

SUBJECT: Presentation of the Great Lakes Legal Foundation's (GLLF) petition for rulemaking to repeal the state's secondary 24-hour ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and request for adoption of Board Order AM-23-07B, proposed rules affecting chs. NR 404 and 484, Wis. Adm. Code, pertaining to repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP.

FOR: JUNE 2011 BOARD MEETING

TO BE PRESENTED BY / TITLE: John H. Melby, Jr. / Director, Bureau of Air Management

SUMMARY: The Department and the Board received a petition for rulemaking from the GLLF on September 15, 2010. The petition requests the repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP (s. NR 404.04 (3), Wis. Adm. Code). The Department will present the petition to the Board and request adoption of AM-23-07B to repeal the TSP standard in response to the petition. Adopting AM-23-07B would satisfy the original intent of AM-23-07, presented to the Board on August 15, 2007 for public hearing approval, which also proposed repeal of the TSP standard. The Department held a public hearing on AM-23-07 in Madison on October 12, 2007.

The U.S. EPA established air quality standards for particulate matter in 1971. Particulate matter was originally measured as TSP, which is particulate up to 100 micrometers in diameter. Then in 1987, the U.S. EPA changed the indicator to coarse particulate matter (PM₁₀), which is particulate up to 10 micrometers in diameter. The federal PM₁₀ air quality standards replaced the federal TSP air quality standards. The U.S. EPA adopted additional air quality standards for fine particulate matter (PM_{2.5}), which is particulate up to 2.5 micrometers in diameter, in 1997 and 2006.

Repeal of the TSP standard was previously considered by the Board in 1989 and 2008 (Board Orders AM-22-88 and AM-23-07). In 1989, the Board was concerned that new federal air quality standards for PM₁₀ did not provide adequate public welfare protection from potential nuisance concerns, such as fugitive dust and adopted a resolution to retain the TSP standard. Currently, large size particulate matter (i.e., TSP) is regulated under the fugitive dust rule (s. NR 415.04, Wis. Adm. Code) and the Department has adopted more stringent PM₁₀ and PM_{2.5} standards for smaller sized particulate matter. On April 23, 2008, the Board requested that the Department should not move too quickly regarding changes to the TSP standard. On April 27, 2011, the Wisconsin Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending s. NR 404.04 (3), Wis. Adm. Code (the TSP standard).

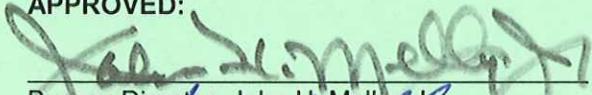
Repeal of the TSP standard, and an associated definition and monitoring requirements, will allow the Department and affected industry to focus resources on smaller particulates, which have been identified as being more harmful than TSP to human health. Additionally, repealing the TSP standard would make the state's air quality standards consistent with the federal air quality standards.

RECOMMENDATION: That the Board adopt Order AM-23-07B.

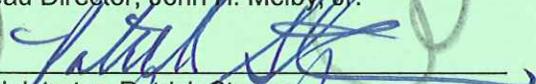
LIST OF ATTACHED MATERIALS:

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|--|---|---|----------|
| No <input type="checkbox"/> | Fiscal Estimate Required | Yes <input checked="" type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input type="checkbox"/> | Background Memo | Yes <input checked="" type="checkbox"/> | Attached |

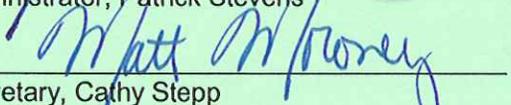
APPROVED:


Bureau Director, John H. Melby, Jr.

5/16/11
Date


Administrator, Patrick Stevens

5/16/11
Date


Secretary, Cathy Stepp

5/6/11
Date

cc: Board Liaison - AD/8 Bill Adamski - AM/7 Bob Eckdale - AM/7 Joe Hoch - AM/7 Marney Hoefler - LS/8

DATE: May 13, 2011

TO: Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo regarding the Great Lakes Legal Foundation's (GLLF) petition for rulemaking to repeal the state's secondary 24-hour ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and the request for adoption of Board Order AM-23-07B, proposed rules affecting chs. NR 404 and 484, Wis. Adm. Code, pertaining to repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP.

Background and Why Is This Rule Being Proposed?

The federal Clean Air Act (CAA) requires the U.S. Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for criteria pollutants. The U.S. EPA is required to periodically review the current health science in order to evaluate if and how the existing NAAQS need to be adjusted to more accurately protect human health and welfare.

The U.S. EPA established air quality standards for particulate matter in 1971. Particulate matter was originally measured as TSP, which is particulate up to 100 micrometers in diameter. Then in 1987, the U.S. EPA changed the indicator to coarse particulate matter (PM₁₀), which is particulate up to 10 micrometers in diameter. The federal PM₁₀ air quality standards replaced the federal TSP air quality standards. Particulate matter larger than 10 micrometers generally is not inhaled into the lungs and thus PM₁₀ was found to adequately protect human health. In 1997, the U.S. EPA adopted air quality standards for fine particulate matter (PM_{2.5}), which is particulate up to 2.5 micrometers in diameter. PM_{2.5} can remain suspended in the air longer and penetrate deeply into the lungs easier than PM₁₀. Currently, there are federal air quality standards for both PM_{2.5} and PM₁₀.

The Department and the Board received a petition for rulemaking from the Great Lakes Legal Foundation on September 15, 2010. The petition requests the repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP (s. NR 404.04 (3), Wis. Adm. Code). The purpose of this informational item is to formally present the petition to the Board. The petitioners' request for rulemaking for repeal of the TSP standard is primarily based on ss. 285.21 (1) (a) and (4), Wis. Stats. These statutes state that the Department may not issue air quality standards more restrictive than federal air quality standards unless there is a finding and written documentation by the Department justifying the need in order to protect public health and welfare. A copy of the petition is included as a reference.

In response to the GLLF petition, the Department is requesting adoption of AM-23-07B to repeal the TSP standard. Repeal of the TSP standard was previously considered by the Board in 1989 and 2008 (Board Orders AM-22-88 and AM-23-07).

In 1989, the Board was concerned that new federal air quality standards for PM₁₀ did not provide adequate public welfare protection from potential nuisance concerns, such as fugitive dust and adopted a

resolution to retain the TSP standard. Currently, large size particulate matter (i.e., TSP) is regulated under the fugitive dust rule (s. NR 415.04, Wis. Adm. Code) and the Department has adopted more stringent PM₁₀ and PM_{2.5} standards for smaller sized particulate matter.

In 2008, the Department planned to request adoption of Board Order AM-23-07, which included repeal of the TSP standard, at the February 2008 Board meeting. Proposed repeal of the TSP standard was included in the original Board Order AM-23-07 taken to public hearing. After the close of the public comment period in October 2007, concerns were expressed by several citizens and the Board regarding the proposed repeal of the TSP standard. Consequently, the Board ordered the Department to bifurcate the original Board Order AM-23-07 in December 2007. The proposed repeal of the TSP standard was moved to AM-23-07B. On April 23, 2008, the Board requested that the Department should not move too quickly regarding changes to the TSP standard.

On April 27, 2011, the Wisconsin Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26(2)(d), Wis. Stats., suspending s. NR 404.04(3), Wis. Adm. Code (TSP standard).

Repeal of the TSP standard, and an associated definition and monitoring requirements, will allow the Department and affected industry to focus resources on smaller particulates, which have been identified as being more harmful than TSP to human health. Additionally, repealing the TSP standard would make the state's air quality standards consistent with the federal air quality standards. This repeal would not have an impact on the fugitive dust rule.

Summary Of The Rule

The proposed rule revisions in AM-23-07B would repeal the state's secondary 24-hour ambient air quality standard, an associated definition and monitoring requirements for particulate matter measured as TSP, affecting chs. NR 404 and 484, Wis. Adm. Code.

How Does This Proposal Affect Existing Policy?

Repealing the TSP standard is consistent with past actions taken by the Department to ensure consistency between state and federal ambient air quality standards. In addition, repealing the TSP standard would make the state's air quality standards consistent with the federal air quality standards.

Hearing Synopsis

A public hearing was held in Madison on October 12, 2007. The only individual from the general public present at the hearing did not provide any comment on the proposed rules.

The only written public comments received on the original Order AM-23-07 were from two trade organizations that represent certain Wisconsin business sectors whose members are subject to the Department's air pollution requirements. These trade organizations are 1) the Wisconsin Paper Council (WPC), which currently represents 20 separate entities in the pulp, paper and allied industry, and 2) Wisconsin Manufacturers and Commerce (WMC) which currently represents nearly 4,000 companies in the state. Both the WPC and WMC expressed full support of the proposed rule revisions in Order AM-23-07, including repeal of the TSP standard.

Information On Environmental Analysis

An environmental analysis of the impact of the proposed rule revisions is not needed because these changes are considered to be a Type III action under s. NR 150.03(3), Wis. Adm. Code. A Type III action is one that normally does not 1) have the potential to cause significant environmental effects, 2) significantly affect energy usage and 3) involve unresolved conflicts in the use of available resources.

Final Regulatory Flexibility Analysis

The proposed rule revisions are to make Wisconsin's ambient air quality standards the same as the federal ambient air quality standards. The Department has limited flexibility to make any changes to the proposed rule revisions.





TO: Secretary Matthew J. Frank, Wisconsin Department of Natural Resources
Members, Wisconsin Natural Resources Board

CC: Members, Assembly Committee on Natural Resources
Members, Senate Committee on Environment

FROM: Andrew Cook, Attorney for Great Lakes Legal Foundation, on behalf of
Wisconsin Manufacturers & Commerce

RE: **Petition for Rulemaking to Repeal the Ambient Air Quality Standard for
Total Suspended Particulates (Wis. Admin. Code § NR 404.04(3))**

DATE: September 15, 2010

Pursuant to Wis. Stat. § 227.12 *et seq.*, the Great Lakes Legal Foundation, representing the Wisconsin Manufacturers & Commerce ("WMC" or "Petitioner"), hereby files this petition requesting the Department of Natural Resources (DNR) and Natural Resources Board (Board) to issue a rule to repeal the ambient air quality standard for total suspended particulates (TSP) contained in Wis. Admin. Code § NR 404.04(3). Related, WMC requests the DNR amend or repeal other rule provisions directly coupled to the TSP standard, such as monitoring or fee assessments, as well as to submit a timely request to the United States Environmental Protection Agency, Region 5, to remove any such provisions that may be contained in Wisconsin's State Implementation Plan.

I. Background

The particulate matter (PM) standard has evolved over the years, mostly to reflect evidence that smaller particles are the more relevant health threat. For example, the original PM standard and increments were based on the non-health based TSP indicator, but on July 1, 1987 (52 FR 24634), EPA replaced TSP with a new indicator known as PM10, which was later supplemented with an even smaller indicator, PM2.5. In any event, the "designations for TSP were therefore no longer necessary and serve no useful purpose relative to the Federal program." 68 FR 54162, Sept. 16, 2003.

For years, petitioner WMC and other business organizations requested the DNR repeal the outdated standard that was imposing unnecessary and substantial compliance costs on Wisconsin businesses, which were not being incurred by their competitors in other states. Finally, being convinced state law requires repeal and that limited resources would better be focused on actual health based air quality standards such as PM2.5, the DNR moved forward in 2007 to repeal the TSP standard. The key documents, in sequence, with relevant DNR findings and basis for the TSP repeal are as follows:

Scope Statement – March 15, 2007 memorandum from DNR Secretary Hassett to Board members Thomas and Ela, noting that "the department is now proposing to repeal the

TSP ambient air standard in order to focus resources on particulate emissions which more directly affect public health.”

“By repealing the TSP ambient air standard . . . Wisconsin’s air quality standards will be consistent with EPA’s NAAQS.” And, “As required by s. 285.21 (1)(a), Stats., Wisconsin must promulgate ambient air quality standards similar to the NAAQS. Consequently, there are no apparent policy alternatives to this proposed action.”

Exhibit A.

Hearing Authorization Memo – May 15, 2007 memorandum from DNR Secretary Hassett to Board on request to go to public hearing, noting that “By repealing the ambient air standards for TSP . . . Wisconsin’s air quality standards would:

1. Reflect the current health science for protecting human health and welfare related to particulate matter;
2. Be fully consistent with EPA’s NAAQS for particulate matter, which is required under s. 285.21 (1)(a), Stats.; and
3. Allow the Department to focus resources on controlling fine particulate emissions [PM2.5, PM10], which more directly affect public health than does TSP.”

Exhibit B.

Notice of Public Hearing – August 30, 2007 notice to the public on an October 12, 2007 hearing, noting that “The proposed rules would assure that the Wisconsin Administrative Code is consistent with the NAAQS for particulate matter, as required under s. 285.21(1)(a), Stats., and reflect the science of particle pollution effects on human health. **Exhibit C.**

Rule Adoption Memo (2007) – November 30, 2007 memorandum from DNR Secretary Frank to Board related to recommendation to adopt the rule, setting forth the same three findings from the May 15 memo, above, and noting that the only comments on the rule were from WMC (**Exhibit D**) and the Wisconsin Paper Council, both supporting the TSP repeal. **Exhibit E.**

Rule Adoption Memo (2008) – March 12, 2008 memorandum from DNR Secretary Frank to Board related to recommendation to adopt the rule, noting that the rule was removed from the February 2008 agenda because “After the close of the public comment period in October, 2007, concerns were expressed by several citizens and the Board regarding the proposed repeal of the air quality standard for total suspended particulates (TSP).” **Exhibit F.**

April 2008 Board Meeting Minutes. At the April 22, 2008 Board meeting, DNR staff again advised the Board that “the proposed rule revisions are needed to make Wisconsin’s ambient air quality standards the same as the federal NAAQS, as required under s.285.21(1)(a), stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions.” Nevertheless, the Board adopted the rules without the TSP repeal provisions, with the minutes noting that the Board advised “the Department should not move too quickly on [the TSP] issue.” **Exhibit G.**

Report to Legislature – This report filed on May 1, 2008, is required under Wis. Stat. § 227.16(2), and is to include a summary of public comments from the hearing, the

agency's response to such comments, and any modifications made as a result of the public hearing. This record reflects the fact the DNR received zero adverse comments to the TSP repeal, either at the hearings or through written comments. Given no such comments, the DNR states that "No modifications were made as a result of the public hearing." This statement, while misleading, is factually correct since the decision to drop the TSP repeal was based on yet-to-be disclosed input provided by unidentified parties after the public comment period. We submit that basing decisions on evidence outside the rulemaking record is inconsistent with the intent, if not the letter of Wisconsin's administrative rulemaking procedures. In addition, the record once again noted but rejected following the law requiring Wisconsin standards to mirror EPA standards.
Exhibit H.

Despite being advised in writing no less than five times by the DNR staff that the repeal of the TSP standard is required by Wisconsin statutes and that such repeal would help marshal resources to address actual health-based standards, the Board directed the DNR staff to unjustifiably remove the provision repealing the TSP standard from Order AM-23-07A. There was no basis or finding in the record to support this modification; only after the close of the public comment period in October 2007 were concerns "expressed by several citizens and the Board."

II. Petition for Rulemaking to Repeal the Ambient Air Quality Standard for Total Suspended Particulates Contained in NR 404.04(3).

This petition for rulemaking meets the criteria set forth in Wis. Stat. § 227.12(2) by stating clearly and concisely: a) the substance and the nature of rulemaking requested; b) the reason for the request and the petitioners' interest in the requested rule; and c) the reference to the agency's authority to promulgate the requested rule. These criteria are discussed in greater length below.

A. WMC Petitions the DNR and Natural Resources Board to Promulgate a Rule to Repeal the Ambient Air Quality Standard for Total Suspended Particulates under NR 404.04(3).

WMC petitions the DNR and Board to promulgate a rule to repeal the ambient air quality standard for total suspended particulates in Wis. Admin. Code § NR 404.04(3). Specifically, WMC petitions the DNR and Board to promulgate a rule to repeal the following language contained in Wis. Admin. Code § NR 404.04(3):

Particulate Matter: Secondary Standard. The secondary standard for particulate matter measured as total suspended particulates is 150 micrograms per cubic meter – maximum 24-hour average concentration, not to be exceeded more than once per year.

WMC also petitions the DNR to amend or repeal other rule provisions directly coupled to the TSP standard, such as monitoring or fee assessments, as well as to submit a timely request to the United States Environmental Protection Agency, Region 5, to remove any such provisions that may be contained in Wisconsin's State Implementation Plan.

B. WMC's Members Are Affected by the Existing TSP Standard in NR 404.04(3); therefore, WMC Objects to the Rule Because It Violates Wis. Stat. §§ 285.21(1)(a) & (4).

WMC is a business trade organization with nearly 4,000 members statewide in the manufacturing, energy, commercial, health care, insurance, banking, and service sectors of the economy. Roughly one-quarter of the private sector employees in Wisconsin are employed by WMC members. WMC members are substantially impacted by administrative rules promulgated by state agencies. Therefore, WMC has a significant interest in ensuring that agencies follow statutory rulemaking procedures and promulgate rules that comport with the statutory authority conferred by the legislature. This is particularly true with respect to rules that impact air quality standards. As a business association, WMC is granted the authority to petition for rulemaking. *See Wis. Stat. § 227.12(1).*

WMC therefore files this petition for rulemaking to ensure that Wisconsin's ambient air quality standards are consistent with the federal air quality standards, as required by Wis. Stat. §§ 285.21(1)(a) & (4).

C. The DNR and the Board Have Authority, and are Required by Wis. Stat. §§ 285.21(1)(a) & (4), to Repeal the Ambient Air Quality Standard for Total Suspended Particulates

The DNR and the Board have statutory authority and the requirement to promulgate a rule to repeal the TSP ambient air quality standard under Wis. Admin. Code § NR 404.04(3).

- "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)." Wis. Stat. § 285.21(1)(a) (*Emphasis added*).
- "If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are modified, the department *shall* alter the corresponding state standards unless it finds that the modified standards would not provide adequate protection for public health and welfare. The department may not make this finding for an ambient air quality standard unless the finding is supported with the written documentation required under sub. (1)(b)1. to 4." Wis. Stat. § 285.21(4) (*Emphasis added*).

As noted above, the DNR staff on numerous occasions has advised the Board, the regulated community, and the public that it is required by law to repeal the ambient air quality standard for TSP. On this point there is no dispute, and thus, no valid reason for the Board to have rejected the DNR's proposed rule to repeal the TSP standard.

The only exception to comporting to EPA standards is if the DNR determines that the existing modified standards do not provide adequate protection for public health and welfare, and that that finding is supported by a public health risk assessment and other requirements as set forth in

Wis. Stat. §§ 285.21 (1)(b)1 to 4. The DNR has made no such finding. Instead, the DNR explicitly found that repealing the TSP standard would have health *benefits* because the repeal would “allow the Department to focus resources on controlling fine particulate emissions [PM_{2.5}, PM₁₀], which more directly affect public health than does TSP.” *See* Exhibit B.

Thus, not only do the DNR and the Board have the authority to issue a rule to repeal the TSP standard in Wis. Admin. Code § NR 404.04(3), they are *required* by law to promulgate ambient air quality standards similar to the EPA’s NAAQS. *See* Wis. Stat. § 227.11(2)(a) (“Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it...but a rule is not valid if it exceeds the bounds of correct interpretation.”); *see also Josam Mfg. Co. v. State Bd. of Health*, 133 N.W.2d 301, 309, 26 Wis.2d 587 (1965) (“the power of an agency to make rules must exist within the framework of the statute creating the agency. A rule must be in accord with the statutory policy...”).

III. Conclusion

Petitioner WMC hereby files this petition for rulemaking under Wis. Stat. § 227.12 *et seq.* to promulgate a rule to repeal the ambient air quality standard for TSP contained in Wis. Admin. Code § NR 404.04(3). Because such a rule is required by law, the DNR and the Board have no legitimate basis for denying the petition.

Petitioner understands that the DNR need only inform it of the agency’s decision to proceed within a “reasonable period of time.” However, given the unjustified regulatory costs already incurred by WMC’s members resulting from the DNR’s and the Board’s failure to follow the law, as well as the Board’s prior directive that “the Department should not move too quickly on [the TSP] issue,” it would be reasonable for Petitioner to seek other means of legal redress should no decision be issued by October 15, 2010.

Exhibit A

DATE: March 15, 2007

TO: Christine L. Thomas, Chair
Jonathan P. Ela, Vice-Chair & Air, Waste and Water Management/Enforcement Committee Chair

FROM: Scott Hassett

SUBJECT: Scope Statement Relating to Proposed Administrative Rule Changes Pertaining to Ambient Air Quality Standards

Description of the Objective of the Proposed Rule

Under the federal Clean Air Act, the US Environmental Protection Agency (EPA) has responsibility for promulgating National Ambient Air Quality Standards (NAAQS) which are designed to protect public health (primary standards) and public welfare (secondary standards). Under state law, if EPA promulgates a NAAQS, the department is required to promulgate a similar, but no more restrictive standard. The EPA has recently promulgated NAAQS for ozone and particulate matter (PM). In order to both reflect current air quality health science and to maintain consistency with EPA-promulgated NAAQS, the department is proposing the following administrative rule actions:

- a) Repeal the ambient air quality standards for total suspended particulates (TSP), annual PM_{10} particulate matter and 1-hour ozone from ch. NR 404, Wis. Adm. Code, as well as corresponding sections from ch. NR 484, Wis. Adm. Code.
- b) Adopt the EPA-promulgated NAAQS for fine particulate matter ($PM_{2.5}$) into ch. NR 404, Wis. Adm. Code, and incorporate the corresponding federal $PM_{2.5}$ monitoring requirements into ch. NR 484, Wis. Adm. Code.

Description of Relevant Existing and New Policies and Analysis of Policy Alternatives

The EPA repealed the TSP NAAQS in 1987 and replaced it with more restrictive particulate NAAQS for PM_{10} (1987), followed by $PM_{2.5}$ (1997) to more directly address the increasing scientific awareness of serious public health impacts from fine-scaled particulate matter. Although Wisconsin has retained the secondary TSP ambient air standard to address nuisance conditions, the department is now proposing to repeal the TSP ambient air standard in order to focus resources on particulate emissions which more directly affect public health.

The EPA repealed the 1-hour ozone NAAQS in 2005 after it promulgated the 8-hour ozone NAAQS, based on its conclusion that the more restrictive 8-hour ozone standard provides greater protection of public health.

By repealing the TSP ambient air standard and adopting the federal $PM_{2.5}$ ambient air standards, Wisconsin's air quality standards will be consistent with EPA's NAAQS. Additionally, Wisconsin's air program will be more focused on emission sources of fine particulates and their precursors, which have greater impacts on public health than emissions of TSP.

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. Consequently, there are no apparent policy alternatives to this proposed action.

Statutory Authority

Authorizing Wis. statutes: ss. 285.11(1) and (6) and 285.21(1)(a), Stats.

Estimate of Time and Other Resources Necessary to Develop the Rule

Approximately 250 hours of agency staff time is being budgeted to this proposed rule action.

Description of All Entities Affected by the Rule

Stationary source facilities that are seeking air permits may potentially be affected by focusing on modeled PM₁₀ impacts because concurrent TSP impacts will no longer be modeled.

Summary and Preliminary Comparison With Existing or Proposed Federal Regulations

A major purpose of this proposed rules package is to amend Wisconsin's ambient air quality standards in order to be consistent with the NAAQS, which are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR part 50). This consistency is required under s. 285.21(1)(a), Stats.

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Laurel Steffes - CE/6
Mark McDermid - CEA/7
Dr. Henry Anderson - H&FS, 1414 E Washington Avenue

CORRESPONDENCE/MEMORANDUM

DATE: May 15, 2007 FILE REF: 4508-2

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Background memo on public hearing authorization for Order AM-23-07 pertaining to revisions to ambient air quality standards for particulate matter.

1. Background and reasons why the rule revisions are being proposed

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as particulate matter, sulfur dioxide and ozone. The EPA is required to periodically review the current health science in order to evaluate if and how the existing NAAQS need to be adjusted to more accurately protect human health and welfare.

In 1987 EPA repealed the NAAQS for the general category of particulate matter pollution called total suspended particulates (TSP). This NAAQS was replaced with more restrictive NAAQS for smaller particles that are more readily inhaled into the human respiratory system (i.e., those less than 10 micrometers in diameter [PM_{10}]). In 1997 EPA promulgated additional NAAQS for even smaller particles (i.e., those less than 2.5 micrometers in diameter [$PM_{2.5}$]) to more directly address the increasing scientific awareness of serious public health impacts from fine particles.

In 2006 EPA took additional action on the particulate matter standards by lowering (making more restrictive) the 24 hour $PM_{2.5}$ NAAQS to better reflect the scientific understanding of how fine particles affect humans, and revoking the annual PM_{10} NAAQS – citing a lack of evidence linking health problems to long-term exposure to PM_{10} .

The Department is now proposing to revise Wisconsin's ambient air quality standards to reflect the current EPA NAAQS for particulate matter.

By repealing the ambient air standards for TSP and annual PM_{10} as well as adopting the NAAQS for $PM_{2.5}$, Wisconsin's air quality standards would 1) reflect the current health science for protecting human health and welfare related to particulate matter, 2) be fully consistent with EPA's NAAQS for particulate matter, which is required under s. 285.21 (1)(a), Stats., and 3) allow the Department to focus resources on controlling fine particulate emissions [$PM_{2.5}$, PM_{10}], which more directly affect public health than does TSP.

2. Summary of the proposed rule revisions

The proposed rule revisions in AM-23-07 would:

- Repeal ambient air standards for TSP and annual PM_{10} from ch. NR 404, Wis. Adm. Code and federal monitoring requirements for TSP and annual PM_{10} from ch. NR 484, Wis. Adm. Code.
- Adopt EPA-promulgated NAAQS for $PM_{2.5}$ into ch. NR 404, Wis. Adm. Code and incorporate the corresponding federal $PM_{2.5}$ monitoring requirements for that ambient air standard into ch. NR 484, Wis. Adm. Code.



3. Proposed rule revisions -- impact on existing policy

A) Proposed promulgation of the PM_{2.5} air standard: Impact on developing a state implementation plan (SIP).

It is possible that EPA in the future may designate some counties in Wisconsin as not attaining the 24 hour PM_{2.5} air standard based upon ambient air monitoring data. The Department's response to a designation of PM_{2.5} NAAQS nonattainment would be the adoption of rules to reduce emissions to bring all counties in the State into attainment of the 24 hour PM_{2.5} air standard. These rules could potentially affect some emissions sources in Wisconsin. If these emission control rules are promulgated to help the entire State attain the 24 hour PM_{2.5} air standard, the Department would work with all affected parties and stakeholders to develop any required State Implementation Plans (SIPs) in order to attain this air standard.

B) Proposed revocation of the TSP air standard: Impact on the air emission fees

There should be no effect on emission fees collected by the Department. Currently, TSP is not specifically listed as a pollutant for which emissions are required to be reported to the Department (s. NR 438.03, Table 1, Wis. Adm. Code). Based upon NR 438 requirements, each facility reports all particulate matter emissions less than 100 micrometers in diameter as particulate matter (PM).

C) Proposed revocation of the TSP air standard: Impact on the air permit review process for particulate matter emission sources

Air permit modeling is currently being done for both TSP and PM₁₀. If the TSP air standard is repealed, the review of air permit applications may be shortened, since the modeling and analysis for PM impacts would be focused solely on PM₁₀ emissions.

D) Proposed revocation of the TSP air standard: Impact on fugitive dust enforcement

The basic fugitive dust provisions in s. NR 415.04., Wis Adm. Code, would not be directly affected by the repeal of the TSP air standard, since most of these provisions are not expressly related to having a TSP ambient air quality standard, but rather are focused on the terms "fugitive dust", "particulate matter", "airborne dust", "air pollution", "fugitive emissions", "visible emissions" or "opacity".

4. Prior involvement of the Natural Resources Board

The Department has periodically revised the ambient air quality standards in ch. NR 404, Wis. Adm. Code, as needed to both reflect current health science and to maintain consistency with national air quality standards.

5. Entities potentially impacted by the proposed rule revisions

As noted in Section 3B, repealing the TSP air quality standard would have the air permit modeling and review process focus on PM₁₀ for those sources that emit particulate matter. This proposed change would expedite the air permit review process, benefiting both the Department and the permit applicant without adversely affecting public health.

6. Environmental review for potential impact

An environmental analysis of the impact of the proposed rule revisions is not needed because these changes are considered to be a Type III action under s. NR 150.03(3), Wis. Adm. Code. A Type III action is one that normally does not 1) have the potential to cause significant environmental effects, 2) significantly affect energy usage and 3) involve unresolved conflicts in the use of available resources.

7. Small business analysis

A) Do these proposed rule revisions impose any compliance and/or reporting requirements on small business?

The proposed rule revisions would modify Wisconsin's ambient air quality standards for particulate matter. These proposed rules contain no new requirements (compliance, reporting, etc..) for any sources, including those classified as small business.

B) Initial regulatory flexibility analysis

These proposed rule revisions are needed to make Wisconsin's ambient air quality standards the same as the federal NAAQS, as required under s.285.21(1)(a), stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions.

The proposed rule revisions pertain to ambient air quality standards, which contain no requirements for reporting, bookkeeping, schedules or other compliance procedures.

Overall, as assessed in Section 3 and summarized in Section 5 - repealing the TSP air quality standard could have a modest effect on certain sources subject to the air permit review process. Some of these facilities may be sources which meet the definition of a small business.

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
AM-23-07

NOTICE IS HEREBY GIVEN that pursuant to ss. 285.11(1) and (6) and 285.21(1)(a), Stats., interpreting s. 285.21(1)(a), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 404 and 484, Wis. Adm. Code, relating to ambient air quality standards for total suspended particulates (TSP) and particulate matter (PM) and affecting small business. The State Implementation Plan developed under s. 285.11(6), Stats., is also revised. The proposed rule will repeal ambient air standards for TSP and annual PM_{10} from ch. NR 404 and federal monitoring requirements for TSP and annual PM_{10} from ch. NR 484. The proposed rule will adopt U.S. Environmental Protection Agency promulgated national ambient air quality standards (NAAQS) for $PM_{2.5}$ into ch. NR 404 and incorporate the corresponding federal $PM_{2.5}$ monitoring requirements for that ambient air standards into ch. NR 484.

The proposed rules would assure that the Wisconsin Administrative Code is consistent with the NAAQS for particulate matter, as required under s. 285.21(1)(a), Stats., and reflect the science of particle pollution effects on human health. If any areas in the state are designated as nonattainment for the new air quality standards, the Department is required to develop an air quality state implementation plan to ensure that the ambient air quality standards are attained and maintained in those areas.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Types of small businesses affected: Any small business emitting particulate matter.
- b. Description of reporting and bookkeeping procedures required: No new state procedures are required.
- c. Description of professional skills required. No new skills are required.

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

October 12, 2007 Room G09, GEF #2 Building, 101 South Webster, Madison, WI
Friday at 1:30 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Robert Eckdale at (608) 266-2856 or by e-mail at Robert.Eckdale@wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site:

<http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-23-07). Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Adamski, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by e-mail to William.Adamski@wisconsin.gov. Comments may be submitted until October 22, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Dated at Madison, Wisconsin August 30, 2007

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By /s/ Scott Hasselt
Scott Hasselt, Secretary



Wisconsin Manufacturers' Association • 1911
Wisconsin Council of Safety • 1923
Wisconsin State Chamber of Commerce • 1929

James S. Haney
President

James A. Duchon
Vice President
Government Relations

James R. Morgan
Vice President
Marketing & Membership

Michael R. Shoys
Vice President
Administration

October 22, 2007

Mr. Bill Adamski,
Bureau of Air Management
Wisconsin Department of Natural Resources
P.O. Box 7921, Madison, WI 53707

Re: Draft Rule AM-23-07 - Revisions to NR 404 and 484 Ambient Air Quality Standards for Total Suspended Particulates (TSP) and Particulate Matter (PM)

Dear Bill:

Wisconsin Manufacturers & Commerce (WMC) submits these comments on the Department of Natural Resources (DNR) subject revisions to the ambient air quality standards and related monitoring provisions. WMC wholeheartedly supports these changes and appreciates DNR's effort to align Wisconsin standards to corresponding federal standards, as required under Wisconsin statutes.

WMC is the state's largest business trade association, with over 4,000 members in the manufacturing, service, health care, retail, energy and insurance sectors of our economy. WMC is dedicated to making Wisconsin the most competitive state to do business, and toward that goal, we support consistent, cost-effective and market-driven regulatory approaches that recognize a balance between environmental protection and the competitiveness Wisconsin's jobs and economy. WMC members have a substantial interest in the establishment or revision of Wisconsin ambient air quality standards.

As described by DNR, the proposed rule will:

- Repeal ambient air standards for TSP and annual PM10 from ch. NR 404 and federal monitoring requirements for TSP and annual PM10 from ch. NR 484.
- Adopt U.S. Environmental Protection Agency (EPA) promulgated national ambient air quality standards (NAAQS) for PM2.5 into ch. NR 404 and incorporate the corresponding federal PM2.5 monitoring requirements for that ambient air standard into ch. NR 484.
- The State Implementation Plan developed under s. 285.11(6), Stats., is also revised.
- The proposed rules would assure that the Wisconsin Administrative Code is consistent with the NAAQS for particulate matter, as required under s. 285.21(1)(a), Stats.

As noted by DNR, Wisconsin Statutes prescribe the authority for DNR to establish ambient air quality standards. Specifically, section 285.21(1) (a), Wis. Stats., provides:

501 East Washington Avenue
Madison, WI 53703-2944
P.O. Box 352
Madison, WI 53701-0352
Phone: (608) 258-3400
Fax: (608) 258-3413
www.wmc.org



Similar to federal standard. 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).

In addition, section 285.21(4), Wis. Stats., provides:

Impact of change in federal standards. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are modified, the department shall alter the corresponding state standards unless it finds that the modified standards would not provide adequate protection for public health and welfare. The department may not make this finding for an ambient air quality standard unless the finding is supported with the written documentation required under sub. (1) (b) 1. to 4.

As required by sections 285.21 (1)(a) and (4), Wis. Stats., Wisconsin must promulgate ambient air quality standards similar to EPA's NAAQS. DNR agrees, and specifically notes that "consequently, there are no apparent policy alternatives to this proposed action."

EPA repealed the TSP NAAQS in 1987 and replaced it with more restrictive particulate NAAQS for PM10 in 1987, followed by PM2.5 in 1997. Nevertheless, Wisconsin has for too long, and inconsistent with section 285.21(4), Wis. Stats., retained the secondary TSP ambient air standard. WMC agrees with DNR that, in addition to meeting statutory requirements, repealing the TSP ambient air standard will allow the State "to focus resources on particulate emissions which more directly affect public health." We also agree that the repeal of the annual PM10 standard and adoption of EPA's PM2.5 NAAQS is consistent with state law. Corresponding revisions to monitoring requirements are also needed.

Aligning Wisconsin air quality standards with corresponding federal standards provides substantial regulatory compliance benefits to our business sector, and allows deserved regulatory relief when those standards are met. However, these benefits are lost if related SIP components go beyond what is necessary to meet and maintain federal standards because they amount to an impermissible backdoor attempt to implement more restrictive air quality standards than what EPA has promulgated. This type of "beyond-EPA" regulatory approach places Wisconsin employers at a significant competitive disadvantage relative to their counterparts in other states. Therefore, while WMC applauds the approach taken in this rule, we look forward to working with the Department to ensure that any underlying policies related to these rule revisions conform to federal law, as required by Wisconsin statutes.

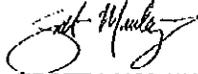
In addition to our comments on the proposed rule, there are several related issues that we would like to bring to the Department's attention for future dialogue:

- The scope statement for AM-23-07 originally discussed the repeal of the 1-hour ozone standard from ch. NR 404, however, this provision was not included in the rule authorized for public comment. As you know, the EPA repealed the 1-hour ozone NAAQS in 2005 after it promulgated the 8-hour ozone NAAQS, based on its conclusion that the more restrictive 8-hour ozone standard provides greater protection of public health. We understand the repeal, designations, and related mandates for the 1-hour ozone standard were the subject of a court decision that created a number of unsettled legal questions. WMC wishes to note our interest in further discussing the 1-hour ozone standard with the Department.
- The EPA Administrator proposed a revision to the 8-hour ozone standard on June 20, 2007. In conjunction with the proposed rule, EPA acknowledged the need for a "better understanding of the relationship between ambient concentrations and personal exposures" (72 Fed. Reg. at 37838). WMC commented on the proposed 8-hour ozone revision, and those comments are attached for your review. Our comments took issue with that assumption that ambient measurements represent a good surrogate in the absence of available data on personal exposures. We have similar concerns relating to any monitoring program that would trigger nonattainment status with the air quality standards proposed in AM-23-07. We would like to discuss in more detail DNR's efforts to develop and implement the monitoring system to assess compliance with ambient air quality standards.
- It is our members' experience that permitting requirements beyond what is needed to assure compliance with ambient air quality standards for particulate matter have been imposed in the past. We have significant concerns that permitting requirements relating to particulate matter, particularly PM2.5, will result in permitting requirements and costs that have little nexus to the health-based concerns that gave rise to the related standards. We would also like to discuss this important implementation issue, as well as how DNR's fugitive dust program could impose mandates not required to meet legitimate environmental or health risks.

In summary, WMC very much appreciates the efforts by DNR's staff to craft a rule that is consistent with state and federal law. We acknowledge this rulemaking effort is compelling evidence that DNR takes seriously the need to balance the important goals of environmental protection and the economic viability of our industrial economy. WMC looks forward to working with the Department to ensure that underlying policies related to these air quality standards continue to reflect that balance.

Thank you for the opportunity to provide these comments, and please give me a call if you have any questions relating to our position on this rulemaking effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Manley". The signature is written in a cursive style with a large initial "S".

SCOTT MANLEY
Environmental Policy Director
Wisconsin Manufacturers & Commerce

Enclosure

CORRESPONDENCE/MEMORANDUM

DATE: November 30, 2007 FILE REF: 4508-2

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: Background memo on proposed adoption of Order AM-23-07 pertaining to revisions to ambient air quality standards for particulate matter.

1. Background and reasons why the rule revisions are being proposed

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as particulate matter, sulfur dioxide and ozone. The EPA is required to periodically review the current health science in order to evaluate if and how the existing NAAQS need to be adjusted to more accurately protect human health and welfare.

In 1987, EPA repealed the NAAQS for the general category of particulate matter pollution called total suspended particulates (TSP). This NAAQS was replaced with more restrictive NAAQS for smaller particles that are more readily inhaled into the human respiratory system (i.e., those less than 10 micrometers in diameter [PM_{10}]). In 1997, EPA promulgated additional NAAQS for even smaller particles (i.e., those less than 2.5 micrometers in diameter [$PM_{2.5}$]) to more directly address the increasing scientific awareness of serious public health impacts from fine particles.

In 2006, EPA took additional action on particulate standards by lowering (making more restrictive) the 24-hour $PM_{2.5}$ NAAQS to better reflect the scientific understanding of how fine particles affect humans, and revoking the annual PM_{10} NAAQS – citing a lack of evidence linking health problems to long-term exposure to PM_{10} .

The Department is now proposing to revise Wisconsin's ambient air quality standards to reflect the current EPA NAAQS for particulate matter, which are as follows: 24-hour PM_{10} : 150 micrograms per cubic meter ($\mu g/m^3$), 24-hour $PM_{2.5}$: 35 $\mu g/m^3$, Annual $PM_{2.5}$: 15.0 $\mu g/m^3$.

By repealing the ambient air standards for TSP and annual PM_{10} as well as adopting the NAAQS for $PM_{2.5}$, Wisconsin's air quality standards would 1) reflect the current health science for protecting human health and welfare related to particulate matter, 2) be fully consistent with EPA's NAAQS for particulate matter, which is required under s. 285.21 (1)(a), Stats., and 3) allow the Department to focus resources on controlling fine particulate emissions [$PM_{2.5}$, PM_{10}], which directly affects public health.

2. Summary of the proposed rule revisions

The proposed rule revisions in AM-23-07 would:

- Repeal ambient air standards for TSP and annual PM_{10} from ch. NR 404, Wis. Adm. Code and federal monitoring requirements for TSP and annual PM_{10} from ch. NR 484, Wis. Adm. Code. Repeal the definition of the abbreviation TSP from ch. NR 400, Wis. Adm. Code.
- Adopt EPA-promulgated NAAQS for $PM_{2.5}$ into ch. NR 404, Wis. Adm. Code and incorporate the corresponding federal $PM_{2.5}$ monitoring requirements into ch. NR 484, Wis. Adm. Code.



3. Proposed rule revisions – impact on existing policy

A) Proposed promulgation of the PM_{2.5} air standard: Impact on developing a state implementation plan (SIP).

In the future, EPA may designate some counties in Wisconsin as not attaining the 24-hour PM_{2.5} air standard based upon ambient air monitoring data. In this event, the Department may adopt rules to reduce PM_{2.5} precursor emissions to bring all areas in the State into attainment with the 24-hour PM_{2.5} air quality standard. The Department would work with affected parties and stakeholders to develop any rules necessary to attain the PM_{2.5} air quality standards.

B) Proposed revocation of the TSP air standard: Impact on the air emission fees

There should be no effect on emission fees collected by the Department. Currently, TSP is not specifically listed as a pollutant for which emissions are required to be reported to the Department (s. NR 438.03, Table 1, Wis. Adm. Code). Based upon NR 438 requirements, each facility reports all particulate matter emissions less than 100 micrometers in diameter as particulate matter (PM).

C) Proposed revocation of the TSP air standard: Impact on the air permit review process for particulate matter emission sources

Air permit modeling is currently being done for both TSP and PM₁₀. If the TSP air standard is repealed, the review of air permit applications may be shortened, since the modeling and analysis for PM impacts would be focused solely on PM₁₀ emissions.

D) Proposed revocation of the TSP air standard: Impact on fugitive dust enforcement

The basic fugitive dust provisions in s. NR 415.04., Wis Adm. Code, would not be directly affected by the repeal of the TSP air standard, since most of those provisions are not expressly related to having a TSP ambient air quality standard, but rather are focused on the terms “fugitive dust”, “particulate matter”, “airborne dust”, “air pollution”, “fugitive emissions”, “visible emissions” or “opacity”.

4. Synopsis: Public hearing and written comments

A public hearing was held in Madison on October 12, 2007. The only individual from the general public present at the hearing did not provide any comment on the proposed rules.

The only written public comments received on Order AM-23-07 were from two trade organizations that represent certain Wisconsin business sectors whose members can be subject to DNR air pollution requirements. These trade organizations are 1) the Wisconsin Paper Council (WPC), which currently represents 21 separate entities in the pulp, paper and allied industry, and 2) Wisconsin Manufacturers and Commerce (WMC) which currently represents nearly 4,000 companies in the state. Both the WPC and WMC expressed full support of the proposed rule revisions in Order AM-23-07.

The Legislative Council Rules Clearinghouse (LCRC) submitted a report on Order AM-23-07 (Clearinghouse Rule # 07-082) on September 17, 2007. The only LCRC comment provided on this rules package was for “clarity, grammar, punctuation and use of plain language”. LCRC commented that two definitions repealed in Order AM-23-07 (i.e., “total suspended particulates” and “suspended particulate matter”) are used in ss. NR

404.04(3) ("Particulate Matter: Secondary Standard") and NR 404.04(7), Wis. Adm. Code (airborne lead), respectively.

The Department's response to the LCRC comment is as follows: A) s. NR 404.04(3), Wis. Adm. Code ("Particulate Matter: Secondary Standard") is also repealed as part of Order AM-23-07, and B) airborne lead (s. NR 404.04(7), Wis. Adm. Code) is considered a separate air pollutant from TSP and is subject to different monitoring requirements as a chemically-defined species of particulate matter.

No further changes to Order AM-23-07 were necessary in response to the LCRC comment.

5. Environmental review for potential impact

An environmental analysis of the impact of the proposed rule revisions is not needed because these changes are considered to be a Type III action under s. NR 150.03(3), Wis. Adm. Code. A Type III action is one that normally does not 1) have the potential to cause significant environmental effects, 2) significantly affect energy usage and 3) involve unresolved conflicts in the use of available resources.

6. Final regulatory flexibility analysis

A) Do these proposed rule revisions impose any compliance and/or reporting requirements on small business?

The proposed rule revisions would modify Wisconsin's ambient air quality standards for particulate matter. These proposed rules contain no new requirements (compliance, reporting, etc.) for any sources, including those classified as small business.

B) Initial regulatory flexibility analysis

These proposed rule revisions are needed to make Wisconsin's ambient air quality standards the same as the federal NAAQS, as required under s. 285.21(1)(a), stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions.

The proposed rule revisions pertain to ambient air quality standards, which contain no requirements for reporting, bookkeeping, schedules or other compliance procedures.

Overall, as assessed in Section 3 and summarized in Section 5 - repealing the TSP air quality standard could have a modest effect on certain sources subject to the air permit review process. Some of these facilities may be sources which meet the definition of a small business.

CORRESPONDENCE/MEMORANDUM

DATE: March 12, 2008

FILE REF: 4508-2

TO: Natural Resources Board

FROM: Matthew J. Frank

SUBJECT: Background memo on proposed adoption of Order AM-23-07A pertaining to revisions to ambient air quality standards for particulate matter.

1. Background and reasons why the rule revisions are being proposed

The federal Clean Air Act requires the US Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as particulate matter, sulfur dioxide and ozone. The EPA is required to periodically review the current health science in order to evaluate if and how the existing NAAQS need to be adjusted to more accurately protect human health and welfare.

In 1987, EPA promulgated NAAQS for smaller particles that are more readily inhaled into the human respiratory system (i.e., those less than 10 micrometers in diameter [PM_{10}]). In 1997, EPA promulgated additional NAAQS for even smaller particles (i.e., those less than 2.5 micrometers in diameter [$PM_{2.5}$]) to more directly address the increasing scientific awareness of serious public health impacts from fine particles.

In 2006, EPA took additional action on particulate standards by lowering (making more restrictive) the 24-hour $PM_{2.5}$ NAAQS to better reflect the scientific understanding of how fine particles affect humans, and revoking the annual PM_{10} NAAQS – citing a lack of evidence linking health problems to long-term exposure to PM_{10} .

The Department is now proposing to revise Wisconsin's ambient air quality standards to better reflect the current EPA NAAQS for particulate matter, which are as follows: 24-hour PM_{10} : 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour $PM_{2.5}$: 35 $\mu\text{g}/\text{m}^3$, Annual $PM_{2.5}$: 15.0 $\mu\text{g}/\text{m}^3$.

By repealing the ambient air standard for annual PM_{10} as well as adopting the NAAQS for $PM_{2.5}$, Wisconsin's air quality standards would 1) reflect the current health science for protecting human health and welfare related to particulate matter, 2) be more consistent with EPA's NAAQS for particulate matter, which is required under s. 285.21 (1)(a), Stats., and 3) allow the Department to focus resources on controlling fine particulate emissions [$PM_{2.5}$, PM_{10}], which directly affects public health.

A request for the Natural Resources Board to adopt Order AM-23-07 was originally scheduled for the Board's February 2008 meeting. After the close of the public comment period in October, 2007, concerns were expressed by several citizens and the Board regarding the proposed repeal of the air quality standard for total suspended particulates (TSP). This proposed repeal was included in the original Order AM-23-07 taken to public hearing. Consequently, the original order has been bifurcated. Those proposed changes related to the repeal of the TSP standard have been removed from this part, Order AM-23-07A, but may be brought before the Natural Resources Board at a future time.

2. Summary of the proposed rule revisions

The proposed rule revisions in AM-23-07A would:



- Repeal the ambient air standard for annual PM₁₀ from ch. NR 404, Wis. Adm. Code and the corresponding monitoring requirements incorporated by reference in ch. NR 484, Wis. Adm. Code.

- Adopt the EPA-promulgated NAAQS for PM_{2.5} into ch. NR 404, Wis. Adm. Code and incorporate by reference the corresponding federal PM_{2.5} monitoring requirements into ch. NR 484, Wis. Adm. Code.

3. Proposed rule revisions – impact on existing policy

In the future, EPA may designate some counties in Wisconsin as not attaining the 24-hour PM_{2.5} air standard based upon ambient air monitoring data. In this event, the Department may adopt rules to reduce PM_{2.5} precursor emissions to bring all areas in the State into attainment with the 24-hour PM_{2.5} air quality standard. The Department would work with affected parties and stakeholders to develop any rules necessary to attain the PM_{2.5} air quality standards.

4. Synopses: Public hearing and written comments

A public hearing was held in Madison on October 12, 2007. The only individual from the general public present at the hearing did not provide any comment on the proposed rules.

The only written public comments received on the original Order AM-23-07 were from two trade organizations that represent certain Wisconsin business sectors whose members are subject to DNR air pollution requirements. These trade organizations are 1) the Wisconsin Paper Council (WPC), which currently represents 21 separate entities in the pulp, paper and allied industry, and 2) Wisconsin Manufacturers and Commerce (WMC) which currently represents nearly 4,000 companies in the state. Both the WPC and WMC expressed full support of the proposed rule revisions in Order AM-23-07.

The Legislative Council Rules Clearinghouse (LCRC) submitted a report on Order AM-23-07 (Clearinghouse Rule # 07-082) on September 17, 2007. The only LCRC comment provided on this rules package was for "clarity, grammar, punctuation and use of plain language". LCRC commented that two definitions repealed in the original Order AM-23-07 (i.e., "total suspended particulates" and "suspended particulate matter") are used in ss. NR 404.04(3) ("Particulate Matter: Secondary Standard") and NR 404.04(7), Wis. Adm. Code (airborne lead), respectively.

As noted in Section 1, the Department has decided to bifurcate the original Order AM-23-07. The current version (Order AM-23-07A) is moving forward at this time without a proposal to repeal the ambient 24 hour air quality standard for TSP [NR 404.04(3), Wis Adm. Code], its definitions, as well its monitoring methods incorporated by reference. With this action, the Department has made moot the LCRC concerns pertaining to the continued use of ss. NR 404.04(3) and NR 404.04(7), Wis. Adm. Code.

No further changes to the updated Order AM-23-07A were necessary in response to the LCRC comment.

5. Environmental review for potential impact

An environmental analysis of the impact of the proposed rule revisions is not needed because these changes are considered to be a Type III action under s. NR 150.03(3), Wis. Adm. Code. A Type III action is one that normally does not 1) have the potential to cause significant environmental effects, 2) significantly affect energy usage and 3) involve unresolved conflicts in the use of available resources.

6. Final regulatory flexibility analysis

A) Do these proposed rule revisions impose any compliance and/or reporting requirements on small business?

The proposed rule revisions would modify Wisconsin's ambient air quality standards for particulate matter. These proposed rules contain no new requirements (compliance, reporting, etc.) for any sources, including those classified as small business.

B) Initial regulatory flexibility analysis

These proposed rule revisions are needed to make Wisconsin's ambient air quality standards the same as the federal NAAQS, as required under s. 285.21(1)(a), stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions.

The proposed rule revisions pertain to ambient air quality standards, which contain no requirements for reporting, bookkeeping, schedules or other compliance procedures.

APRIL 22-23, 2008

NATURAL RESOURCES BOARD

MINUTES

A Climate Change seminar for the Natural Resources Board was held on Tuesday, April 22, 2008 in Room G09, State Natural Resources Building (OEF 2), Madison, Wisconsin. The seminar began at 1:35 p.m. and ended at 4:40 p.m.

Tuesday, April 22, 2008

ORDER OF BUSINESS

1. Seminar
- 1.A. Air, Waste, and Water/Enforcement
- 1.A.1 Climate Change

NOTE: All presentations are available for viewing on the Department's website at:
<http://dnr.wi.gov/org/nrboard/2008/April/04-22-08-Climate-Change-Seminar.htm>

Al Shea, DNR Air & Waste Administrator and moderator welcomed the Board, colleagues, and public to the seminar.

Matt Frank, DNR Secretary thanked the Board for scheduling this seminar on Earth Day. Climate Change is the greatest environmental challenge of our generation, an issue that dwarfs all the rest at the Department and is an issue that calls the Department to act. He stated we have a moral obligation to confront and deal with climate change. He addressed the need to work with other state agencies as policies are developed that reflect the will of the people.

Overview of Climate Change: *News from a Warming Planet*
Jonathan Foley, Director, Center for Sustainability and the Global Environment, UW-Madison spoke on green house effects, global warming, and shifting weather patterns.

Discussion followed regarding impacts on natural resources and eco systems, crop production, and emission reduction strategies.

How Climate Change May Affect Us: *The Wisconsin Initiative on Climate Change Impacts (WICCI)*

Lewis Gilbert, Interim Director, Nelson Institute, UW-Madison and
Jack Sullivan, Director, Bureau of Science Services, Department of Natural Resources, both spoke on the history and institutional design of WICCI, adaptive strategies, projected climate changes, and the effects of climate change on our weather and natural resources

Discussion followed on climate changes to forestry and edge-of-range species, Managed Forest Land (MFL) management plans and long-term projections, endangered resources, and geographic shifts in plant species and wildlife.

Mr. Ela requested that over the next few years, WICCI give Board regular updates on this topic to include an overview on research funding.

How We May Affect Climate Change: *The Midwest Governors Association Initiative*
Eric Callisto, Public Service Commission gave an overview of the Summit Platform and GHG (Greenhouse Gases) Accord to include the Midwest's strategic contributions, energy vulnerabilities, opportunities and challenges in renewal energy, and advisory groups.

Discussion followed on the definition of "observer" states and the difference between an observer and participant, cost of wind production, legislative process, National Cap and Trade Program, solar power, and a permitting and licensing process to encourage investment efficiency.

APRIL 22-23, 2008

How We May Affect Climate Change: *The Governor's Task Force on Global Warming*
Roy Thilly, CEO, Wisconsin Public Power, Inc. and Task Force Co-Chair gave an overview on the Governor's Task Force including the process, where we are, obligations, recommendations, and key issues.

Tia Nelson, Executive Secretary, Board of Commissioners of Public Lands and Task Force Co-Chair reflected on the legacy of her father, Senator Gaylord Nelson. She then briefed the Board on GHG emissions, baseline GHG inventory for the forestry and agriculture sector, opportunities, environmental ethics, the changing ethics in Washington DC, and policy considerations.

Discussion followed on mandatory timber harvest and rotations, bio-fuels, reforestation, and sequestration in land in CRP vs. forestry.

Mr. Shea concluded the seminar program and stated that Department staff are revitalized and enthusiastic in the Board's interest in this topic.

Mr. Frank thanked everyone for attending the Seminar. He stated the Department has an important role in making a difference. He invited the Board and public to view the Earth week displays located in the front lobby, which were put together by the Department's green team.

The seminar ended at 4:40 p.m.

The regular meeting of the Natural Resources Board was held on Wednesday, April 23, 2008 in Room G09, State Natural Resources Building (GEF 2), Madison, Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 4:22 p.m.

ORDER OF BUSINESS

I. Organizational Matters

I.A. Calling the roll

David Clausen – present

Jonathan Ela – present

John Welter – present

Jane Wiley - present

Preston Cole – present

Gerald O'Brien – present

Christine Thomns – present

I.B. Approval of agenda for April 23, 2008

Mr. Ela **MOVED**, seconded by Mr. O'Brien approval of the agenda for April 23, 2008. The motion carried unanimously.

Dr. Thomas stated that this was Gerald O'Brien's final meeting as Board Member. She congratulated Mr. O'Brien on his years of service to the Department. She stated it is an honor to be a Natural Resources Board member and with that comes a responsibility to find a balance to the needs and wants of current and future users. He had served the citizens faithfully for this term. She said Mr. O'Brien had been a good mentor to her and thanked him for all his accomplishments. On behalf of the Board, she presented Mr. O'Brien with a plaque thanking him for his excellent service and commitment to the state's natural resources from May 1999 through April 2008.

Matt Frank, DNR Secretary thanked Mr. O'Brien on behalf of the Department and people of Wisconsin for making Wisconsin a better place. Mr. O'Brien is an important member of the community and has given a lot to the state. He stated a good strong Board is important to the state and thanked him for his years of service.

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Mr. O'Brien said he enjoys watching loons near his property and thanked the Board for his wooden loon plaque. The friendships he has formed with staff and Board Members are enduring. Over the years he had gotten a chance to meet and know many people in the field. DNR workers are outstanding, dedicated, hardworking, and have been terrific to work with as well as past and current Board members. The Board has interesting problems facing them and they do a terrific job with the items that come through. He clarified that this is not just a policy Board but that this Board also supervises the Department. He thanked everyone for the wonderful experiences and the plaque.

1.C. Approval of minutes from February 26-27, 2008

Mr. Eln **MOVED**, seconded by Mr. O'Brien approval of the minutes as presented. The motion carried unanimously.

2. Ratification of Acts of the Department Secretary
2.A. Real Estate Transactions

Dr. Clausen **MOVED**, seconded by Mr. Welter approval of the real estate transactions. The motion carried unanimously.

3. Action Items
3.A. Air, Waste, and Water/Enforcement

3.A.1 Presentation of citizen award – Wisconsin Ethical Hunter Award for 2007

Steve Dewald, Warden Team Supervisor presented Dennis Carothers Sr. of Edgerton, Wisconsin with the Wisconsin Ethical Hunter Award for ethical behavior that serves as a positive example for all hunters in the state of Wisconsin.

Mr. Carothers stated he is honored to receive the award and thanked the Board and Department for the outdoor opportunities he has enjoyed over the years.

Presentation – No Board Action was taken.

3.A.2 Request adoption of Board Order AM-23-07A, proposed rules affecting chs. NR 404 and 484 pertaining to ambient air quality standards for particulate matter

Larry Bruss, Section Chief, Regional Pollutants and Mobile Sources Section, Air Management Bureau stated the proposed rule revisions are needed to make Wisconsin's ambient air quality standards the same as the federal NAAQS, as required under s.285.21(1)(a), stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions. These revisions pertain to ambient air quality standards, which contain no requirements for reporting, bookkeeping, schedules, or other compliance procedures. The proposed rules would repeal the ambient air standard for annual PM10 from ch. NR 404, WI Administrative Code and the corresponding monitoring requirements incorporated by reference in ch. NR 484, WI Administrative Code. This rule would also adopt the EPA-promulgated NAAQS for PM2.5 into ch. NR 404, WI Administrative Code and incorporate by reference the corresponding federal PM2.5 monitoring requirements into ch. NR 484, WI Administrative Code. Mr. Bruss requested the Board approve adoption of this rule.

Discussion followed on total suspended particulates (TSP) and a request that the Department should not move too quickly on this issue.

Dr. Clausen **MOVED**, seconded by Mr. Eln approval of the request for adoption of Board Order AM-23-07A, proposed rules affecting chs. NR 404 and 484 pertaining to ambient air quality standards for particulate matter. The motion carried unanimously.

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3.A.3 ~~Amendment of Adopted Permanent Rule Revisions to NR 320, NR 323, NR 328, NR 329, NR 341, NR 343, NR 345 Wisconsin Administrative Code relating to invasive species decontamination standards~~ DELETED

3.A.4 Request authorization for hearings for Board Order WT-09-08, revisions to NR 198 relating to Aquatic Invasive Species Control Grants
Carroll Schaaf, Lakes Team Leader, Fisheries Management and Habitat Protection Bureau was the presenter for this agenda item. The Board approved this item without staff presentation or discussion.

Mr. Cole MOVED, seconded by Mr. O'Brien approval of the request for authorization for hearings for Board Order WT-09-08, revisions to NR 198 relating to Aquatic Invasive Species Control Grants. The motion carried unanimously.

3.B. Land Management, Recreation, and Fisheries/Wildlife
3.B.1 Request Adoption of Board Order WM-05-08 relating to deer hunting and the management of chronic wasting disease (CWD)

Alan Crossley, Wildlife Biologist, South Central Region stated this proposed rule addresses a number of the recommendations in the Stakeholder Advisory Group final report that advance the goal of containing CWD. The Department has evaluated those recommendations that require a rule change in this proposed order. In response to public comment received, the Department proposes withdrawing the rule change to allow the shooting of deer from a farm tractor or implement of husbandry in the CWD Management Zone. He requested the Board approve Board Order WM-05-08, modifications to chapters NR 10, 12, and 19, Wisconsin Administrative Code.

Public Appearances

1. Steve Gehrke, Platteville, representing himself, pre-registered but did not speak.
2. Lee Swanson, Cross Plains, representing himself spoke in favor of the rule.

Secretary Frank thanked Mr. Swanson for all he has done for the state.

3. Ed Harvey, Waldo, representing the Wisconsin Conservation Congress spoke in support of the rule with some exceptions. The Congress did not support the expanded use of rifles through the entire herd reduction zone and stated this should be returned to the counties.
4. Greg Kaznierski, Waukesha, representing the Safari Club International, pre-registered but did not speak.

Mr. Cole MOVED, seconded by Ms. Wiley approval of the request for Adoption of Board Order WM-05-08 relating to deer hunting and the management of chronic wasting disease (CWD).

Discussion followed regarding goal setting concerns and motivating hunters.

Dr. Clausen MOVED to amend the rule to include following language: "If after two consecutive seasons with management goals as established in subd. 1., the Department determines it is necessary to adjust the goals to control the spread of CWD in deer, the Department may lower the goals for units in the CWD management zone to 5 to 10 deer per square mile of deer range. The adjusted goals shall become effective upon issuance of an order by the Secretary of the Department and publication in the state official newspaper. In addition, a notice of the order shall be provided to newspapers, legislators, and hunting license outlets in the area affected."

Discussion followed on revisiting the goal statement in two years, and the critical need to reduce the deer herd.

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Secretary Frank stated it is very difficult to eradicate a disease in a roaming wildlife population. There is a need to be objective and the Department recognizes that. This policy is not a complete failure. The Department has been able to contain CWD. The Department needs to set realistic goals with Board, hunter support, and ultimately legislative support. All are intertwined. He would like to give staff time to take a fresh look at this and then come back before the Board.

Discussion followed on whether the disease has been contained and long range plans.

Secretary Frank stated staff will come back to the Board later this year and will keep the Board informed. A comprehensive statewide plan with long-term goals is needed. He noted this is a long term issue.

Discussion followed on eradicating CWD, containment of the disease, the tuberculosis threat to agriculture, and the need to be proactive in taking action.

Dr. Clausen withdrew his amendment.

Dr. Clausen **MOVED**, seconded by Eln to amend the request to include "After the 2009 season, the Department shall evaluate the goals established in subd. 1 to determine if they need to be adjusted to control the spread of CWD in deer."

Discussion followed on population goals.

The amendment carried unanimously.

Ms. Wiley **MOVED** to table April agenda item 3.B.1 until after April agenda 3.B.2 was completed.

Ms. Wiley's motion was not seconded and failed.

Discussion followed on the Wisconsin Conservation Congress voting at the spring hearings.

Mr. Eln requested staff number each page of the green sheet package.

Discussion followed on spring hearing locations, the holiday season deer hunt, and reporting back to Board on the success of the 2008 structure and a recommendation to continue or change it.

The original motion as amended carried unannmously.

3.B.2 Request Approval of department recommendations for the 2008 deer hunting season structure and antlerless deer quotas

Keith Warnke, Wildlife Biologist, Wildlife Management Bureau stated the Department annually recommends deer season frameworks in management units where standard hunting seasons will not reduce the population to established goals. The recommendations contained in this order are for units that are not in a CWD management area. He requested the Department adopt these recommendations to the order.

Discussion followed on maintaining population goals.

Public Appearances

1. Jane Soyert, Merrill, representing WI County Forests Association (HANDOUT) spoke in support of this rule.
2. Lee Swanson, Cross Plains, representing himself spoke in support of this rule.

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3. Don Waller, Madison, representing himself spoke in support of this rule.
4. George Meyer, Poynette, representing the Wisconsin Wildlife Federation spoke in support of this rule. He recommended that the Department expand the Food Pantry Program.
5. Jamie Nack, Fall River, representing the Wisconsin Chapter of the Wildlife Society spoke in support of this rule.
6. Eugene Ronark, Madison, representing the Wisconsin Woodland Owners Association spoke in support of this rule.
7. Greg Kazmierski, Waukesha, representing the Safari Club International stated hunters oppose the unreasonable regulations of October T-Zone and Earn-A-Buck and spoke against the rule.

Discussion followed on the status of the WI Deer Hunters Coalition. Mr. Kazmierski said it no longer existed.

8. Tom Thoresen, Fitchburg, representing the Association of Retired Conservationists spoke in support of this rule.
9. Rieh Kirchmeyer, Prentice, representing the Wisconsin Bowhunters Association spoke against the early firearm season during the 9 days of the late archery season. He added they do support the youth hunt in early October.
10. Paul Zimmerman, Prairie du Sac, representing Wisconsin Farm Bureau spoke in support of the rule.

Discussion followed on baiting and feeding.

11. Mike Christianson, Oshkosh, representing Safari Club International stated they paid for an ad in the Wisconsin Outdoor News with a resolution to eliminate the unreasonable regulations of Earn-A-Buck and the October T-Zone hunt. He spoke against the rule.

Secretary Frank and Dr. Thomas thanked the Oshkosh West Woods and Waters Hunting Club for attending the meeting and for their interest in hunting and conservation.

12. Shahin Werner, Madison, representing the Wisconsin Chapter - Sierra Club spoke in support of the rule.
13. Richard Ketelboeter, Lodi, representing himself spoke against the October deer season and spoke against the baiting of deer. He then stated that the Department dug up roads at the end of the Meadow Valley area and now hunters cannot get in to hunt except on foot.
14. David Vngt, Fitchburg, representing the Bicycle Federation of WI and WI Off-Road Bicycling Association spoke against the October deer hunt and that hunting areas should be limited to areas not used by bicyclists.
15. Steve Goyner, Green Bay, representing the WI Deer Hunters Association did not speak before the Board.
16. Mark Noll, Alma, representing the Wisconsin Conservation Congress spoke in support of the rule.

Secretary Frank congratulated Ed Harvey in his recent re-election as Chair of the Wisconsin Conservation Congress. He stated the Department has enjoyed working with Mr. Harvey and looks forward to working with him in the future.

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17. Ed Harvey, Waldo, representing the Wisconsin Conservation Congress stated the Big Game Committee voted 11-7 in support of the rule.

Dr. Clausen **MOVED**, seconded by Mr. Welter approval of the request for approval of department recommendations for the 2008 deer hunting season structure and antlerless deer quotas.

Discussion followed on the December and October hunts, hunting pressure in the southern part of Wisconsin, deer density data on private and public lands, and the effects of deer on forest resources.

The motion carried unanimously.

3.B.3 Request Adoption of Board Order FH-42-07, revisions to NR 20 and 21 relating to hook and line lake sturgeon fishing

Karl Scheldegger, Warmwater Rivers Management Biologist spoke in place of Mike Staggs. He stated the Department proposes to increase the minimum length limit to 60" on all inland waters and the lower St. Croix River and reduce the season by two weeks to the first Saturday in September to September 30. The uniform regulation proposal is intended for all inland waters and the WI/MN boundary waters to minimize concerns about angler displacement. The reduced season length will eliminate the late-season harvest and allow a more concentrated effort of enforcement by conservation warden staff. He requested the Board adopt Board Order FH-42-07.

Mr. Cole **MOVED**, seconded by Mr. O'Brien approval of the request for Adoption of Board Order FH-42-07, revisions to NR 20 and 21 relating to hook and line lake sturgeon fishing. The motion carried unanimously.

3.B.4 Northern Highland-American Legion State Forest ATV Trail Alternatives and Recommendation

Steve Petersen, State Forest Superintendent stated that the public has demonstrated through this process that they care deeply about the NHAL State Forest. The public is strongly divided with respect to ATV recreation on public lands, particularly where ATV trails are not already established. Establishing either of the trails as presented would displace current users to some degree and change the character of the property. Given the level of existing use in the area that would be affected by the Oneida/Vilas trail and the very strong opposition to ATVs on public land in this area of the forest, particularly in Vilas County, the Department recommended to the Board that the Oneida/Vilas trail not be considered further. The Department is concerned about the potential for adverse ecological impact from the development of this trail, the high cost per-mile to develop it, and the on-going maintenance and enforcement challenges that would result. The Department recommended to the Board that neither Iron County trail option be considered further. The Department remains fully committed to working with partners to improve existing ATV trail opportunities and to expand opportunities in Wisconsin to address the demand for an increasing popular form of outdoor recreation.

Public Appearances:

1. Jane Severt, Merrill, representing WI County Forests Association (HANDOUT) requested the Department offer some form of ATV recreation in some areas of the NH-AL.
2. Mike Peterson, Spooner, representing WI County Forests Association (WCFA) requested the Department offer multi-use trails in the NH-AL. He offered the WCFA expertise to the Board and Department.
3. Frank Splitt, Mount Prospect, IL, representing himself stated that the ban on the use of ATVs in the Northern Highlands-American Legion State Forest should be made permanent.

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4. Sue Drum, Presque Isle, representing herself (HANDOUT) spoke in support of the Department's recommendation.
 5. Alan Drum, Presque Isle, representing himself spoke in support of the Department's recommendation.
 6. Mike McFadzen, Greenbush, representing the Wisconsin Nordic Network (exchanged places with Waalen #18) spoke in support of the Department's recommendation.
 7. Peter Grunwald, Cambridge, representing himself (HANDOUT) spoke in support of the Department's recommendation.
 8. Jeff Rubsani, Lake Tomahawk, representing himself (HANDOUT) spoke in support of the Department's recommendation.
 9. John Kuczkowski, Lac du Flambeau, representing himself spoke in support of the Department's recommendation.
 10. John Dotes, Manitowish, representing himself spoke in support of the Department's recommendation.
 11. Chris Wise, Sayner spoke on behalf of Kathryn Drew, Star Lake, representing self (HANDOUT) spoke in support of the Department's recommendations.
 12. Dave Vogt, Presque Isle, representing himself spoke in support of the Department's recommendation.
 13. Robert Pierce, Madison, representing himself spoke in support of the Department's recommendation.
- Dr. Thomas thanked speakers for traveling hours in order to appear before the Board
14. Diane Muri, Boulder Junction, representing herself spoke in support of the Department's recommendation.
 15. John Aldridge, Boulder Junction, representing himself spoke in support of the Department's recommendation.
 16. Joel Patenaud, Waupaca, representing Silent Sports Magazine spoke in support of the Department's recommendation.
 17. Bill Sloey, Star Lake, representing himself (HANDOUT) spoke in support of the Department's recommendation.
 18. Brook Waalen, Luck, representing self (exchanged places with McFadzen #6) spoke in support of the Department's recommendation.
 19. Richard Olson, Madison, representing himself (HANDOUT) spoke in support of the Department's recommendation.
 20. Joe Heltz, Merrill, representing himself requested the Department follow the guidelines within the NH-AL Master Plan.
 21. Nancy Atwater, Star Lake, representing herself spoke in support of the Department's recommendation.

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22. Mark Haag, Boulder Junction, representing himself spoke in support of the Department's recommendation.
23. Jeff Richter, Mercer, representing himself spoke in support of the Department's recommendation. He is a wildlife photographer and shared his art with the Board.
24. Al Eschenbauch, Presque Isle, representing The Last Wilderness Conservation Association spoke in support of the Department's recommendation.
25. David Vogt, Fitchburg, representing the Bicycle Federation of WI and WI Off-Road Bicycling Association spoke in support of the Department's recommendation.
26. Susan Knight, Arbor Vitae, representing herself spoke in support of the Department's recommendation.
27. Sheelagh Donoghue, Sayner, representing Plum Lake Riparian Homeowners Association spoke in support of the Department's recommendation.

Mr. Welter **MOVED**, seconded by Ms. Wiley approval of the Northern Highland-American Legion State Forest ATV Trail Alternatives and Recommendation.

Discussion followed regarding the stakeholders group and other matters.

The motion carried unanimously.

Mr. Ela **MOVED**, seconded by Dr. Clausen that the Natural Resources Board commends and thanks the NH-AI Stakeholder Group for its dedicated efforts to analyze potential routes for ATV trails on the property. The work of this group has helped the Board reach a more informed policy decision. The motion carried unanimously

- 3.B.5 Request authorization for public hearing on Board Order FR-12-08, amending subchapter VI in NR 47 related to county forest administration grant program
Jeff Barkley, County Forests Specialist stated this proposed change makes eligible for cost-sharing, a county's dues to a non-profit organization that represents the collective interests of counties in the county forest program and that serves as an organizational liaison to the Department. The total amount that the Department may award in funding for this portion of the grant cannot exceed \$50,000 annually. The remainder of the grant is unchanged, providing for up to 50% of the cost of a county forest administrator's salary and benefits so long as the benefits do not exceed more than 40% of the salary. This grant program has been instrumental in encouraging counties to hire professionally qualified staff to administer their county forests and has facilitated the ability of the program to become green-certified. He requested the Board approve authorization for public hearing.

Mr. Welter **MOVED**, seconded by Dr. Clausen adoption of the request for authorization for public hearing on Board Order FR-12-08, amending subchapter VI in NR 47 related to county forest administration grant program. The motion carried unanimously.

- 3.B.6 Land Donation – Statewide Wildlife Habitat – Chippewa County

Mr. Cole **MOVED**, seconded by Dr. Clausen approval of Land Donation – Statewide Wildlife Habitat – Chippewa County. The motion carried unanimously.

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3.B.7 Reconsideration of the request for adoption of Emergency Board Order FH-07-08(E), related to proposed trout regulations in the Prairie River, Lincoln County

Dr. Thomas stated this item is back on the agenda since the motion made at the February 2008 meeting did not clarify if this item was to go before the Board in April "if passed locally" or "if passed statewide" at the 2008 Spring hearings.

Mike Staggs, Director, Fisheries and Habitat Bureau stated that this rule was presented at the 2008 spring rules hearings with additional biological data included. Hearing attendees in Lincoln County and neighboring Taylor and Marathon counties rejected the proposal to have restrictive trout regulations in place on this section of the Prairie River. Hearing attendees in neighboring Oneida and Langlade counties favored the more restrictive regulation option as did hearing attendees statewide. No recommendation was given to the Board.

Discussion followed regarding if this is a local or statewide issue, the lack of a Department recommendation, access to river, difficulty in posting and enforcing regulations after publication, population estimates, and the recommendation of fish manager.

Public Appearances:

1. Ed Harvey, Waldo, representing the Wisconsin Conservation Congress stated 47 counties voted in favor of the question and 25 counties opposed it. In Lincoln county, 16 voted yes and 135 voted no. He asked the Board to not put an emergency rule in place until the Lincoln county delegation had the last option of reversing that state vote on the floor. He noted the WCC will be before the Board again in May.

NOTE: In accordance with s. 15.348, Wis. Stats., the Wisconsin Conservation Congress shall serve in an advisory capacity to the Natural Resources Board on all matters under the jurisdiction of the Board, and therefore is uniquely granted the permission to address the Board on any agenda items. No other public testimony was accepted.

Discussion followed on this not being a Congress advisory question and the effects the WCC recommendation.

Mr. Harvey stated this is a renewable resource which can be rebuilt.

Discussion followed regarding this being a local issue and if this began as an evaluation or management objective.

Dr. Clausen MOVED, seconded by Mr. Welter approval of the reconsideration of the request for adoption of Emergency Board Order FH-07-08(E), related to proposed trout regulations in the Prairie River, Lincoln County.

Mr. O'Brien moved the question.

Mr. Welter requested additional time.

Mr. O'Brien asked that additional discussion be brief.

Discussion followed on if this river watershed is a water of statewide significance, the need for a diversity of fishing opportunities in the state, and how neighboring counties voted.

Ms. Wiley moved the question.

The motion failed on a roll call vote of 2-5.

David Clausen - yes

Preston Cole - no

Jonathan Ela - no

Gerald O'Brien - no

John Welter - yes

Christine Thomas - no

Jane Wiley - no

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4. Citizen Participation – 1:00 p.m.

4.A. Citizen Participation

Public Appearances

1. Carol Rittenhouse, Plymouth, representing C.A. Rittenhouse, LLC and WI's Ethnic Settlement Trail, Inc. (WEST) Topic: WEST and Rittenhouse are applying for additional rule to be written and/or variance in the ground water rules because issues of education and history are not included.

She requested the Board direct the proper persons to add a clause or paragraph including the words "education" and "history" to its administrative rules. She stated this would make possible a variance which will impact saving a dug well from the territorial period in Sheboygan County.

5. Board Members' Matters

5.A. Committee Assignments

None

Dr. Clausen requested a feasibility study be done for Ottawa-Paradise Valley in Waukesha County.

Mr. Cole requested a demographic breakdown of DNR permanent staff workforce to be focused on minorities and females.

Dr. Thomas requested staff to brief her on the process of how her turkey question that passed at the spring hearings would progress to a rule.

6. Special Committees' Reports

None.

7. Department Secretary's Matters

7.A. Retirement Resolutions

7.A.1 James J. Janovak

7.A.2 David Hantz

7.A.3 Charles Burney

7.A.4 Daniel Joyce

7.A.5 Sherryle M. Koepf

7.A.6 Richard A. Kalnicky

7.A.7 William C. Jaeger

Mr. Welter MOVED, seconded by Mr. Cole approval of the retirement resolutions. The motion carried unanimously.

7.B. Donations

7.B.1 The Natural Resources Foundation of Wisconsin will donate \$21,160 for the Wisconsin State Park System's Junior Ranger/Wisconsin Explorer program

Charlie Luthin, Executive Director of the Natural Resources Foundation stated the Foundation's gift of \$21,166 is to support the production and printing of two publications. He also stated additional monetary donations will be forthcoming at the May Board meeting. He apologized for the embarrassment surrounding invitations to the dedication of the Millville Unit, a Natural Resources Foundation planned event in honor of Paul Brandt, without having consulted the NRB about the dedication. The dedication is scheduled for May 20 at Wyalusing State Park.

Mr. Ela MOVED, seconded by Dr. Clausen approval of the Natural Resources Foundation of Wisconsin donation of \$21,160 for the Wisconsin State Park System's Junior Ranger/Wisconsin Explorer program. The motion carried unanimously.

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- 7.B.2 The Natural Resources Foundation of Wisconsin will donate 2 - \$750 Besadny Grants for the Invasive Plants of the Future Program
David Ladd, Natural Resources Foundation Board Member briefed the Board on the history of the Besadny program. He then presented the checks to Secretary Frank.

Dr. Clausen **MOVED**, seconded by Mr. Ela approval of the Natural Resources Foundation of Wisconsin donation of 2 - \$750 Besadny Grants for the Invasive Plants of the Future Program. The motion carried unanimously.

Mr. O'Brien **MOVED**, seconded by Mr. Ela approval of donations 7.B.3 (the Margaret Van Alstyne donation of \$10,000 to support the whooping crane restorations project), 7.B.4 (the Friends of Horicon Marsh International Education Center donation of \$9,000 to support an existing FY08 wildlife education LTE position), 7.B.5 (the Friends of Mead-McMillan Association, Inc. donation of \$5,808 to support an existing LTE position for education duties at the Stanton Mead Education and Visitor Center), and 7.B.6 (the Terry Kohler donation of \$5,000 for the Wisconsin Trumpeter Swan Recovery Program). The motion carried unanimously.

- 7.B.3 Margaret Van Alstyne will donate \$10,000 to support the whooping crane restoration project
7.B.4 The Friends of Horicon Marsh International Education Center will donate \$9,000 to support an existing FY08 wildlife education LTE position
7.B.5 The Friends of Mead-McMillan Association, Inc. will donate \$5,808 to support an existing LTE position for education duties at the Stanton Mead Education and Visitor Center
7.B.6 Terry Kohler will donate \$5,000 for the Wisconsin Trumpeter Swan Recovery Program

7.C. Dedication

- 7.C.1 Dedicating the Millville Unit of the Lower Wisconsin State Riverway in honor of Paul Brandt
Eric Lobner, Regional Program Manager stated that the intent of this dedication is to honor the significant contributions that Paul made to the Wisconsin Department of Natural Resources both throughout his professional career as a WDNR wildlife biologist as well as the bequest from his estate following his death. The intent of the Department is to add a portion to the existing sign on the property, install a stone monument near the parking lot, dedicate a hiking trail, and place a bench with a monument near the top of the bluff.

Discussion following regarding the confusion associated with the invitation and green sheet.

Dedication – no action was taken by the Board.

8. Information Items

- 8.A. Air, Waste, and Water/Enforcement
None

- 8.B. Land Management, Recreation, and Fisheries/Wildlife
None

Dr. Clausen **MOVED**, seconded by Ms. Wiloy to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 4:22 p.m.

NOTE: Each Natural Resources Board meeting is recorded. Tapes of each meeting are available for purchase by contacting the Natural Resources Board at 608-267-7420. The following resources are also available: Agenda Item Packets (green sheets), supporting documents, and public comment.

REPORT TO LEGISLATURE

NR 404 and 484, Wis. Adm. Code
Ambient air quality standards and affecting small business

Board Order No. AM-23-07A
Clearinghouse Rule No. 07-082

Basis and Purpose of the Proposed Rule

The federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to promulgate national ambient air quality standards (NAAQS), which are designed to protect public health (primary standards) and public welfare (secondary standards) for certain criteria pollutants such as particulate matter, sulfur dioxide and ozone. The U.S. EPA is required to periodically review the current health science in order to evaluate if and how the existing NAAQS need to be adjusted to more accurately protect human health and welfare.

The U.S. EPA has revoked the NAAQS for annually-averaged particulate matter less than 10 micrometers in diameter (PM₁₀) and promulgated new NAAQS for particulate matter less than 2.5 micrometers in diameter (PM_{2.5}). The U.S. EPA also revised the monitoring requirements related to these NAAQS changes. The proposed rule revisions would update the ambient air standards for particulate matter in ch. NR 404 and the monitoring requirements in ch. NR 484 to reflect the NAAQS changes. This would assure that Wisconsin's Administrative Code is consistent with the NAAQS for particulate matter, as required under s. 285.21(1)(a), Stats., and better reflect the science of particle pollution effects on human health.

If any areas in the state are designated as nonattainment for the new air quality standards, the Department is required to develop an air quality state implementation plan to ensure that the ambient air quality standards are attained and maintained in those areas.

Summary of Public Comments

Public comments from the Wisconsin Paper Council and Wisconsin Manufacturers and Commerce were in support of the proposed rule. After the close of the public comment period in October, 2007, concerns were expressed by several citizens and the Natural Resources Board regarding the proposed repeal of the air quality standard for total suspended particulates (TSP). This proposed repeal was included in the rule as it was taken to public hearing. Consequently, the original order has been bifurcated. The proposed changes related to the repeal of the TSP standards have been removed from Board Order No. AM-23-07A, but may be brought before the Natural Resources Board at a future time.

Modifications Made

No modifications were made as a result of the public hearing.

Appearances at the Public Hearing

In support:

Donald Pay, 26 Mesa Court, #4, Madison, WI 53719

In opposition – none

As interest may appear - none

Changes to Rule Analysis and Fiscal Estimate

The rule analysis was changed to reflect the elimination of the portion of the rule relating to the repeal of the total suspended particulates (TSP) air quality standard.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse report did not contain any recommendations relating to the rule as it related to particulate matter.

Final Regulatory Flexibility Analysis

The proposed rule revisions would modify Wisconsin's ambient air quality standards for particulate matter. These proposed rules contain no new requirements (compliance, reporting, etc.) for any sources, including those classified as small business. These proposed rule revisions are needed to make Wisconsin's ambient air quality standards the same as the federal NAAQS, as required under s. 285.21(1)(a), Stats. Consequently, the Department has limited flexibility to make any changes to these proposed rule revisions.

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number If Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 404 and 484

Subject

Proposed rules to make Wisconsin ambient air quality standards for particulates consistent with federal regulations for these air quality standards.

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.
 Yes No

Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Summary:

The proposed rule revisions are designed to make Wisconsin's ambient air quality standards for particulates consistent with the federal air quality standards and to reflect current health science. Specifically, these proposed rule changes would repeal the ambient air quality standards for total suspended particulates (TSP) and annually-averaged particles of less than 10 micrometers in diameter (PM₁₀) from ch. NR 404, Wis. Adm. Code and the corresponding monitoring requirements from ch. NR 484, Wis. Adm. Code; and adopt federal air quality standards for particulate matter less than 2.5 micrometers in diameter (PM_{2.5}) into ch. NR 404, Wis. Adm. Code, and the corresponding monitoring requirements into ch. NR 484, Wis. Adm. Code.

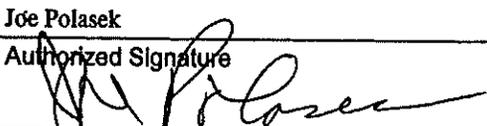
Fiscal Estimate:

The proposed modifications to Wisconsin's air quality standards for particulates would not have a fiscal effect on government and may have only a minor, positive effect on private entities.

Wisconsin is already subject to the federal air quality standards, so no fiscal effect is expected for addition of the new 24-hour PM_{2.5} ambient air standard.

Repealing the TSP air standard may ease permitting and reduce the cost of installing emission controls for particulate matter. The rule change would affect a few new TSP emission sources. Any cost savings are expected to be relatively minor compared to the overall cost of permitting and installing new equipment.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05/16/2007

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number If Applicable
Bill Number	Administrative Rule Number NR 404 and 484

Subject

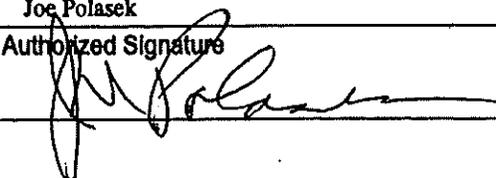
Proposed rules to make Wisconsin ambient air quality standards for particulates consistent with federal regulations for these air quality standards.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05/16/2007

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING RULES

The Wisconsin Natural Resources Board adopts an order to **repeal** NR 404.02 (11), 404.04 (3) and 484.04 (3) relating to the 24-hour secondary ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and affecting small business.

AM-23-07B

Analysis Prepared by the Department of Natural Resources

- 1. Statute interpreted:** Section 285.11 (1) and (6), Wis. Stats.
- 2. Statutory authority:** Sections 227.11 (2) (a) and 285.11 (1) and (6), Wis. Stats.
- 3. Explanation of agency authority:** Section 227.11 (2) (a), Wis. Stats., gives state agencies general rule-making authority. Section 285.11 (1), Wis. Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Wis. Stats. Section 285.11 (6), Wis. Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution.
- 4. Related statute or rule:** There are no related statutes that are not identified above.
- 5. Plain language analysis:** Currently, the Department has a secondary 24-hour ambient air quality standard for particulate matter measured as TSP (s. NR 404.04 (3), Wis. Adm. Code). Adopting this Order would satisfy the original intent of AM-23-07, originally presented to the Board on August 15, 2007 for public hearing approval, which also proposed repeal of the TSP standard. The Department held a public hearing on AM-23-07 in Madison on October 12, 2007.

The U.S. Environmental Protection Agency (EPA) established air quality standards for particulate matter in 1971. Particulate matter was originally measured as TSP, which is particulate up to 100 micrometers in diameter. Then in 1987, the U.S. EPA changed the indicator to coarse particulate matter (PM₁₀), which is particulate up to 10 micrometers in diameter. The federal PM₁₀ air quality standards replaced the federal TSP air quality standards. Particulate matter larger than 10 micrometers generally is not inhaled into the lungs and thus PM₁₀ was found to adequately protect human health. In 1997, the U.S. EPA adopted air quality standards for fine particulate matter (PM_{2.5}), which is particulate up to 2.5 micrometers in diameter. PM_{2.5} can remain suspended in the air longer and penetrate deeply into the lungs easier than PM₁₀. Currently, there are federal air quality standards for both PM_{2.5} and PM₁₀.

Repeal of the TSP standard was previously considered by the Board in 1989 and 2008 (Board Orders AM-22-88 and AM-23-07). In 1989, the Board was concerned that new federal air quality standards for PM₁₀ did not provide adequate public welfare protection from potential nuisance concerns, such as fugitive dust and adopted a resolution to retain the TSP standard. Currently, large size particulate matter (i.e., TSP) is regulated under the fugitive dust rule (s. NR 415.04, Wis. Adm. Code) and the Department has adopted more stringent PM₁₀ and PM_{2.5} standards for smaller sized particulate matter. On April 23, 2008, the Board requested that the Department should not move too quickly regarding changes to the TSP standard. On April 27, 2011, the Wisconsin Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending s. NR 404.04 (3), Wis. Adm. Code (TSP standard).

Repeal of the TSP standard, and an associated definition and monitoring requirements, will allow the Department and affected industry to focus resources on smaller particulates, which have been identified as being more harmful than TSP to human health. Additionally, repealing the TSP standard would make the state's air quality standards consistent with the federal air quality standards. This repeal would not have an impact on the fugitive dust rule.

6. Summary of, and comparison with, existing or proposed federal regulation: Federal National Ambient Air Quality Standards (NAAQS) are contained in Title 40, Part 50 of the Code of Federal Regulations (40 CFR Part 50). The purpose of these proposed rule revisions is to make the state ambient air quality standards for particulate matter in ch. NR 404, Wis. Adm. Code, consistent with the corresponding federal NAAQS.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota): These proposed rule revisions make Wisconsin's ambient air quality standards fully consistent with federal NAAQS, which are effective and enforced throughout the United States. Iowa and Michigan both reference the federal NAAQS for their respective state air quality standards. Illinois repealed their TSP standard on May 15, 1992 (Section 243.121, Illinois Adm. Code). Minnesota currently maintains their TSP standard (Section 7009.0080, Minnesota Adm. Rules).

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen: The U.S. EPA, through its Clean Air Scientific Advisory Committee (CASAC), has conducted exhaustive reviews and assessments on the health science of air pollution impacts to human health and welfare. This research has yielded NAAQS that are based upon sound health science designed to protect public health and welfare. The Department is accepting this extensive federal research as adequate factual data and analytical methodologies.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report: The Department relies on the analysis used by the U.S. EPA to support the NAAQS to develop and promulgate changes to the state's air quality standards.

10. Effect on small business (initial regulatory flexibility analysis): In repealing the TSP air quality standard, the air permitting process may be shortened since the modeling and analysis for particulate matter impacts would focus solely on emissions of PM₁₀ and PM_{2.5}. Also, this repeal may reduce the cost of installing emission controls for particulate matter. Consequently, this rule revision would have a direct positive effect on businesses, including those defined as small business.

11. Agency contact person:

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SECTION 1. NR 404.02(11) is repealed.

SECTION 2. NR 404.04(3) is repealed.

SECTION 3. NR 484.04(3) in Table 2 is repealed.

SECTION 4. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. 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)