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

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 400.02(61m), 405.02(5), 405.04(3), 415.09(1)(a) to (e), 417.06(3), 417.07(6)(a)1. to 5. and (b) to (d) and (9), 418.025(2)(intro.) and (a) to (e), 418.03(2)(intro.) and (a) to (e), 418.04(2)(a) to (e), 418.05(2), (3)(a) to (e), 418.06(2)(b) to (e), 418.07(2)(intro.) and (a) to (e), 421.04(4), 422.05(3), 422.09(2)(c), (3)(a), (c), (e), (f) and (h) and (4)(a), (c) and (e), 423.03(6)(b)1. to 5., 424.03(2)(b)1. and 2., 425.03(2)(a)1. to 5. and (b), (3)(a)1. to 7., (c)2., (d)1. to 4., (e)1. to 6. and (f), (4)(a)1. to 5. and (b), (5)(a)1. to 4., (b) and (c) and (6)(b)1. to 3., 439.095(2)(a) and (b), 447.02(4), 484.03(5) and (6), 484.11(1)(c), 485.045(1)(a), 488.06(1)(d) Note and 493.02(2); to **renumber** NR 400.02(100)(u), 411.02(6) and Note, 418.06(2)(f), 419.02(1m), (1p), (1s), (1t), (1u), (2), (3), (3c), (3e), (3m), (4), (6), (6m) and (7), 420.02(28), 421.02(2e) to (13), 422.02(1e) to (6), (7m) to (11m), (12d) to (33j), (34) to (47e), (48) to (52) and 499.07(2)(a) to (m); to **renumber and amend** NR 417.07(6)(a)(intro.), 418.025(2)(f), 418.03(2)(f), 418.07(2)(f), 419.02(8), 422.02(7), (12), (33m) and (47m), 424.03(2)(b)(intro.), 425.03(2)(a)(intro.), (4)(a)(intro.) and (5)(a)(intro.) and 499.07(2)(n)(intro.); to **amend** NR 30.03(2)(f), 30.04(2)(f), 400 Note, 400.02(41), (77), (79), (90) and (100)(t), 400.03(2), 401.04, 404.04(2)(a)1. and 2. and (6), 404.06(1)(a) and (4)(b), 405.01(2) Note, 405.02(1)(d), (2)(intro.), (3)(intro.) and (a), (4)(a)(intro.), 1. and 2. and (b)1. and 2., (7), (12), (21)(intro.), (b)3. and 5.a. and b., 6. and 8.a., (22)(a)1. and 2., (24)(d), (25g)(b) and (d), (25m)(a) and (c), (25s)(intro.) and (a), (27)(c) and (28), 405.04(1)(a) and (e), (4)(intro.) and (a), 405.05(1), (4)(intro.), (5) and (6), 405.07(3), (4)(intro.) and (b)27. and (5), 405.08(3), 405.10(4), 405.14(1), (2) and (4) 405.15(2)(d), 406.04(1)(intro.), (g), (h), (j) and (2)(intro.), (c), (f)3m., (h) and (i), (4)(a)6., 406.11(1)(f), 407.03(1)(g), (h), (o), (2)(b) and (4), 407.05(4)(c)1. and Table 2 footnote 8, 407.09(4)(a)3.c., 408.02(4), (20)(e)5.a. and b. and (21)(intro.), 409.02(76)(intro.), 409.06(8)(d), 415.02(5), 415.04(1)(b), (2)(a)(intro.), (b)(intro,) and (c)(intro.), (3)(a) and (4)(b), 415.05(2), 415.07(1)(a)(intro.), (b)(intro.) and 2., 415.075(2)(a)5., 415.08(1), 415.09(1)(intro.) and (3), 417.01(1), 417.02(intro.), 417.06(1) and (2), 417.07(7)(a)(intro.) and 1. to 3., 418.01(1), 418.04(1)(a)2. and (2)(intro.), 418.05(3)(intro.) and (4)(intro.), 418.06(2)(intro.), 419.02(intro.), 420.02(intro.), 420.03(1)(b), 420.035(2)(b) and (3)(c), 420.04(2)(a)(intro.) and 2., 420.045(1)(a), (b)(title), (c), (d)1.(intro.) and (e) and (10)(intro.), 421.02(intro.), 421.05(2)(a)(intro.), (2)(e)1. and 2., 421.06(2)(e)1. and 2., 422.03(intro.), (2), (3), (4), (4m)(b) and (c) and (5)(intro.), 422.04(1)(a), (2)(intro.) and (3)(b)(intro.), 422.132(1)(intro.) and (2)(b), 422.14(2)(c)(intro.), 423.02(intro.), 423.03(4)(intro.) and (m), (5)(intro.), (6)(a)(intro.) and (b)(intro.) and (9), 424.03(1)(a)3. and 4., 425.03(3)(a)(intro.), (b), (d)(intro.), (e)(intro.), (6)(b)(intro.), (7)(e), (7m)(intro.) and (a) and (8), 425.035(2)(f) and (3)(a)3. Note, 425.04(1)(b), 426.04, 429.02(intro.) and (1), 436.02(intro.), 436.05(2)(b) and (5), 438.03(1)(b) and Table 1, 439.03(1)(c) and (4)(a)(intro.), 439.075(2)(a)(intro.) and 4., 439.095(2)(intro.), 445.01(1), 445.02(intro.), (2) and (6), 445.04(3)(c)6., (4r)(a)Note and (b)4., (6)(a)(intro.), (b)4. and Tables 2, 3 and 5, 445.05(3)(a) and (c)7., (4r)(b)4. and (6)(bm)4.(intro.), (c) and (e), 447.02(intro.), (16) and (18) Note, 447.07(3)(a) and (d)(intro.), 447.12(3)(b) Note, 447.16(2) 447.18(1) Note, 448.02(intro.), 448.04(2), 449.02(intro.), 449.09(6)(a)3. and 4., (d)2. and (e)1.(intro.), 449.12(3)(a) and (b)5., 484.04(18), 484.05(3), 484.11(1)(a), 488.02(2) Note, 488.03(3)(b) Note, 488.04(3) Note, 488.08, 488.11(1)(b), 493.02(intro.), 493.04(2) and (3), 499.06(2)(intro.), (e) and (g) and 499.07(2)(intro.); and to **create** NR 400.02(53s) Note, (100)(u) and (v), 405.02(21m), (22m), 406.04(7), 419.02(10), 421.05(2)(e)3., 421.06(2)(e)3., 422.03(7), 424.03(2)(c), 425.03(14), 436.05(2)(bm) and 484.04(18m) relating to clarification and cleanup changes in NR 30 and throughout the NR 400 series.

AM-9-95

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 144.31(1)(a), 144.391(6) and 227.11(2)(a), Stats.

Statutes interpreted: s. 144.31(1)(f), Stats. The State Implementation Plan developed under that provision is revised.

These rule changes affect Wisconsin's existing environmental protection air pollution control rules. Changes affecting most elements of the air pollution control program are made, including; definition of terms, permitting, compliance schedules, emission testing, emission limitations, emission monitoring and incorporation by reference. These changes also affect diverse source categories and pollutants. However, these changes are of a cleanup nature, and are intended to correct errors in content or style, or to improve consistency or clarify existing policy or procedures.

The consent of the Attorney General and the Revisor of Statutes will be sought for the incorporation by reference of two appendicies in Title 40 of the Code of Federal Regulations containing test methods and the incorporation by reference of a previously approved document from the American Conference of Governmental Industrial Hygienists for two additional citations.

SECTION 14. NR 405.01(2) Note is amended to read:

NR 405.01(2) Note: Throughout the proposed rule, changes have been made which result in the provisions of this PSD rule differing from 40 CFR ~~s.~~ 51.166, the federal regulation on which it is based. In this rule, the term "air contaminant" is substituted for the term "pollutant" in the federal regulation ~~and the term~~ "~~administrator of~~ U.S. ~~EPA~~" ~~for~~ "~~administrator~~", "~~federal clean air act~~" ~~for~~ "~~act~~" and "department" for "the State", "the Governor" and "reviewing authority". The federal definition for "building, structure, facility or installation" is applied to the phrase "facility, building, structure, equipment, vehicle or action" – a similar term which appears in Wisconsin's statutory provisions on air pollution. In addition, cross references in the federal regulation have been changed in the rule to comparable provisions in Wisconsin's rule (e.g., "40 CFR Parts 60 and 61" has been changed to "chs. NR 440 and ~~445~~ 446 to 449"). Eliminated from the rule are provisions of the federal regulations which do not apply to the state's PSD program (i.e., provisions governing ~~U.S.~~ EPA approval of plan revisions).

SECTION 15. NR 405.02(1)(d), (2)(intro.), (3)(intro.) and (a), (4)(a)(intro.), 1. and 2. and (b)1. and 2. are amended to read:

NR 405.02(1)(d) For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the ~~administrator of the~~ U.S. ~~environmental protection agency~~ department, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the ~~administrator~~ department if ~~the administrator~~ the department determines such a period to be more representative of normal source post-change operations.

(2)(intro.) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source ~~(~~, unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both~~)~~, and the most stringent of the following:

(3)(intro.) "Baseline area" means any intrastate area, and every part thereof, designated as attainment or unclassifiable under ~~s.~~ section 107(d)(1)(D) or (E) of the ~~federal clean air~~ act (42 USC 7407(d)(1)(D) or (E)) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the air contaminant for which the minor source baseline date is established. Area redesignations under ~~s.~~ section 107(d)(1)(D) or (E) of the act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(4)(a) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each air contaminant for which a minor source baseline date is established and shall include:

1. The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in par. (b).

2. The allowable emissions of major stationary sources which commenced construction before ~~January 6, 1975~~ the major source baseline date, but were not in operation by the applicable minor source baseline date.

(b)1. Actual emissions from any major stationary source on which construction commenced after ~~January 6, 1975; and~~ the major source baseline date.

2. Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

SECTION 16. NR 405.02(5) is repealed.

SECTION 17. NR 405.02(7) and (12) are amended to read:

NR 405.02(7) "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each air contaminant subject to regulation under the ~~federal clean air~~ act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under chs. NR 440 and 445 to 449 and under ~~ss.~~ sections 111 and 112 of the act (42 USC 7411 and 7412). Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required under this subsection as it existed prior to enactment of the 1990 ~~federal~~ clean air act amendments. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(12) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air contaminant subject to regulation under the ~~federal clean air~~ act.

SECTION 18. NR 405.02(21)(intro.), (b)3. and 5.a. and b., 6. and 8.a. are amended to read:

NR 405.02(21)(intro.) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any air contaminant subject to regulation under the ~~federal clean air~~ act.

(b)3. Use of an alternative fuel by reason of an order or rule under section 125 of the ~~federal clean air~~ act;

5.a. The source was capable of accommodating before January 6, 1975, unless such 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;

b. The source is approved to use under any permit issued under this chapter or ch. NR 406~~;~~ , 407 or 408.

6. An increase in the hours of operation or in the production rate, unless such 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.

8.a. When the department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any ~~criteria~~ pollutant for which a national ambient air quality standard has been adopted over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the ~~federal clean air~~ act, if any; and

SECTION 19. NR 405.02(21m) is created to read:

NR 405.02(21m) "Major source baseline date" means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975.

(b) In the case of nitrogen dioxide, February 8, 1988.

SECTION 20. NR 405.02(22)(a)1. and 2. are amended to read:

NR 405.02(22)(a)1. Any of the following stationary sources of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any air contaminant subject to regulation under the ~~federal clean air~~ act: Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totalling more than 250

million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subd. 1., any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air contaminant subject to regulation under the ~~federal clean air~~ act; or

SECTION 21. NR 405.02(22m) is created to read:

NR 405.02(22m)(a) "Minor source baseline date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

1. In the case of particulate matter and sulfur dioxide, August 7, 1977.

2. In the case of nitrogen dioxide, February 8, 1988.

(b) The minor source baseline date is established for each air contaminant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the act for the air contaminant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166.

2. In the case of a major stationary source, the air contaminant would be emitted in significant amounts or, in the case of a major modification, there would be a significant net emissions increase of the air contaminant.

SECTION 22. NR 405.02(24)(d), (25g)(b) and (d), (25m)(a) and (c), (25s)(intro.) and (a), (27)(c) and (28) are amended to read:

NR 405.02(24)(d) An increase or decrease in actual emissions of sulfur dioxide, nitrogen ~~dioxide~~ oxides or particulate matter measured as PM_{10} which occurs before the applicable minor source baseline date is credible

only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(25g)(b) Was equipped prior to ~~shut-down~~ shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

(d) Is otherwise in compliance with the requirements of the ~~clean air~~ act.

(25m)(a) "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator ~~of the U.S. environmental protection agency~~, in consultation with the secretary of energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(c) The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under ~~s.~~ section 409 of the ~~clean air~~ act (42 USC 7651h).

(25s)(intro.) "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit, ~~(~~or a different consecutive 2-year period within 10 years after that change, where the ~~administrator~~ department determines that such period is more representative of normal source operations~~)~~, considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the ~~administrator~~ department shall:

(a) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the state or federal regulatory authorities, and compliance plans under title IV of the ~~clean air~~ act; and

(27)(c) "Significant" means~~,~~ any emissions rate in reference to a net emissions increase or the potential of a source to emit an air contaminant subject to regulation under the ~~federal clean air~~ act ~~that~~ other than air contaminants listed in par. (a) ~~does not list, any emissions rate~~ or under section 112(b) of the act (42 USC 7412(b)).

(28) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant subject to regulation under the ~~federal clean air~~ act.

SECTION 23. NR 405.04(1)(a) and (e) are amended to read:

NR 405.04(1)(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2 (a) and (b) of the energy supply and environmental coordination act of 1974 ~~(~~, or any superseding legislation~~)~~, over the emissions from such sources before the effective date of such an order.

(e) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen dioxide or particulate matter from stationary sources which are affected by plan revisions approved by the administrator ~~of U.S. EPA~~ as meeting the criteria specified in sub. (4).

SECTION 24. NR 405.04(3) is repealed.

SECTION 25. NR 405.04(4)(intro.) and (a) are amended to read:

NR 405.04(4)(intro.) For purposes of excluding concentrations pursuant to sub. (1)(e), the administrator ~~of U.S. EPA~~ may approve a plan revision that:

(a) Specifies the time over which the temporary emissions increase of sulfur dioxide, nitrogen dioxide or particulate matter would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the administrator ~~of U.S. EPA~~;

SECTION 26. NR 405.05(1), (4)(intro.), (5) and (6) are amended to read:

NR 405.05(1) All areas of the state ~~(~~, except as otherwise provided under s. NR 405.03~~)~~, shall be designated either Class I, Class II, or Class III. Any designation other than Class II shall be subject to the redesignation procedures of this section. Any redesignation must be approved by the administrator ~~of U.S. EPA~~ as a revision to the applicable state implementation plan.

(4)(intro.) Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. The appropriate Indian governing body may submit to the administrator ~~of U.S. EPA~~ a proposal to redesignate areas Class I, Class II, or Class III provided that:

(5) If the administrator ~~of U.S. EPA~~ disapproves a proposed redesignation, the classification of the area shall be that which was in effect prior to the disapproval of the redesignation.

(6) If the administrator ~~of U.S. EPA~~ disapproves any proposed area redesignation, the department or Indian governing body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the administrator ~~of U.S. EPA~~.

SECTION 27. NR 405.07(3), (4)(intro.) and (b)27. and (5) are amended to read:

NR 405.07(3) The requirements of ss. NR 405.08 to 405.11 apply only to any major stationary source or major modification that would be constructed in an area which is designated as attainment or unclassifiable under section 107(a)(1)(D) or (E) of the ~~federal clean air~~ act~~; and~~.

(4)(intro.) A major source or major modification is exempt from the requirements of ss. NR 405.08 to 405.16 if any of the following apply:

(b)27. Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the ~~federal clean air~~ act~~; or~~.

(5) The requirements of ss. NR 405.08 to 405.16 do not apply to a major stationary source or major modification with respect to a particular air contaminant if the owner or operator demonstrates that, as to that air contaminant, the source or modification is located in an area designated as nonattainment under section 107 of the ~~federal clean air~~ act.

SECTION 28. NR 405.08(3) is amended to read:

NR 405.08(3) A major modification shall apply best available control technology for each air contaminant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the ~~pollutant~~ air contaminant would occur as a result of a physical change or change in the method of operation in the unit.

SECTION 29. NR 405.10(4) is amended to read:

NR 405.10(4) Written approval of the administrator ~~of U.S. EPA~~ shall be obtained for any modification or substitution.

SECTION 30. NR 405.14(1), (2) and (4) are amended to read:

NR 405.14(1) NOTICE TO EPA. The department shall transmit to the administrator ~~of U.S. EPA~~ a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator ~~of U.S. EPA~~ of every action related to the consideration of such permit.

(2) FEDERAL LAND MANAGER. The federal land manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the administrator ~~of U.S. EPA~~, whether a proposed source or modification would have an adverse impact on such values.

(4) CLASS I VARIANCES. The owner or operator of a proposed major source or major modification may demonstrate to the federal land manager that the emissions from the source would have no adverse impact on the air quality-related values, including visibility, of these lands, notwithstanding that the change in air quality resulting from emissions from the source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with this demonstration and so certifies to the department, the department may, provided that applicable requirements of this chapter are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of particulate matter measured as PM_{10}, sulfur dioxide, and nitrogen dioxide would not exceed the following maximum allowable increases over minor source baseline concentration for these air contaminants.

Pollutant	Maximum Allowable Increase ($\mu g/m^3$)
PM_{10}	
Annual arithmetic mean	17
24-hour maximum	30
Sulfur Dioxide	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen Dioxide	
Annual arithmetic mean	25

SECTION 31. NR 405.15(2)(d) is amended to read:

NR 405.15(2)(d) Send a copy of the notice of public comment to the applicant, the administrator ~~of U.S. EPA~~ and to officials and agencies having cognizance over the location where the proposed ~~concentration~~ construction would occur as follows; any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the major source or major modification.

Draft #8
9/13/94

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

IN THE MATTER of repealing NR 405.10(5) and 484.05(6) and (7), amending NR 400.02(39m), 404.05(2)(intro.) and (a), (3)(intro.) and (a) and (4)(intro.) and (a), 405.02(1)(b), (2)(a), (3)(intro.), (7), (21)(b)6, (24)(d) and (25m)(b) and (c), 405.07(8)(a)3, 405.08(1), 405.10(1) to (3), 405.14(4) and creating NR 484.04(9) and footnote 1 to 484.04 Table 2 of the Wisconsin Administrative Code, pertaining to Prevention of Significant Deterioration and associated particulate matter increments.

AM-27-94

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 144.31(1)(a) and (f), 144.375(2) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 144.31(1)(a) and (f) and 144.375(2), Stats. The state implementation plan developed under s. 144.31(1)(f), Stats., is revised.

On January 4, 1994, the USEPA published a notice of disapproval of the State's Prevention of Significant Deterioration (PSD) State Implementation Plan (SIP) submittal, citing several minor discrepancies under 40 CFR 51.166. These discrepancies are addressed in this rule revision. Section 144.375(2), Stats., requires that PSD ambient air increments as promulgated by the Department shall be consistent with the corresponding federal increments, with certain exceptions. The USEPA, on June 3, 1993, promulgated new PSD particulate matter increments which are subject to this statute.

The purpose of this rule is to address the deficiencies in Wisconsin's PSD SIP and to add the new federal PSD increments for particulate matter into Wisconsin's rules. The PM_{10} basis for particulate matter measurement, new particulate matter increments and the revised annual concentration averaging procedure for Class I, II and III PSD areas are incorporated in s. NR 404.05. The changes in s. NR 404.05(3)(a) are also incorporated in s. NR 405.14(4), which pertains to the granting of Class I variances. Other changes to incorporate the federal PM_{10} rules are in ss. NR 405.02(24)(d) and 405.07(8)(a)3. Deficiencies in the PSD SIP submittal delineated in the disapproval notice of January 4, 1994, are rectified in ss. NR 400.02(39m), 405.02(1)(b), (2)(a), (21)(b)6, 405.08, 405.10(1) and (2) and 484.04 and by the repeal of ss. NR 405.10(5) and the amendment of ss. NR 484.04 and 484.05 (as affected by Clearinghouse Rule 94-104).

SECTION 3. NR 405.02(1)(b), (2)(a), (3)(intro.), (7), (21)(b)6, (24)(d) and (25m)(b) and (c) are amended to read:

NR 405.02(1)(b) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit unless reliable data are available which demonstrate that the actual emissions are different than the source-specific allowable emissions.

(2)(a) The applicable standards ~~as~~ set forth in chs. NR 440 and 445 to 449 and under ss. 111 and 112 of the act (42 USC 7411 and 7412).

(3)(intro.) "Baseline area" means any intrastate area, and every part thereof, designated as attainment or unclassifiable under ~~section~~ s. 107(d)(1)(D) or (E) of the federal clean air act (42 USC 7407(d)(1)(D) or (E)) in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 ~~ug~~μg/m^3 (annual average) of the air contaminant for which the baseline date is established. Area redesignations under ~~section~~ s. 107(d)(1)(D) or (E) of the ~~federal clean air~~ act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(7) "Best available control technology" or "BACT" means an emissions limitation, ~~(~~including a visible emissions standard~~)~~, based on the maximum degree of reduction for each air contaminant subject to regulation under the federal clean air act which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including clean fuels, fuel cleaning or treatment or innovative fuel combination techniques for control of the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under chs. NR 440 and 445 to 449 and under ss. 111 and 112 of the act (42 USC 7411 and 7412). Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required under this subsection as it existed prior to enactment of the 1990 federal clean air act amendments. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. ~~Such~~The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(21)(b)6. An increase in the hours of operation or in the production rate, unless such 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 40 CFR 52.21.

(24)(d) An increase or decrease in actual emissions of sulfur dioxide, nitrogen dioxide or particulate matter measured as PM_{10} which occurs before the applicable baseline date is credible only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(25m)(b) Repowering shall also include any ~~oil-and/or-gas-fired~~ unit fired by oil or gas or both which has been awarded clean coal technology demonstration funding as of January 1, 1991, by ~~by~~ the federal department of energy.

(c) The ~~administrator~~ department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under ~~,~~ s. 409 of the clean air act (42 USC 7651h).

SECTION 4. NR 405.07(8)(a)3 is amended to read:

NR 405.07(8)(a)3. ~~Total-suspended-particulates~~PM_{10} - 10 ~~ug~~µg/m^3, 24-hour average;

SECTION 5. NR 405.08(1) is amended to read.

NR 405.08(1) A major stationary source or major modification shall meet each applicable emissions limitation under chs. NR 400 to 499 and under ss. 111 and 112 of the act (42 USC 7411 and 7412).

SECTION 6. NR 405.10(1) to (3) are amended to read:

NR 405.10(1) All estimates of ambient concentrations required under this ~~section~~ chapter shall be based on the applicable air quality models, data bases, and other requirements specified in the ~~Guidelines~~ Guideline on Air Quality Models (Revised) ~~(OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C.~~

~~27711, July 1986). This publication is~~ in Appendix W of 40 CFR part 51, incorporated by reference in ~~ch. NR 484~~s. NR 484.04.

(2) Where an air quality impact model specified in the Guideline on Air Quality Models in Appendix W of 40 CFR part 51 is inappropriate, the model may be modified or another model substituted.

(3) A substitution or modification of a model shall be subject to the public comment procedures set forth in s. NR ~~405.16~~405.15.

SECTION 7. NR 405.10(5) is repealed.

SECTION 8. NR 405.14(4) is amended to read:

NR 405.14(4) CLASS I VARIANCES. The owner or operator of a proposed major source or major modification may demonstrate to the federal land manager that the emissions from ~~such~~the source would have no adverse impact on the air quality-related values, including visibility, of ~~such~~these lands ~~(including visibility)~~, notwithstanding that the change in air quality resulting from emissions from ~~such~~the source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with ~~such~~this demonstration and so certifies to the department, the department may, provided that applicable requirements of this chapter are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of particulate matter measured as PM_{10}, sulfur dioxide~~,~~ and nitrogen dioxide ~~and particulate matter~~ would not exceed the following maximum allowable increases over baseline concentration for ~~such~~ these air contaminants.

	Maximum Allowable Increase (~~micrograms per cubic meter~~ µg/m^3)
~~Particulate matter~~ PM_{10}	
Annual ~~geometric~~ arithmetic mean	~~19~~ 17
24-hour maximum	~~37~~ 30
Sulfur Dioxide	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325
Nitrogen Dioxide	
Annual arithmetic mean	25