

## Report From Agency

### REPORT TO LEGISLATURE

NR 433.05 and 433.06, Wis. Adm. Code

Implementation of best available retrofit technology for the protection of visibility in mandatory class I federal areas

Board Order Number: AM-06-09

Clearinghouse Rule Number: CR 10-033

### **BASIS AND PURPOSE OF THE PROPOSED RULE**

In January 2008, the Natural Resources Board adopted rules establishing ch. NR 433, requiring Best Available Retrofit Technology (BART) for the protection of visibility. Specifically, the BART requirements pertain to controlling particulate matter, nitrogen oxides and sulfur dioxide emitted from certain stationary sources which cause or contribute to impairment of visibility in mandatory class I federal areas. For Wisconsin, these areas are the Boundary Waters Canoe Area Wilderness and Voyageurs National Park in Minnesota, and the Seney National Wildlife Refuge and Isle Royal National Park in Michigan. The rule sets forth procedures for identifying stationary sources potentially subject to BART and for determining appropriate control levels for each source based on several factors including visibility improvement.

Since the initial creation of BART requirements, the Department and affected stakeholders have identified several implementation issues and the need for certain rule clarifications. The revisions proposed by this rule package are in response to those issues.

#### Summary of the rule revisions

##### Compliance Date for BART Controls

The current BART rules require the owner or operator of a source which has been determined to be subject to BART controls to have those controls in place and operating "as expeditiously as practicable" but no later than December 31, 2013. The Department is proposing to extend the final allowed compliance date to December 31, 2015. This extended compliance date provides additional time for sources which are undergoing significant installations of control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. Extending the final compliance date to December 31, 2015 does not relax the requirement for controls to be in place as expeditiously as practicable.

##### Emissions Averaging

The Department is proposing clarifications to the emissions averaging provisions of the BART rules. One change pertains to the extra 10% emission reduction required in order to qualify for the additional compliance flexibility afforded by emissions averaging under the current rule provisions. The proposed revision clarifies that the additional reduction applies only to the pollutant being offset by other reductions achieved under the averaging plan.

Another proposed revision clarifies the intent that emissions averaging must account for all sources at a facility which can impact the real emission reductions achieved under BART requirements. Due to the nature of the regulation, BART may apply to one emissions unit at a facility but not to other similar emissions units. To avoid simply shifting emissions from one boiler to another, the BART rule currently requires all boilers at a facility to be included in any emissions averaging program. However, this

language may unnecessarily include units which cannot be used to offset operational load or emissions of a BART affected boiler. For that reason, a revision is proposed to require only the boilers serving a similar function at the facility be included in emissions averaging because those boilers can affect the amount of actual emission reductions achieved by BART.

The Department also proposes to modify the emissions averaging program to allow an owner or operator of a BART affected source to submit a proposed emissions averaging plan at any time, not just during the initial BART determination process. Determining the best control approach for a source may require significant additional analysis once the BART control levels have been finalized. Therefore, the Department proposes to revise the BART rule to allow for future submittals of an emissions averaging plan. If submitted later, the emissions averaging plan must still show that the necessary emission reductions will be achieved by the compliance date set under the initial BART determination. This approach will also allow sources flexibility for submitting a revised averaging plan as operating conditions at the source change.

### **SUMMARY OF PUBLIC COMMENTS**

Written comments were submitted by Alliant Energy and Georgia Pacific, both of which operate emission sources affected by the proposed rules. The substantive comments and issues, and the Department's associated response, are as follows.

#### **Issue 1) Final Compliance Date**

This rule making proposes to extend the final compliance date for requiring operation of BART controls from December 31, 2013 to December 31, 2015. There were several comments related to the final compliance date.

*Comment* –Both sets of comments supported the change to the compliance date but sought even further extension. Alliant Energy suggested that the additional time would be necessary if EPA changes their Federal Clean Air Interstate Rule (CAIR), which currently allows SO<sub>2</sub> and NO<sub>x</sub> BART requirements for electric utilities to be met through complying with CAIR.

*Response* – The Department extended the compliance date two years, to December 31, 2015, to allow for planning and installation of control equipment for the sources currently affected under the state's BART rule. The 2015 date is sufficient to allow for installation of the most intensive SO<sub>2</sub> and NO<sub>x</sub> controls that may require several years for completion. At this time, EPA has not proposed revisions to the CAIR rule. If EPA does promulgate a revised CAIR that changes its interaction with BART, the Department will consider making related changes to the state BART rule. However, at this time the Department does not recommend further delay in reducing the amount of SO<sub>2</sub> and NO<sub>x</sub> emitted and achieving the resultant health and environmental benefits.

#### **Issue 2) Existing BART Rule Provisions and Their Effect on Final Compliance Date**

*Comment* - Georgia Pacific suggests sources demonstrating compliance through emissions averaging under the state BART rule are not subject to a compliance date.

*Response* - The trading provisions are meant to provide flexibility to the source to meet BART emission reduction requirements, not eliminate the compliance date as suggested by Georgia Pacific. The compliance date under an averaging program would not exceed the final compliance date established in the rule which, if adopted, is December 31, 2015.

*Comment* - Georgia Pacific suggests that NR 433.05(5) in the BART rule allows the Department to consider an extended compliance date.

*Response* – To clarify, NR 433.05(5) allows the Department to revise BART requirements in a permit if the Department determines that the revision is justified based on safety, health, environment, or excess costs not considered when the Department originally made the BART determination. This provision allows the Department to address conditions that cannot be foreseen through the BART determination process, but it does not allow the Department to generally extend the compliance date farther into the future than is specifically warranted by the known conditions leading to the extension until 2015.

**Issue 3) Boilers Required to Participate in an Emissions Trading Program**

This rule proposes to modify the boilers required to participate in emissions trading from "all boilers" to "boilers serving a similar function" which are located at the affected facility. This proposed change provides additional compliance flexibility for facilities without jeopardizing the emission reduction requirements of the rule.

*Comment* – Georgia Pacific suggested that only those boilers at a facility subject to BART be required to participate in emissions trading if that compliance option is utilized.

*Response* – The original rule established the trading program to provide compliance flexibility to facilities when they are installing control equipment to comply with the BART requirements. The proposed rule change clarifies the scope of boilers used in averaging but not in the same way recommended in the comment. The comment proposal would allow a facility to shift loads to other boilers resulting in less emission reduction and so is not recommended.

**MODIFICATIONS MADE**

No modifications were made in response to the public comments received.

**APPEARANCES AT THE PUBLIC HEARING**

The Department held a hearing on April 26, 2010 at the DNR Building located at 101 S. Webster Street in Madison, WI. One person attended as indicated below.

In support: None

In opposition: None

As interest may appear: Kathleen Standen, We Energies, 22 E. Mifflin St., Suite 850, Madison, WI

**CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE**

No changes to the fiscal estimate were necessary. The rule analysis was changed to reflect a change in terminology recommended by the Legislative Council Rules Clearinghouse, and discussed in the next section of this report.

**RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

The Clearinghouse provided a comment on Form, Style and Placement in Administrative Code relating to the use of the term “particulate matter” instead of “particulate” in the analysis section of the Order. The recommended change was made.

## **FINAL REGULATORY FLEXIBILITY ANALYSIS**

The existing rule requirements apply to large industrial sources or electric generation units which are not small businesses. Therefore based on the limited nature of the proposed rule changes there is no impact anticipated to small businesses.