

Attachment A: Wisconsin Pb Infrastructure SIP Elements

1. Section 110(a)(2)(A): Emission limits and other control measures

“Each such plan shall [...] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.”

The WDNR continues to monitor, update and implement revisions to Wisconsin's SIP as emission limits and/or other control measures in order to meet federal and state ambient air quality standards including the 2008 Pb NAAQS. Authority for this effort is established under ss. 285.11 through 285.19, Wis. Stats. Authorities related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations and various performance and emissions standards, are contained in ss. 285.21 through 285.29, Wis. Stats.

2. Section 110(a)(2)(B): Ambient air quality monitoring/data system

“Each such plan shall [...] provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator.”

The WDNR continues to operate a source-specific Pb monitoring site located at Kohler Company in Sheboygan County using USEPA approved Federal Reference Method (FRM) or equivalent monitors in accordance with recent revisions to the Pb monitoring network requirements (Lead Ambient Air Monitoring Requirements, December 14, 2010).

In 2010 and 2011, the WDNR re-evaluated Pb sources that could potentially require monitoring and determined that no additional source-specific monitors are required in Wisconsin. Waivers for those seven sources that were found to emit above the 0.5 ton per year of Pb threshold, but that modeling showed contributed less than 50% of the Pb NAAQS, was submitted by the WDNR and approved by the USEPA on September 19, 2011.

The USEPA also requires Pb monitoring in large urban areas (CBSAs with a population above 500,000) but only at N-core monitoring sites. Milwaukee is the only large urban area in Wisconsin with a population above 500,000; however, because there is no N-core site located within the urban area (Wisconsin's N-core site is located in Horicon in a rural area), no additional Pb monitoring is required.

Wisconsin's most recently adopted annual network plan for 2012 was signed by WDNR in June 2011. All monitored data is submitted to the USEPA's Air Quality System (AQS) in a timely manner in accordance with 40 CFR 51.320. The WDNR continues to provide the USEPA regional office notice of any planned changes to monitoring sites or to the network plan. In addition, the WDNR actively participated in the development of a five-year regional network assessment for Region 5 states dated July 1, 2010. Authority for monitoring efforts exists under general air pollution duties in s. 285.11, Wis. Stats.

Funding for Wisconsin's air monitoring network comes from a variety of sources including from the U.S. EPA under its Section 103 and 105 grant programs supporting federal monitoring requirements specified in *40 C.F.R Part 58.10*.

3. Section 110(a)(2)(C): Programs for enforcement, PSD, and NSR

"Each such plan shall [...] include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter."

The WDNR Air Management and Environmental Enforcement Programs work together to assure compliance with air program SIP provisions, administrative code, and permit requirements. Authority to enforce violations and to assess penalties is contained in ss. 285.83 and 285.87, Wis. Stats. The WDNR follows a stepped enforcement process to address violations. The enforcement response ranges from issuance of a Letter of Inquiry (the state counterpart of an EPA 114 request) where additional information is needed to confirm or assess the significance of a violation, up through referral to the Wisconsin Department of Justice (DOJ) for civil or criminal enforcement as appropriate. Wisconsin regulates Pb emissions under Chapter NR 447, Wis. Adm. Code. Under s. 285.13, Wis. Stats., WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented.

The Environmental Performance Partnership Agreement (EnPPA) between the Wisconsin Air Management Program and U.S. EPA Region 5 addresses implementation of the U.S. EPA High Priority Violation (HPV) policy. The process for prosecution of violations is also addressed in an Air Management Program Compliance and Enforcement Memorandum of Understanding (MOU) between U.S. EPA Region 5 and the WDNR Air Management Program. Consistent with the provisions of this MOU, the two agencies conduct monthly compliance and enforcement conference calls to discuss program issues and specific cases.

The WDNR regulates modification and construction of stationary sources through its USEPA approved nonattainment NSR, PSD, and Title V permits programs under s. 285.11, s. 285.13, s. 285.17, s. 285.19 and ss. 285.60 through 285.69, Wis. Stats. WDNR collects revenue to support these permit programs through application and annual fee requirements under s. 285.69, Wis. Stats.

On March 28, 2011, WDNR transmitted a letter to EPA clarifying that the infrastructure SIP before EPA review at that time (with respect to the 1997 ozone and 1997 PM_{2.5} NAAQS) only included PSD regulations that remained approved after EPA issued the PSD SIP narrowing rule. Thus, the greenhouse gas (GHG) PSD permitting requirement in Wisconsin's infrastructure SIP submittal consisted of only that portion of the PSD SIP program that applies PSD permitting requirements to GHG emissions at or above the tailoring rule thresholds. WDNR made a subsequent submittal on May 4, 2011, asking that revisions to the State's PSD program with respect to aligning the State threshold for GHG emitting sources with the Federal threshold be incorporated into the SIP. Therefore, Wisconsin retains all necessary resources and authority to permit GHG emitting sources at the Federal tailoring rule threshold.

4. Section 110(a)(2)(D)(i): Interstate transport provisions
“Each such plan shall [...] contain adequate provisions:
 - (i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will-
 - (I) contribute significantly to nonattainment in, or
 - (II) interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality to protect visibility.”

In 2010 and 2011, the WDNR re-evaluated all Pb sources in the state and determined that only one source, Kohler Company located in Sheboygan County, continues to require air monitoring. Other potential Pb sources were found to either have emissions well below 0.5 tons per year, contributed less than 50% to the Pb NAAQS, or were permanently closed. A waiver for those sources that were found to emit above the 0.5 ton per year of Pb threshold, but that modeling showed contributed less than 50% of the Pb NAAQS, was submitted by the WDNR and approved by the U.S. EPA on September 19, 2011. Since the only Pb source that requires monitoring (Kohler Company) is located more than 70 miles from the nearest state border (IL), Wisconsin does not believe that any Pb sources in the state contribute significantly to nonattainment in, or interfere with maintenance by, any other state. Furthermore, the U.S. EPA has designated all of Wisconsin as unclassifiable/attainment for the 2008 Pb NAAQS.

If needed, ss. 285.11, 285.13 and 285.15, Wis. Stats., address circumstances where interstate transport reduction agreements between states are needed to resolve SIP development of cross-boundary nonattainment areas.

As detailed in the section addressing section 110(a)(2)(C), Wisconsin has adequate PSD and NSR regulations; these regulations satisfy all applicable elements of section 110(a)(2)(D)(i), as well as those of section 110(a)(2)(C).

5. Section 110(a)(2)(D)(ii): Interstate and International transport provisions
“Each such plan shall [...] contain adequate provisions insuring compliance with the applicable requirements of sections 115 or 126(b) that involve Pb emissions (relating to interstate and international pollution abatement).”

Wisconsin’s air management program contains adequate provisions to insure compliance with Section 126 of the federal Clean Air Act relating to interstate pollution abatement. Neighboring states and tribes are notified regarding new or modified sources. Additionally, Section 115 of the Federal Clean Air Act relates to international pollution abatement. Wisconsin has no pending obligations under Section 115.

6. Section 110(a)(2)(E): Adequate personnel, funding, and authority
“Each such plan shall [...] provide:

- (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof),
- (ii) requirements that the state comply with the requirements respecting state boards under section 128,
- (iii) necessary assurances that, where the state has relied on a local or regional government agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.”

Funding and personnel for the WDNR is through the State's biennial budget process. The WDNR Air Management Program has several funding sources, including program revenue (fees paid by businesses), tax revenue and grants (federal and state). There are separate accounts affiliated with the different funding sources to ensure the funding and related personnel are used for the intended purpose. The primary federal grant the Air Management Program receives is the Section 105 Air Pollution Control Grant. It is an annual grant that includes extensive review by the U.S. EPA. In addition, the WDNR and the U.S. EPA negotiate priorities and grant commitments under the EnPPA, which is a two year agreement itemizing performance measure and outcomes across the various funding sources and grants. Wisconsin's basic air management program duties and authorities are ensured under s. 285.11, Wis. Stats.

As specified in the section addressing section 110(a)(2)(C), WDNR also retains both the legal authority and adequate personnel to permit GHG emitting sources at the appropriate Federal tailoring threshold.

With respect to the requirements of section 128, WDNR notes that our Natural Resources Board does not generally approve enforcement or permit orders. However, there are rules that explicitly address conflict of interest. Of note, Chapter 19 of the Wisconsin State Rules, “General Duties of Public Officials” part 46 is the provision that would address conflict of interests over public officials, which would include the Natural Resources Board.

7. Section 110(a)(2)(F): Stationary source monitoring and reporting
“each such plan shall [...] require, as may be prescribed by the Administrator:

- (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,
- (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source

(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection."

The WDNR requires regulated sources to monitor, keep records, and submit reports, dependant on applicable requirements and type of permit issued. Frequency and requirements for review are incorporated as part of Wis. Adm. Codes NR 438 and 439. Emission reports are submitted to meet requirements in our emission statement SIP. Wisconsin has one net-based monitoring, reporting, permits and compliance database that substantially strengthens the integrity of each of its component units. Basic authority for this effort is provided in s. 285.65, Wis. Stats. Public inspection of reports is available under Wisconsin's open records law contained in s. 19.35, Wis. Stats.

8. Section 110(a)(2)(G): Emergency episodes:

"Each such plan shall provide for authority comparable to that in section 303 of this Title and adequate contingency plans to implement such authority,"

Wisconsin Statute s. 285.85 requires the WDNR to act upon a finding that episode or emergency conditions exist. This language authorizes the WDNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health.

9. Section 110(a)(2)(H): Future SIP revisions

"Each such plan shall [...] provide for revisions of such plan-

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter (CAA)."

Wisconsin Statutes s. 285.11(6) provides the WDNR the authority to develop all rules, limits and regulations necessary to meet ambient air quality standards as they evolve and to respond to any U.S. EPA findings of inadequacy with the overall Wisconsin SIP and air management programs.

10. Section 110(a)(2)(J): Consultation with government officials, public notification, PSD and visibility protection

"Each such plan shall [...] meet the applicable requirements of section 121 of this Title (relating to consultation), section 127 of this Title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection)."

The WDNR follows an administrative process for the authorization, approval of public notice, and final adoption by its Natural Resources Board (NRB) of SIP revisions for air quality control programs or measures. The administrative process ensures that potentially impacted public entities are identified and allowed to become engaged in the SIP

development process. The Bureau of Air Management has effectively used formal stakeholder structures in the development and refinement of all major SIP revisions. The WDNR is given the authority in s. 285.13(5), Wis. Stats., to "advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or inter-local agencies, and the federal government, and with interested persons or groups" during the entire SIP revision process and for other elements related to air management for which the WDNR is the officially-charged agency.

The WDNR maintains an active monitoring network for criteria pollutants (those with NAAQS). As provided for under s. 285.11, Wis. Stats., public notice is provided at levels associated with the extent of the monitored problem ranging from an advisory to alert levels. The State of Wisconsin actively participates in regional air quality forecasts and EPA's AIRNOW air quality data outreach program. The WDNR maintains an active multi-media outreach effort through a variety of partners to ensure adequate public notice of air quality and to advise the public of actions to reduce immediate exposure and improve air quality. Public notification is provided through the Department's website and through a contracted email subscription service (GovDelivery). Wisconsin is also an active member of LADCO (Lake Michigan Air Directors Consortium).

WDNR's satisfaction of the PSD and visibility requirements of this section have been previously addressed in the section addressing 110(a)(2)(C) and section 110(a)(2)(D). Insofar as those provisions satisfy the applicable requirements of those sections, WDNR intends the same provisions to satisfy the applicable requirements of section 110(a)(2)(J).

11. Section 110 (a)(2)(K): Air quality modeling/data

"Each such plan shall [...] provide for-

(i) the performance of such air quality modeling as the administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission upon request, of data related to such air quality modeling to the Administrator."

The WDNR has the authority and capability to perform source-oriented dispersion modeling of Pb emissions using models such as AERMOD. The WDNR requires source-specific modeling for PSD-NSR assessment and permitting for the construction of major and some minor sources. These authorities reside under ss. 285.11, 285.13 and 285.60 - 285.69, Wis. Stats.

12. Section 110(a)(2)(L): permitting fees

"Each such plan shall require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover-

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit

(not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter Title V of this chapter.”

Major stationary sources receive permits under Wisconsin's Title 5 and NSR programs. The Title 5 program is funded by emission fees paid by sources and the level of funding is included in the state's biennial budget process. The NSR program is funded by application and review fees that vary based on the type and complexity of the permit. These fees were revised effective January 1, 2011. Authority is established under s. 285.69, Wis. Stats.

13. Section 110(a)(2)(M): Consultation/participation by affected local entities

“Each such plan shall [...] provide for consultation and participation by local political subdivisions affected by the plan.”

Consultative authorities and responsibilities are noted in response to Section 110(a)(2)(J) above regarding intergovernmental consultation. In addition, the WDNR follows formal public hearing processes in developing and adopting all formal SIP revisions that entail new or revised control programs or strategies. The WDNR actively engages potentially impacted stakeholders and other interested parties including local governmental entities. The WDNR is required to adopt all formal emission control programs and strategies as rules following the state's formal regulatory processes of notice prior to adoption of rules. For any SIP revision not related to a single source, the WDNR is required to provide the standing Committees of the State Legislature with jurisdiction over environmental matters, a 60 day review period which effectively ensures local entities have been engaged in the program development process. The WDNR is obligated to respond to inquiries by the committee Chairs within 15 days under s. 285.14, Wis. Stats.