

CORRESPONDENCE/MEMORANDUM

DATE: September 7, 2012

TO: Natural Resources Board

FROM: Cathy Stepp, Secretary



SUBJECT: Notification of the intent to solicit information and advice for the preparation of an economic impact analysis (EIA) for Natural Resources Board Order AM-08-11

Based on the scope statement approved by the Board on December 21, 2010, the Department has prepared proposed rules in Board Order AM-08-11 affecting NR 404 and 484, Wis. Adm. Code. These proposed rules pertain to the adoption of the 1-hour National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂) and sulfur dioxide (SO₂).

The Department intends to proceed to gather information and advice on the economic effect of the proposed rules on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. The attached Board Order and solicitation notice will be distributed to those businesses, business associations, local governmental units, and individuals that the Department believes may be affected by the proposed rules. This rule order and notice will be made available to the public on September 14, 2012 unless the Department receives a request not to do so from the Board before that date.

Approval:

Kendra Fisher 8/30/12
Legal Services Date

~~Cathy Stepp~~ 8/30/12
Bureau Director Date

~~Matthew Mowrey~~ 8/31/12
Division Administrator Date

W. J. ... 8/30/12
Science Services Economist Date

Matt Mowrey 9/4/12
Secretary's Office Date

Enclosures – Board Order
Solicitation Notice

**DEPARTMENT OF NATURAL RESOURCES
REQUEST FOR INFORMATION AND ADVICE ON THE ECONOMIC EFFECT OF
PROPOSED RULES**

NATURAL RESOURCES BOARD ORDER AM-08-11

NOTICE IS HEREBY GIVEN THAT pursuant to § 227.137 (2), Wis. Stats., the Department of Natural Resources (*hereinafter the Department*) will prepare an economic impact analysis (EIA) for the proposed rules in Natural Resources Board Order AM-08-11, relating to the adoption of the 2010 1-hour National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂) and sulfur dioxide (SO₂). The EIA must contain information on the economic effect of the proposed rules on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.

The Department is interested to learn whether specific businesses, business sectors, public utility ratepayers, or local governmental units want a public informational meeting. The purpose of a public informational meeting would be to provide a forum to discuss the requirements for developing the EIA and to answer any questions regarding this request for information. If you would like the Department to schedule a public informational meeting; please respond to this e-mail message **within 21 days** of receipt of this initial solicitation. If there is sufficient interest, the Department will schedule a meeting and provide a separate e-mailed notice of the location, date, and time.

AVAILABILITY OF PROPOSED RULES

The proposed rules and supporting documentation, including a preliminary estimate of the fiscal estimate, may be viewed and downloaded at:

<https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=10843>

If you do not have internet access, a printed copy of these materials may be obtained free of charge by contacting Robert Eckdale, Wisconsin Department of Natural Resources (AM/7), PO Box 7921, Madison, WI, 53707-7921 or by calling (608) 266-2856.

REQUEST FOR INFORMATION

In order to prepare the EIA, and as required by § 227.137 (3), Wis. Stats., and 2011 Executive Order 50, the Department requests information and advice on the economic effects of the proposed rules from businesses, business sectors, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rules.

Applications for major source air construction permits, either due to proposed new construction or a major modification, are **not affected** by this proposed Department action. These types of major source air construction permits were immediately subject to the 1-hour NO₂ and SO₂ standards when they were finalized by the U.S. EPA in 2010.

State law (*s. 285.21(1)(a), Wis. Stats*) requires the Department to adopt the federal 1-hour NO₂ and SO₂ standards into Wisconsin Administrative Code (*i.e., ch. NR 404, Wis. Adm. Code*). This section of statute reads as follows, "*If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (4).*" The Department believes incorporating the 1-hour NO₂ and SO₂ standards into Wisconsin Administrative Code will impact minor construction permits and operation permits. The impact will be that these standards need to be considered and met before an air permit can be issued.

Responses received within **60 days** of this initial solicitation will be considered by the Department when preparing the EIA. The Department is not requesting comments on the proposed rules themselves at this time, but will do so under a separate notice of public hearing after the EIA has been finalized.

A. The Department therefore specifically requests information from those that may be affected by the proposed rules relating to the following:

1. A detailed quantification, with supporting assumptions and calculations, of the economic impact of the proposed rules, including implementation and compliance costs that are reasonably expected to be incurred by you or passed along to other businesses, local governmental units, or individuals.
2. Any actual and quantifiable benefits of the proposed rule, including an assessment of how effective the proposed rule will be in addressing the policy problem that the rule is intended to address.
3. Alternatives to the proposed rule and a comparison of the economic effect of each alternative to the economic effect of the proposed rule.
4. Adverse effects the proposed rule may have on the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of the state.

B. Include the following in your submittal:

1. Distinguish whether the economic impact is caused by the 1-hour standard for NO₂, SO₂ or both pollutants.
2. Differentiate the discrete economic impact caused by other federal air pollution rules, (e.g., the Cross State Air Pollution Rule or the Clean Air Interstate Rule, the Mercury Air Toxics Standards for Electric Generating Units, Boiler Maximum Achievable Control Technology Rules), from economic impact caused by the 1-hour NO₂ and SO₂ standards.
3. The name and title of the person preparing the information, and the name of the business, association, or governmental unit represented, if applicable.
4. The name and title of a contact person if different from 3.
5. The e-mail address (preferred) or the U.S. Post Office mailing address of the contact person.

C. The Department also requests that any local governmental unit that responds to this request also clearly indicate whether or not the local governmental unit wishes to coordinate with the Department in the preparation of the EIA. The Department will contact the representative of a local governmental unit indicating a wish to coordinate to discuss the information and advice provided. The Department will incorporate the information and advice into the EIA to the extent feasible.

SUBMITTING INFORMATION

Mr. Michael Friedlander
Wisconsin Department of Natural Resources (AM/7)
PO Box 7921
Madison, WI, 53707-7921
Phone: (608) 267-0806
Fax: (608) 267-0560
E-mail: DNRam1hrSO2NO2Naaqs@wisconsin.gov

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 404.04 (2) (a) 1. and 2.; to **renumber and amend** NR 404.04 (2) (a) (intro.); to **amend** NR 404.04.(2) (a) (title), 404.06 (2), and 484.04; to **repeal and recreate** NR 404.04 (6); and to **create** NR 484.04 (7) and (7m); relating to adopting the National Ambient Air Quality Standards, (NAAQS) for sulfur dioxide, (SO₂) and nitrogen dioxide, (NO₂).

AM-08-11

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Section 285.11(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), and 285.21(1)(a), Stats.
3. **Explanation of agency authority:** Section 227.11(2)(a), Stats. expressly confers rule making authority to an agency. Section 285.11(1) and (6) 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) 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 sulfur dioxide (SO₂), and nitrogen dioxide (NO₂).
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). The Department is required by state law (s. 285.21, Wis. Stats.) to promulgate by rule a similar, but no more restrictive, air quality standard when the U.S. EPA promulgates a new or revised NAAQS.

The U.S. EPA has recently promulgated NAAQS for SO₂ and NO₂. In order to both reflect current air quality health science and to maintain consistency with U.S. EPA-promulgated NAAQS, the Department is proposing to adopt the SO₂ and NO₂ 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 NO₂ and SO₂.
6. **Summary of, and comparison with, existing or proposed federal regulation:** On February 9, 2010, the U.S. EPA promulgated a 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (75 FR 6474). In addition, the U.S. EPA promulgated a 1-hour primary NAAQS for SO₂ at a level of 75 parts per billion on June 22, 2011 (75 FR 35520). The Department is proposing to adopt these same standards.
7. **Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):** All adjacent states will adopt SO₂ and NO₂ standards that are the same as Wisconsin's proposed rule. Illinois has not yet proposed a rule to revise the state standards to match the federal NAAQS. Illinois intends to consolidate revisions to SO₂ and NO₂ standards this year with updates to the ozone and fine particulate matter (PM_{2.5}) standards. Iowa adopted the NO₂ standard in November, 2010 and intends to begin the rule process to adopt the SO₂ standard in late 2011. The NAAQS become part of Michigan's administrative code through an incorporation by reference provision in its existing rules without further rule changes. Minnesota and Iowa have not yet determined when to adopt SO₂ and NO₂ standards into their administrative rules.

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), 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, 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: Incorporating 1-hour standards for NO₂ and SO₂ into ch. NR 404 will trigger the need to do additional dispersion modeling and engineering analysis in reviews for minor construction and operation permits in order to satisfy s. 285.63(1)(b), Wis. Stats. This will increase the amount of time and cost of applying for and receiving these air pollution control permits for both the private sector and the agency.

Reviewing three years of permit applications reveals that some small businesses that apply for minor source permits (both construction and operation) will be affected by the new NO₂ and SO₂ NAAQS.

An economic impact analysis and final fiscal estimate will be completed prior to the submittal of this rule to the Legislative Council as required under s. 227.137(2), Stats. In addition, public comments will be sought to better define the economic impact of this proposed rule.

10. Effect on small business: Private consultant time for technical analysis is expected to raise permit application cost for small business. The compliance costs associated with control measures has not been evaluated at the state level at this point. The potential cost increases will be quantified before proposed rule adoption.

11. Agency contact person: Mike Friedlander, WDNR, P.O. Box 7921, Madison, WI 53707-7921; (608) 267-0806; (608) 267-0560 (fax); Michael.friedlander@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:

Mike Friedlander
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707
(608) 267-0806
Fax: (608) 267-0560
Michael.friedlander@wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

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

The consent of the Attorney General will be requested for the incorporation by reference of new data handling conventions in ch. NR 484.

SECTION 1. NR 404.04 (2) (a) (title) is amended to read:

NR 404.04 (2) (a) (title) *Primary standards standard.*

SECTION 2. NR 404.04 (2) (a) (intro.) is renumbered NR 404.04 (2) (a) and amended to read:

NR 404.04 (2) (a) The primary ~~standards~~ standard for sulfur oxides, measured as sulfur dioxide, ~~are: is 0.075 ppm -- maximum 1-hour concentration. The 1-hour primary standard is met at an ambient air quality monitoring site when the 3-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 0.075 ppm, as determined by the methodology of 40 CFR part 50, Appendix T, incorporated by reference in s. NR 484.04 (7m).~~

SECTION 3. NR 404.04 (2) (a) 1. and 2. are repealed.

SECTION 4. NR 404.04 (6) is repealed and recreated to read:

NR 404.04 (6) NITROGEN DIOXIDE. (a) *Primary standards.* The primary standards for nitrogen dioxide are:

1. 0.053 ppm -- primary annual average concentration. The primary annual standard is met when the annual average concentration in a calendar year is less than or equal to 0.053 ppm, as determined by the methodology of 40 CFR part 50, Appendix S, incorporated by reference in s. NR 484.04 (7).

2. 0.100 ppm -- primary 1-hour average concentration. The primary 1-hour standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 ppm, as determined by the methodology of 40 CFR part 50, Appendix S, incorporated by reference in s. NR 484.04 (7).

(b) *Secondary Standard.* The secondary standard for nitrogen dioxide is 0.053 ppm. The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places. Fractional parts equal to or greater than 0.0005 ppm shall be rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that are at least 75% complete or upon data derived from manual methods that are at least 75% complete for the scheduled sampling days in each calendar quarter.

SECTION 5. NR 404.06 (2) is amended to read:

NR 404.06 (2) REFERENCE METHODS. Ambient air quality monitoring which utilizes a reference

monitoring method shall use monitoring methods which conform to the federal reference methods which are specified in 40 CFR part 50, Appendices A to N I, incorporated by reference in s. NR 484.04 (2), or which have been so designated by the department.

SECTION 6. NR 484.04 is amended to read:

NR 484.04 **Code of federal regulations appendices.** The appendices to federal regulations in effect on ~~March 1, 2006~~ the effective date of this section ... [LRB insert date] listed in the first column of Table 2 are incorporated by reference for the corresponding sections of chs. NR 400 to 439 and 445 to 499 or code of federal regulations appendix method listed in the third column of Table 2. Since some of these materials are incorporated by reference for another appendix of the code of federal regulations and the other appendix is also incorporated by reference in this section, the materials listed in this section which are incorporated by reference for the other appendix are hereby also incorporated by reference and made a part of this chapter.

SECTION 7. NR 484.04 (7) and (7m) are created to read:

NR 484.04

(7)	40 CFR part 50 Appendix S	Interpretation of the National Ambient Air Quality Standards for Nitrogen Dioxide	NR 404.04 (6) (a)
(7m)	40 CFR part 50 Appendix T	Interpretation of the National Ambient Air Quality Standards for Sulfur Dioxide	NR 404.04 (2) (a)

SECTION 8. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as as provided in s. 227.22 (2) (intro.), Stats.

SECTION 9. 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)