order to prepare the fiscal estimate and economic impact analysis, WDNR requested information and advice on the economic impact of the proposed rule in a solicitation made on August 26, 2013. Responders to the request had until September 9, 2013 to submit information. Three companies responded that they had no input because they believed the proposed rules would not have an economic impact on them.

One commenter responded that the proposed rule provided economic benefit and asked the WDNR to consider providing an analysis of the benefit. Additionally, the commenter felt that the proposed rules addressed broader policy issues whose economic benefits should be analyzed. WDNR does not believe the proposed rules provide economic benefit. Any economic benefit from the repeal of ch. NR 411 occurred when the chapter was repealed through legislative action and is not due to this clean-up action. Testimony, including an estimate of the costs associated with implementing the former indirect source permit program, was given at the time the legislature was considering the repeal of this program. The portions of the rule package associated with the major new source review program found in chs. NR 405 and 408 are amendments to ensure that the rules align with current practice as well as USEPA policy and do not represent changes in implementation. The economic impact analysis speaks to the economic impacts of the proposed rules, not the underlying statutes that give WDNR the authority for rulemaking.

**7. Final Regulatory Flexibility Analysis.**

The proposed rules will not have an impact on small business because they are addressing USEPA identified SIP deficiencies by aligning rules to current practice.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

NR 400 Air Pollution Control Definitions, NR 405 Prevention of Significant Deterioration, NR 408 Construction Permits for Direct Major Sources in Nonattainment Areas, and NR 410 Air Permit, Emission, and Inspection Fees

3. Subject

Proposed rules relating to consistency with federal major source permit review requirements and clean-up of rules related to the former indirect source permit program.

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

9. Policy Problem Addressed by the Rule

The DNR is proposing to amend definitions in chs. NR 400, 405, and 408, Wis. Adm. Code, related to the major new source permit review program for both attainment and nonattainment areas. Definitions proposed to be amended include PM2.5 emissions, PM10 emissions, major modification, and regulated New Source Review (NSR) air contaminant. These changes do not represent a policy problem, but are being proposed in response to deficiencies identified by the U.S. Environmental Protection Agency (USEPA), and are necessary to maintain approval of the state implementation plan.

The DNR is also proposing to repeal several rule provisions whose purpose was in support of an indirect source permit program. This permit program was previously implemented through ch. NR 411, which was repealed through legislative action. The provisions include several definitions and permit fees in chs. NR 400 and 410, Wis. Adm. Code, respectively. These proposed changes do not represent a policy problem, but are appropriate since the purpose of the rules affected was only related to ch. NR 411.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The businesses that were contacted for comment were all those listed as major sources by the DNR. Additionally, Wisconsin Manufacturers and Commerce, Wisconsin Paper Council, and the Wisconsin Utilities Association were contacted.

11. Identify the local governmental units that participated in the development of this EIA.

None

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed changes to the new source review program are being made to ensure consistency with federal regulations and implementation policy governing this permit program. DNR believes that the proposed rule changes will not have an economic impact on any of the entities listed or on the state's economy as a whole because there will be no change from

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

the way DNR currently implements the requirements. In response to a request for information on the economic impacts of the proposed rules, three companies responded that they had no input because they believed the proposed rules would not have an economic impact on them. One commenter responded that the proposed rule provided economic benefit and asked the DNR to consider providing an analysis of the benefit. Additionally, the commenter felt that the proposed rules addressed broader policy issues whose economic benefits should be analyzed. DNR does not believe the proposed rules provide economic benefit. The economic benefit from the repeal of ch. NR 411 occurred when the chapter was repealed through legislative action and is not due to the clean-up action. Testimony, including an estimate of the costs associated with the indirect source permit program, was given at the time of the legislative action. The portions of the rule package associated with the major new source review program found in chs. NR 405 and 408 are amendments to ensure that the rules align with current practice as well as USEPA policy and do not represent changes in implementation. The economic impact analysis speaks to the economic impacts of the proposed rules, not the underlying statutes that give DNR the authority for rulemaking.

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### 13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The alternative to this rule action is to keep the rules as they are which USEPA has already identified as an inconsistency with the major source permit program. In the Federal Register, USEPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the associated state implementation plan within 2 years. The Federal Register states that the FIP will not be promulgated if DNR rectifies the deficiencies within the 2 year timeframe. Not repealing sections of chs. NR 400 and 410 in response to the repeal of NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency between DNR rules and state statute.

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### 14. Long Range Implications of Implementing the Rule

The proposed rule changes to the new source review program do not represent changes in operation by DNR, so there are no long term implications. The proposed rule changes to the indirect source fee structure are of a clean-up nature and also have no long term implications.

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### 15. Compare With Approaches Being Used by Federal Government

The purpose of the proposed changes related to the major source permit program is to ensure state rules are consistent with federal regulations. The federal government does not have regulations for an indirect source permit program.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois and Minnesota are states delegated by the USEPA to implement the federal air pollution program, so they are directly implementing the federal program. Iowa and Michigan, similar to Wisconsin, are SIP-approved states, so they are also implementing a federal program, but through their own state rules and regulations. It is the goal of SIP-approved states to implement federal programs in accordance with federal regulations. The majority of this rule package addresses changes necessary to comply with federal regulations. Those changes not dictated by federal regulations are associated with the repeal of fees related to the indirect source program which is no longer existing in Wisconsin, thereby addressing a current internal inconsistency.

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### 17. Contact Name

Gail Good

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### 18. Contact Phone Number

(608) 266-1058

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 400.02 (101) and (106), and 410.03 (3); to **amend** NR 400.02 (123m) and (124), 405.02 (21) (b) 5. a. and b. and 6., and (25i) (a), 408.02 (20) (e) 5. a. and b. and 6., 408.02 (29m) (c), and 408.06 (1) (a); and to **create** NR 405.02 (25i) (ag) and (ar), and 408.02 (29m) (d), relating to revisions to air pollution control rules in chs. NR 405 and 408, necessary to maintain consistency with federal requirements, as well as in chs. NR 400 and 410, related to the repeal of ch. NR 411.

AM-21-12

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Section 285.11 (1) and (6), Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised.
- 2. Statutory authority:** Sections 227.11 (2) (a), 285.11 (1), (16), and (17), and 285.60 (11) (b).
- 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 Wisconsin Department of Natural Resources (WDNR) the authority to promulgate rules implementing and consistent with ch. 285, Stats. Section 285.11 (6), Stats., requires WDNR to develop a plan for the prevention, abatement, and control of air pollution. The plan must conform with the Clean Air Act and is necessary for new source review implementation. Section 285.11 (16), Stats., requires WDNR to promulgate rules that may limit the classification of a major source to specified air contaminants. Section 285.11 (17), Stats., requires WDNR to promulgate rules, consistent with the federal Clean Air Act, that modify the term 'modification' as it relates to specific categories of stationary sources. Section 285.60 (11) (b), Stats., establishes that the WDNR may not require a permit for an indirect source under ch. 285, Stats.
- 4. Related statute or rule:** There are no related statutes that are not identified above.
- 5. Plain language analysis:** The objective of this rule package is to revise language in chs. NR 400, 405, and 408 to maintain consistency with federal requirements and definitions. Additionally, sections of chs. NR 400 and 410 need to be repealed due to the repeal of ch. NR 411.

In May 2006, WDNR requested approval by the U.S. Environmental Protection Agency (USEPA) of rules promulgated by Wisconsin to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The USEPA approved the SIP revisions, but subsequently requested, through a narrow disapproval, changes to language in chs. NR 405 and 408. The changes pertain to the fuel use prohibition that is part of the definition of "major modification".

Section NR 405.02 (25i) defines "Regulated NSR air contaminant" and specifically identifies volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO<sub>x</sub>) in the definition for clarification purposes. Similarly USEPA requires, through its 2008 New Source Review Rule, explicit identification of NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM<sub>2.5</sub>) within the definition of "Regulated NSR air contaminant". WDNR has also amended the definition of "Regulated NSR air contaminant" in s. NR 408.02 (29m) to specifically address precursor pollutants in nonattainment areas. Additionally, WDNR will amend the

definitions of PM<sub>2.5</sub> and particulate matter with a diameter of 10 micrometers or less (PM<sub>10</sub>) to address a USEPA-identified SIP deficiency. The definitions as currently written do not specifically mention condensables as required in the federal 2008 New Source Review Rule.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see 2011 Wisconsin Act 121), resulted in the repeal of ch. NR 411. The primary purpose of ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore the WDNR proposes to repeal rules whose only purpose is in support of ch. NR 411. Rules proposed for repeal include ss. NR 400.02 (101) and (106), and 410.03 (3). Sections NR 400.02 (101) and (106) define 'modified indirect source' and 'new indirect source' respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source.

**6. Summary of, and comparison with, existing or proposed federal statutes and regulations:** In a letter dated June 17, 2009, the USEPA notified the WDNR that the definition of the term "major modification" in s. NR 405.02 was inadequate because it failed to identify permits issued under federal authority. Wisconsin's Prevention of Significant Deterioration (PSD) program was approved into its SIP on June 28, 1999. Before that, PSD construction permits were issued under federal authority. When s. NR 405.02 (21) (b) 5. was written, the references to federal authority were inadvertently omitted. Because the federal citations were omitted from the rule, USEPA identified that in a very limited situation, the current state definition would allow a source to make a change to use a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a federal permit. The WDNR will amend this definition to ensure that it is consistent with USEPA rule and policy and recognizes all federally-issued permits. WDNR is likewise amending the definition of "major modification" at s. NR 408.02 (20) for nonattainment area new source review.

The alternative to this rule action is to keep the rules as they are which USEPA has already identified as an inconsistency with federal rules. However, in a Federal Register filed June 15, 2012, USEPA disapproved narrow portions of the SIP pertaining to permit requirements in chs. NR 405 and 408 that would be addressed with this rulemaking. In the Federal Register, USEPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the SIP within 2 years. The Federal Register states that the FIP will not be promulgated if WDNR rectifies the deficiencies within the 2 year timeframe.

The clarifications of NO<sub>x</sub> as a precursor to ozone and NO<sub>x</sub> and SO<sub>2</sub> as precursors to PM<sub>2.5</sub>, as well as the clarification of accounting for PM<sub>2.5</sub> and PM<sub>10</sub> condensables as a portion of PM<sub>2.5</sub> and PM<sub>10</sub> emissions are not policy changes nor do they change how WDNR currently implements chs. NR 405 and 408 requirements. On June 15, 2012, USEPA disapproved a narrow portion of Wisconsin's SIP for the 1997 ozone National Ambient Air Quality Standard pertaining to air construction permitting. This was done because NO<sub>x</sub> was not explicitly identified as a precursor to ozone as part of PSD permit program requirements. The final disapproval triggered a requirement that USEPA promulgate a FIP addressing the deficiency no later than 2 years from the date of disapproval. USEPA published a proposed disapproval of Wisconsin's submittal on December 18, 2012, because the submittal did not meet the 2008 PM<sub>2.5</sub> SIP requirements. Specifically, the revisions submitted did not explicitly define the precursors of PM<sub>2.5</sub>, nor did they contain the prescribed language to ensure that gases that condense to form particulate matter (PM), known as condensables, are regulated as part of PM<sub>2.5</sub> and PM of less than 10 micrometer (PM<sub>10</sub>) emissions. Final disapproval to portions of the SIP relating to identifying precursors of PM<sub>2.5</sub> will also result in the promulgation of a FIP unless the deficiencies are addressed.

Not repealing sections of chs. NR 400 and 410 in response to the repeal of NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency between WDNR rules and state statute.

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

Illinois and Minnesota are delegated states, so they are directly implementing the federal program and not implementing their programs through a State Implementation Plan (SIP), as Wisconsin does. Iowa and Michigan, similar to Wisconsin, are SIP approved states, so they are also implementing a federal program, but through their own state rules and regulations. It is the goal of SIP-approved states to implement federal programs in accordance with the regulations set out in federal code. The majority of this rule package addresses changes necessary to comply with federal regulations. Those changes not dictated by federal regulations are associated with the repeal of fees related to the indirect source program which is no longer existing in Wisconsin, thereby addressing a current internal inconsistency.

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

The WDNR did not use any factual data or analytical methodologies in developing the proposed rules. The changes proposed in this rule package are based on deficiencies in the rules identified by the USEPA and a comparison of the current state rules to the federal rules.

**9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact analysis:** The proposed changes to the new source permit review programs only affect major sources which typically do not include small businesses. The WDNR relied on experience in implementation of the new source permit review program to conclude that small businesses would not be affected by the proposed changes. No supporting documents or other analyses were used. The proposed changes related to the former indirect source permit program will not have any effect on small businesses since the indirect permit program has been repealed and the proposed changes are of a clean-up nature only.

**10. Effect on small business:** WDNR does not believe that the proposed rule revisions will affect small businesses.

**11. Agency contact person:** Gail Good; P.O. Box 7921, Madison, WI 53707-7921; Telephone number (608) 266-1058; email address: [gail.good@wisconsin.gov](mailto:gail.good@wisconsin.gov).

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**SECTION 1.** NR 400.02 (101) and (106) are repealed.

**SECTION 2.** NR 400.02 (123m) and (124) are amended 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. PM<sub>2.5</sub> emissions include filterable emissions and gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

(**124**) "PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method or an equivalent or alternative method specified by the department. PM<sub>10</sub>

emissions include filterable emissions and gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

**SECTION 3.** NR 405.02 (21) (b) 5. a. and b. and 6. are amended to read:

NR 405.02 (21) (b) 5. a. The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

b. The source is approved to use the alternative fuel or raw material under any permit issued under this chapter or ch. NR 406, 407, or 408, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

6. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975; pursuant to this chapter, ch. NR 406, or 408 ~~or 40 CFR 52.21~~ or under an operation permit issued pursuant to ch. NR 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR Part 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

**SECTION 4.** NR 405.02 (25i) (a) is amended to read:

NR 405.02 (25i) (a) Any air contaminant for which a national ambient air quality standard has been promulgated ~~and any constituents or precursors for the air contaminants identified by the administrator, e.g., volatile organic compounds are precursors for ozone.~~

~~(Note) Nitrogen oxides have been identified by the administrator as precursors for ozone.~~

**SECTION 5.** NR 405.02 (25i) (ag) and (ar) are created to read:

NR 405.02 (25i) (ag) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions. As defined in s. NR 400.02 (123m) and (124), respectively, these terms include filterable emissions and gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

(ar) Any air contaminant that is identified under this paragraph as a precursor to an air contaminant for which a national ambient air quality standard has been promulgated by the EPA, or that the EPA has determined to be a constituent or precursor to an air contaminant for which a national ambient air quality standard has been promulgated by the EPA. The precursors identified by the administrator are as follows:

1. Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

2. Sulfur dioxide is a precursor to  $PM_{2.5}$  in all attainment and unclassifiable areas.

3. Nitrogen oxides are precursors to  $PM_{2.5}$  in all attainment and unclassifiable areas, unless the department demonstrates to the administrator's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient  $PM_{2.5}$  concentrations.

**SECTION 6.** NR 408.02 (20) (e) 5. a. and b. and 6. are amended to read:

NR 408.02 (20) (e) 5. a. The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to this chapter or ch. NR 405 or 406 or under an operation permit issued pursuant to ch. NR 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

b. The source is approved to use an alternative fuel or raw material under any permit issued under this chapter or ch. NR 405, 406, or 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

6. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to this chapter, ch. NR 405, or 406 or this chapter, or under operation permits issued pursuant to ch. NR 407, or pursuant to a permit issued under 40 CFR Part 51 Appendix S, 40 CFR 52.21, or regulations approved pursuant to 40 CFR Part 51 subpart I.

**SECTION 7.** NR 408.02 (29m) (c) is amended to read:

NR 408.02 (29m) (c) Any air contaminant that is identified under this paragraph as a constituent or precursor of a general air contaminant listed under par. (a) or (b), or that the EPA has determined to be a constituent or precursor of a general air contaminant listed under par. (a) or (b), provided that a constituent or precursor pollutant may only be regulated under this chapter ~~or ch. NR 405~~ as part of regulation of the general air contaminant. The precursors identified by the administrator are as follows:

1. Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

2. Sulfur dioxide is a precursor to  $PM_{2.5}$  in all  $PM_{2.5}$  nonattainment areas.

3. Nitrogen oxides are presumed to be precursors to  $PM_{2.5}$  in all  $PM_{2.5}$  nonattainment areas, unless

the department demonstrates to the administrator's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient PM<sub>2.5</sub> concentrations.

**SECTION 8.** NR 408.02 (29m) (d) is created to read:

NR 408.02 (29m) (d) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions. As defined in s. NR 400.02 (I23m) and (124), respectively, these terms include filterable emissions and gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

**SECTION 9.** NR 408.06 (1) (a) is amended to read:

NR 408.06 (1) (a) ~~Offsets~~ Except as provided in par. (cm), offsets shall be of the same air contaminant class, that is, volatile organic compounds, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, or lead.

**SECTION 10.** NR 410.03 (3) is repealed.

**SECTION 11. 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 12. 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 \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)