

Wisconsin's Infrastructure State Implementation Plan (SIP) Elements for Nitrogen Dioxide (NO₂), Ozone (O₃), and Sulfur Dioxide (SO₂)

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

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

The Wisconsin Department of Natural Resources (WDNR) continues to monitor, update, and implement revisions to Wisconsin's SIP as emission limits and/or other control measures are needed in order to meet National Ambient Air Quality Standards (NAAQS), including the 2008 O₃ NAAQS, 2010 NO₂ NAAQS, and 2010 SO₂ NAAQS. Authority for this effort is established under ss. 285.11 through 285.19, Wis. Stats. Authorities related to specific pollutants, including the establishment of ambient air quality standards and increments, identification of nonattainment areas, air resource allocations, and various performance and emissions standards, are contained in ss. 285.21 through 285.29, Wis. Stats.

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

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

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

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

The WDNR continues to operate an extensive air monitoring network. The data is used after full quality assurance to determine compliance with the NAAQS.

Wisconsin's most recently adopted annual network plan for 2013 was approved by the United States Environmental Protection Agency (U.S. EPA) on October 31, 2012. All monitored data is submitted to the U.S. EPA's Air Quality System (AQS) in a timely manner in accordance with 40 CFR 51.320. The WDNR continues to provide the U.S. EPA regional office notice of any planned changes to monitoring sites or to the network plan. In addition, the WDNR actively participated in the development of a five-year regional network assessment for U.S. EPA Region 5 States dated July 1, 2010. Authority for monitoring efforts exists under general air pollution duties in s. 285.11, Wis. Stats. Funding for Wisconsin's air monitoring network comes from a variety of sources, including from the U.S. EPA under its Section 103 and 105 grant programs supporting federal monitoring requirements specified in 40 CFR 58.10.

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

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

The WDNR Air Management and Environmental Enforcement Programs work together to ensure compliance with Air Management Program SIP provisions, administrative code, and permit requirements. Authority to enforce violations and to assess penalties is contained in ss. 285.83 and 285.87, Wis. Stats. The WDNR follows a stepped enforcement process to address violations. The

enforcement response ranges from issuance of a Letter of Inquiry (the state counterpart of a U.S. EPA 114 request) where additional information is needed to confirm or assess the significance of a violation, up through referral to the Wisconsin Department of Justice (DOJ) for civil or criminal enforcement as appropriate.

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

The WDNR regulates modification and construction of stationary sources through its U.S. EPA approved nonattainment New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Title V permits programs under s. 285.11, s. 285.13, s. 285.17, s. 285.19, and ss. 285.60 through 285.69, *Wis. Stats.* The WDNR collects revenue to support these permit programs through application of applicable fee requirements under s. 285.69, *Wis. Stats.*

On March 28, 2011, the WDNR transmitted a letter to the U.S. EPA clarifying that the infrastructure SIP before the U.S. EPA review at that time (with respect to the 1997 O₃ and 1997 fine particulate matter (PM_{2.5}) NAAQS) only included PSD regulations that remained approved after the U.S. EPA issued the PSD SIP narrowing rule. Thus, the greenhouse gas (GHG) PSD permitting requirement in Wisconsin's infrastructure SIP submittal consisted of only that portion of the PSD SIP program that applies PSD permitting requirements to GHG emissions at or above the tailoring rule thresholds. The WDNR made a subsequent submittal on May 4, 2011, asking that revisions to the State's PSD program with respect to aligning the state threshold for GHG emitting sources with the federal threshold be incorporated into the SIP. Therefore, Wisconsin retains all necessary resources and authority to permit GHG emitting sources at the federal tailoring rule threshold.

4. Section 110(a)(2)(D)(i): Interstate transport provisions

"Each such plan shall [...] contain adequate provisions:

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will-

(I) contribute significantly to nonattainment in, or

(II) interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or interfere with measures required to be included in the applicable implementation plan for any other state under part C of this subchapter to prevent significant deterioration of air quality to protect visibility."

The WDNR has adopted and implemented the various major programs related to interstate transport of pollution, as required by the U.S. EPA. The WDNR developed implementation programs in ch. NR 432, *Wis. Adm. Code*, in 2007, for the state portions of the Clean Air Interstate Rule (CAIR), to address interstate transport of O₃ and PM_{2.5} precursor emissions. Emissions of NO₂ and SO₂ are addressed regionally as PM_{2.5} precursors, as well as locally within the state as described in section 110(a)(2)(K).

When the U.S. EPA finalizes a replacement to CAIR, as required by the U.S. Court of Appeals for the D.C. Circuit, the WDNR has the authority to develop refined control requirements to address that forthcoming federal program – either by adopting a Federal Implementation Plan (FIP) directly or through development of an approvable substitute regulation embodying a more unique state program. In addition, as part of the U.S. Court of Appeals for the D.C. Circuit August 21, 2012 decision regarding the Cross State Air Pollution Rule (CSAPR), the U.S. EPA must first define “significant contribution” before requiring states to eliminate that contribution.

In August 2012, the U.S. EPA fully approved Wisconsin’s Regional Haze SIP, which satisfies the visibility protection requirements under 40 CFR Part 51 Subpart P. Wisconsin has entered into agreements and working relationships with the surrounding States of Illinois, Indiana, Michigan, Ohio and Minnesota through the Lake Michigan Air Directors Consortium (LADCO) to address a continuing assessment and control strategy program to ensure multi-state nonattainment areas meet required Clean Air Act (CAA) timelines. Together these regulations and cooperative agreements address CAA and U.S. EPA concerns over the interstate transport of emissions of regulated pollutants.

If needed, ss. 285.11, 285.13 and 285.15, *Wis. Stats.*, address circumstances where interstate transport reduction agreements between states are needed to resolve SIP development of cross-boundary nonattainment areas. As detailed in the section addressing Section 110(a)(2)(C), Wisconsin has adequate PSD and NSR regulations; these regulations satisfy all applicable elements of Section 110(a)(2)(D)(i), as well as those of Section 110(a)(2)(C).

5. Section 110(a)(2)(D)(ii): Interstate and International transport provisions

“Each such plan shall [...] contain adequate provisions insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).”

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

6. Section 110(a)(2)(E): Adequate personnel, funding, and authority

“Each such plan shall [...] provide:

(i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),

(ii) requirements that the state comply with the requirements respecting State boards under section 128,

(iii) necessary assurances that, where the State has relied on a local or regional government agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.”

Funding and personnel for the WDNR is through the state’s biennial budget process. The WDNR Air Management Program has several funding sources, including program revenue (fees paid by

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

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

With respect to the requirements of Section 128, the WDNR notes that the Wisconsin Natural Resources Board (NRB) does not generally approve enforcement or permit orders. Therefore, only the second requirement of Section 128 applies to Wisconsin. Rules that apply to the Wisconsin NRB can be found in s. 15.34, *Wis. Stats.* Wisconsin Statute Chapter 19, "General Duties of Public Officials" contains provisions, specifically in s. 19.46, 19.47, and 19.48, *Wis. Stats.*, that address conflict of interest over public officials, which would include the NRB.

7. Section 110(a)(2)(F): Stationary source monitoring and reporting

"each such plan shall [...] require, as may be prescribed by the Administrator:

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such source

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

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

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

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

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

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

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

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

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

Wisconsin Statute s. 285.11(6) provides the WDNR the authority to develop all rules, limits, and regulations necessary to meet NAAQS as they evolve and to respond to any U.S. EPA findings of inadequacy with the overall Wisconsin SIP and Air Management Programs.

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

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

The WDNR follows an administrative process for public input and legislative review on non-rule SIP revisions for air quality control programs or measures. In addition, the WDNR follows an administrative process for public input, adoption by the Wisconsin NRB, and legislative review on rule SIP revisions for air quality control programs or measures. These processes ensure that potentially impacted public entities are identified and allowed to become engaged in the SIP development process. The WDNR Air Management Program has effectively used formal stakeholder structures in the development and refinement of all major SIP revisions. The WDNR is given the authority in s. 285.13(5), *Wis. Stats.*, to "advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or inter-local agencies, and the federal government, and with interested persons or groups" during the entire SIP revision process and for other elements related to air management for which the WDNR is the officially-charged agency.

The WDNR maintains an active and fully-approved monitoring network for criteria pollutants. As provided for under s. 285.11, *Wis. Stats.*, public notice is provided at levels associated with the extent of the monitored problem ranging from an advisory to alert levels. The State of Wisconsin actively participates in development of regional air quality forecasts and the U.S. EPA's AIRNow air quality data outreach program. The WDNR maintains an active multi-media outreach effort through a variety of partners to ensure adequate public notice of air quality and to advise the public of actions to reduce immediate exposure and improve air quality. Public notification is provided through the Department's website and through a contracted e-mail subscription service known as "GovDelivery".

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

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

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

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

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

The WDNR has the authority and capability to perform source-oriented dispersion modeling of all criteria pollutants – including NO₂, O₃, and SO₂ – using models such as AERMOD. The WDNR works with LADCO and the U.S. EPA to perform regional modeling of O₃ and PM_{2.5} precursors – including NO₂ and SO₂ – from consistent emissions inventory and meteorology platforms. This regional modeling supports SIP development for Wisconsin, nearby nonattainment areas, addresses interstate pollutant transport quantification, and supports visibility impact assessments. The WDNR requires source-specific modeling for PSD-NSR assessment and permitting for the construction of major and some minor sources. These authorities reside under ss. 285.11, 285.13 and 285.60 - 285.69, Wis. Stats.

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

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

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

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under subchapter Title V of this chapter.”

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

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

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

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