

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: AM-15-25

Relating to: Incorporation of reasonably available control technology requirements for sources of volatile organic compound air emissions

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

2. Detailed description of the objective of the proposed rule:

The objective of these rules is to implement federal requirements limiting emissions of ozone-forming substances to meet Clean Air Act requirements and protect air quality in ozone nonattainment areas.

Per the federal Clean Air Act (CAA), an ozone nonattainment area is initially classified according to the degree by which ozone levels within the area exceed the federal ozone standard. To protect public health, regulatory requirements in the nonattainment area become more stringent with each successive classification (Marginal, Moderate, Serious, Severe, and Extreme).

CAA sections 182(b)(2), (c), (d), and (e) require states with areas that are classified as Moderate or above to implement Reasonably Available Control Technology (RACT) requirements to limit emissions of an ozone precursor called volatile organic compounds (VOC). VOC RACT requirements apply to two groups of emissions sources: source categories for which the U.S. Environmental Protection Agency (EPA) has issued Control Techniques Guidelines (CTGs), and all other sources that emit VOC at or above the major source threshold, also known as “non-CTG major sources”.

The Department of Natural Resources (department) anticipates that portions of chs. NR 419 through 425, Wis. Adm. Code, that are related to the control of VOC emissions may be revised as part of the proposed rulemaking. Additional rule changes or clarifications that are reasonably related to the stated objective may be pursued.

Non-CTG VOC RACT

Without the proposed VOC RACT rules for non-CTG major sources, the state will not have a federally approvable VOC RACT program and the state’s nonattainment areas will be ineligible for redesignation to attainment, even if ozone concentrations are below the standard. This can impact economic growth as nonattainment areas would continue to be under stricter regulations. The department expects that the proposed non-CTG major source VOC RACT rules may impact the state’s air quality by reducing emissions of ozone-forming VOCs from stationary sources.

CTG VOC RACT

The department will assess the five CTGs that are not currently incorporated into Wisconsin Administrative Code (Shipbuilding and Ship Repair Operations; Aerospace Manufacturing and Rework Operations; Fiberglass Boat Manufacturing; Oil and Natural Gas Industry; and Automobile and Light-Duty Truck Assembly Coatings) and determine whether any should be included. If it is deemed necessary to incorporate any of these CTGs, the department would propose rule language to do so.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule will be consistent with federal requirements. A fully implemented VOC RACT program covers CTG sources and non-CTG major sources. The department has incorporated some administrative rules under chs. NR 419 through 425, Wis. Adm. Code, to meet VOC RACT requirements. The proposed rulemaking will assess VOC RACT requirements for the remaining CTGs and incorporate all non-CTG major sources, ensuring the state has a fully implemented and federally enforceable VOC RACT program.

The department consulted with the EPA to evaluate all available options to satisfy Wisconsin's non-CTG VOC RACT requirements. In an April 14, 2023, letter, EPA pointed out these deficiencies. The only remaining option to meet RACT requirements is for Wisconsin to adopt a VOC RACT rule that applies to non-CTG major sources located in ozone nonattainment areas that are, or were previously, classified as Moderate or above.

The proposed VOC RACT rule will ensure the state can make a timely demonstration that it meets federal VOC RACT requirements for current ozone nonattainment areas and any future ozone nonattainment area reclassifications. This will allow the state to redesignate areas meeting current air quality standards from nonattainment to attainment as expeditiously as possible.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is required under s. 285.11(1), Stats., to promulgate and implement air pollution control rules consistent with ch. 285, Stats. In addition, s. 285.11(6), Stats., requires the department to prepare and develop comprehensive state implementation plans (SIP) for the prevention, control, and abatement of air pollution and to revise and implement those plans to conform with the CAA.

CAA sections 182(b)(2), (c), (d), and (e) provide the federal statutory basis for this rule. CAA section 182(b)(2) requires states to implement VOC RACT in ozone nonattainment areas classified as Moderate or above for all VOC sources in the area covered by any CTG and major stationary sources of VOC emissions not otherwise covered by EPA's CTGs (i.e., for non-CTG major sources). CAA sections 182(c), (d), and (e) establish ozone nonattainment area requirements for Serious, Severe, and Extreme areas.

Section 183(a) and (b)(1) of the CAA requires EPA to issue CTGs for new stationary source categories, and periodically review and, if necessary, update these CTGs.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that approximately 1,600 hours of staff time will be required to complete the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

The proposed non-CTG major source portion of the VOC RACT rule will apply to stationary sources located in ozone nonattainment areas classified as moderate or above that have the potential to emit VOCs at or above the major source threshold. In moderate ozone nonattainment areas, the major source threshold for VOCs is 100 tons per year (tpy). This threshold decreases as areas are “bumped up” to higher ozone nonattainment classifications (Serious – threshold is 50 tpy, Severe – 25 tpy, Extreme – 10 tpy). Examples of potential non-CTG major sources include: metal foundries, industrial laundry and dry cleaning facilities, energy generating facilities, and large manufacturers of personal care products, coatings, electrical motors/generators, and petroleum products.

The proposed CTG portion of the VOC RACT rule may apply to industrial sources located in ozone nonattainment areas classified as moderate or above in the five identified categories (Shipbuilding and Ship Repair Operations; Aerospace Manufacturing and Rework Operations; Fiberglass Boat Manufacturing; Oil and Natural Gas Industry; and Automobile and Light-Duty Truck Assembly Coatings) where these emissions have not already been addressed in the Wisconsin Administrative Code. The Air Program will assess if any sources would be subject to these CTGs as part of the rulemaking process.

In addition to these entities, there are organizations that may not be directly affected by the rule but may have an interest in rule development, including business, environmental, and public health organizations.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

EPA has made available a guidance document containing a generic model rule for states to use as a template when developing their own non-CTG VOC RACT administrative rules (“Model Volatile Organic Compound Rules for Reasonably Available Control Technology”). While the model rule guidance does not represent a federal regulation, it does provide a framework for what EPA deems a federally approvable non-CTG major source VOC RACT rule.

EPA has also promulgated CTGs that the department will evaluate for incorporation into state code. The department’s rule development will be based on, and consistent with, EPA’s CTGs.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

Overall economic impact of the rule is expected to be moderate.

While the proposed rule is intended to limit non-CTG VOC emissions from large stationary sources that have emissions exceeding the major source threshold, the rule may impact small businesses. To comply with the proposed rule, subject businesses may be required to reduce VOC emissions through a variety of means, such as reformulation of VOC-containing materials or operation of pollution control equipment. Small businesses may have the option of taking production or capacity limitations by permit to avoid triggering rule applicability.

Additionally, given the applicability threshold for the CTGs, the control requirements, and the limited geographic scope of potential applicability, a relatively small number of CTG controlled sources are anticipated to be impacted.

The economic impact of this proposed rule is expected to be far less than the economic impact to the region of ongoing ozone nonattainment. Without the proposed rule, the state is unable to meet CAA

requirements or redesignate these ozone nonattainment areas to attainment when current ozone standards are met.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one virtual public hearing in the month of June 2027. Comments may be provided verbally during the hearing or in writing by email or mail.

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Signed by:

Steven Little

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Steven Little, Deputy Secretary For Karen Hyun, Ph.D., Secretary

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Date Submitted