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

The Wisconsin Natural Resources Board proposes an order **to repeal** NR 404.04 (9) (c); **to renumber and amend** NR 404.04 (9) (b) 2.; **to consolidate, renumber, and amend** NR 404.04 (9) (a) (intro.), 1., and 2.; and (b) (intro.) and 1.; **to amend** NR 404.04 (9) (title) and 484.04 (6g) and (6r) in Table 2; and **to create** NR 404.04 (9) (am) (title), 1. a. and b., (bm), and (Note), relating to the ambient air quality standards for fine particles ($PM_{2.5}$).

AM-07-15

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Section 285.11(6), Wis. 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), and 285.21(1)(a), Wis. Stats.

3. Explanation of agency authority: Section 227.11(2)(a), Wis. Stats. expressly confers rule making authority to an agency. Section 285.11(1) and (6), Wis. Stats., requires that the Department 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. Section 285.21(1)(a), Wis. Stats., requires that the Department promulgate by rule ambient air quality standards that are similar to, but not more restrictive than the National Ambient Air Quality Standards (NAAQS).

4. Related statute or rule: There are no other statutes or rules directly related to the adoption of the NAAQS for fine particles ($PM_{2.5}$).

5. Plain language analysis: The U.S. Environmental Protection Agency (EPA) is required by the federal Clean Air Act (CAA) to promulgate NAAQS to protect public health (i.e., primary standards) and public welfare (i.e., secondary standards). Under s. 285.21, Wis. Stats., the Department is required to promulgate by rule a similar, but no more restrictive, air quality standard when the U.S. EPA promulgates a new or revised NAAQS.

On January 15, 2013, the U.S. EPA published revisions to the NAAQS for $PM_{2.5}$ (78 FR 3086) and the revised standard was in effect on March 18, 2013. The primary annual standard for $PM_{2.5}$ was revised from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $\mu g/m^3$. The secondary annual standard of 15.0 $\mu g/m^3$ and the primary and secondary 24-hour standards of 35 $\mu g/m^3$ for $PM_{2.5}$ were retained. As a result of this federal action, the Department is proposing to adopt the revised annual $PM_{2.5}$ NAAQS into ch. NR 404, Wis. Adm. Code. In addition, the Department is proposing to revise ch. NR 484, Wis. Adm. Code, to include references to applicable U.S. EPA data handling conventions for $PM_{2.5}$.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations: The Department is proposing to adopt standards that are identical to the EPA promulgated 2013 federal National Ambient Air Quality Standards for $PM_{2.5}$. Thus the proposed standards are not more stringent than the federal standards.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): Since NAAQS are federal standards, they apply in all states. The states of Illinois and Michigan have already

adopted the revised NAAQS standard for $PM_{2.5}$ into their state rules. Minnesota is in the process of rule promulgation and expecting to finalize the rule in the spring of 2016. Iowa is in the early stage of a rule making process to incorporate the revised NAAQS for $PM_{2.5}$.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: As required by s. 285.21 (1) (a), Wis. Stats., Wisconsin must promulgate ambient air quality standards similar to the NAAQS for the protection of public health and welfare. Because the Department is required by statute to adopt the NAAQS and because the Department is proposing to adopt standards identical to the EPA promulgated NAAQS, it did not develop or use data or analytical methodologies to support the proposed adoption of these standards

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact analysis: This rule proposes to adopt the 2012 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) into state administrative code. The Department expects this proposed rule to have no, or minimal, economic impact on private sector businesses or individuals.

Prior to issuing an air permit, the Department is required, under s. 285.63(1)(b), Wis. Stats., to make a finding that emissions from the source will not cause or exacerbate a violation of the ambient air quality standards. The Department is also required by EPA guidance to determine that any approved major construction permit will not cause or exacerbate a violation of the 2012 $PM_{2.5}$ NAAQS. Major construction permits are regulated under the federal Prevention of Significant Deterioration (PSD) program in attainment areas and the New Source Review (NSR) program in nonattainment areas. A major construction permit is required for PSD/NSR major sources that increase emissions above significant emissions thresholds, or for projects at minor sources which increase emissions beyond the applicable permitted emissions thresholds defining a major source under each program. This was the requirement before EPA promulgated the 2012 annual $PM_{2.5}$ NAAQS, and nothing in the proposed rule changes this requirement.

Because sources undertaking major construction permits are already subject to this standard, the only sources potentially impacted by state adoption of this standard are those facilities which are obtaining a minor source construction permit, obtaining an operating permit for the first time, or renewing a Title V operating permit.

The Department finds there would be no, or minimal additional, economic impact (cost or benefit) due to this rule. The above-mentioned sources already need to comply with the 2006 annual $PM_{2.5}$ NAAQS currently in state code. The Department reviewed permitting actions from the year 2011, the last year prior to when EPA finalized the 2012 $PM_{2.5}$ NAAQS, and found that, for these sources, there would be no difference between meeting the 2006 and 2012 annual $PM_{2.5}$ NAAQS when it came to permitting preparation and emission control requirements. Therefore, the Department expects no changes in the administrative cost on these sources when it comes to preparing and obtaining a permit. In addition, since control requirements for these sources also are not expected to change as a result of this rule, the Department also does not expect additional health benefits (or associated economic impact) from this rule.

An economic impact analysis and final fiscal estimate has been completed prior to the submittal of this rule to the Legislative Council as required under s. 227.137(2), Wis. Stats.

10. Effect on small business: As stated above, the Department believes this rule making would have no or minimal economic impact on small businesses. This rule does not change or impose new recordkeeping or reporting requirements on small businesses or change any schedules or deadlines for compliance reporting.

11. Agency contact person: Yu-Lien Chu, WDNR, P.O. Box 7921, Madison, WI 53707-7921; (608) 266-2711; (608) 267-0560 (fax); yulien.chu@wisconsin.gov

12. 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:
Yu-Lien Chu
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707
Fax: (608) 267-0560

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Website (registration required) at
https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=19484 .

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

SECTION 1. NR 404.04 (9) (title) is amended to read

NR 404.04 **(9)** (title) $PM_{2.5}$~~: PRIMARY AND SECONDARY STANDARDS~~.

SECTION 2. NR 404.04 (9) (am) (title) is created to read:

NR 404.04 **(9)** (am) (title) *Primary standards.*

SECTION 3. NR 404.04 (9) (a) (intro.), 1., and 2. are consolidated, renumbered NR 404.04 (9) (am) 1. (intro.) and amended to read:

NR 404.04 **(9)** (am) 1. (intro.) The primary ~~and secondary~~ standards for $PM_{2.5}$ are~~: 1. 15.0~~ 12.0 micrograms per cubic meter (mg/m^3) — annual arithmetic mean concentration~~. 2.~~ and 35 ~~micrograms per cubic meter (~~µg/m^3~~)~~ — 24-hour average concentration~~.~~ , measured in the ambient air as $PM_{2.5}$ by either of the following methods:

SECTION 4. NR 404.04 (9) (am) 1. a. and b. are created to read:

NR 404.04 **(9)** (am) 1. a. A reference method based on 40 CFR part 50, Appendix L.

b. An equivalent method designated in accordance with s. NR 404.06 (3) (b).

SECTION 5. NR 404.04 (9) (b) (intro.) and 1. are consolidated, renumbered NR 404.04 (9) (am) 2., and amended to read:

NR 404.04 **(9)** (am) 2. The ~~PM2.5 standards are attained~~ primary annual standard is met when ~~all of the following are met: 1. The~~ the annual arithmetic mean concentration, as determined in accordance

with 40 CFR part 50, Appendix N, is less than or equal to ~~15.0~~ 12.0 µg/m3~~, the level designated in par. (a) 1~~.

SECTION 6. NR 404.04 (9) (b) 2. is renumbered NR 404.04 (9) (am) 3. and amended to read:

NR 404.04 **(9)** (am) 3. The ~~ninety-eighth~~ primary 24-hour standard is met when the 98th percentile 24-hour ~~average~~ concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35µg/m^3~~, the level designated in par. (a) 2~~.

SECTION 7. NR 404.04 (9) (bm) is created to read:

NR 404.04 **(9)** (bm) *Secondary standards.* 1. The secondary standards for $PM_{2.5}$ are 15.0 µg/m^3 annual arithmetic mean concentration and 35 µg/m^3 24-hour average concentration, measured in the ambient air as $PM_{2.5}$ by either of the following methods:

a. A reference method based on 40 CFR part 50, Appendix L.

b. An equivalent method designated in accordance with s. NR 404.06 (3) (b).

2. The secondary annual standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 µg/m^3.

3. The secondary 24-hour standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 µg/m^3.

SECTION 8. NR 404.04 (9) (c) is repealed.

SECTION 9. NR 404.04 (9) (Note) is created to read:

NR 404.04 **(9)** (**Note**) 40 CFR part 50, Appendices L and N are incorporated by reference in s. NR 484.04 (6g) and (6r), respectively.

SECTION 10. NR 484.04 (6g) and (6r) in Table 2 are amended to read:

NR 484.04 **(6g)** and **(6r)** in Table 2

	CFR Appendix Referenced	Title	Incorporated by Reference For
(6g)	40 CAR part 50 Appendix L	Reference Method for the Determination of Particulate Matter as $PM_{2.5}$ in the Atmosphere	NR 400.02 (123e) NR 404.04 (9)
(6r)	40 CAR part 50 Appendix N	Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$	NR 404.04 (9) ~~(c)~~

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)