

understands clearly the important role it plays in encouraging and enabling international trade and commerce.

As noted above, the Department determined its proposed fees using a federally approved fee-setting model—activity-based costing—developed with the assistance of independent professional consultants experienced in activity-based cost modeling, and believes that these proposed fees will be self-sustaining when implemented. Moreover, the Department continues to refine and update the CoSS so it can regularly monitor its fees and make adjustments as required to continue to set fees commensurate with what it costs the Department to provide the service in question.

Dated: March 18, 2010.

**Patrick F. Kennedy,**  
Under Secretary of State for Management,  
Department of State.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-0587; FRL-9130-1]

### Approval of Implementation Plans of Wisconsin: Nitrogen Oxides Reasonably Available Control Technology

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Wisconsin State Implementation Plan (SIP) submitted on June 12, 2007 and on September 14, 2009. These revisions incorporate provisions related to the implementation of nitrogen oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) for major sources in the Milwaukee-Racine and Sheboygan ozone nonattainment areas. EPA is proposing to approve SIP revisions that address the requirements found in section 182(f) of the Clean Air Act (CAA). EPA is also proposing to approve other miscellaneous rule changes that affect NO<sub>x</sub> regulations that were previously adopted and approved into the SIP.

**DATES:** Comments must be received on or before *April 23, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-0587, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov).

3. *Fax*: (312) 385-5501.

4. *Mail*: Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Genevieve Damico, Acting Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R05-OAR-2007-0587. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage

at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

#### FOR FURTHER INFORMATION CONTACT:

Douglas Aburano, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

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#### I. What Action Is EPA Proposing To Take?

Throughout this document wherever "we," "us," or "our" are used, we mean EPA.

##### NO<sub>x</sub> RACT Approval

EPA is proposing to approve revisions to Wisconsin's SIP, submitted on June 12, 2007 and on September 14, 2009. The CAA amendments of 1990 introduced the requirement for existing major stationary sources of NO<sub>x</sub> in nonattainment areas to install and operate NO<sub>x</sub> RACT. Specifically, section 182(b)(2) of the CAA requires States to adopt RACT for all major sources of volatile organic compounds (VOC) in ozone nonattainment areas; section 182(f) extends the RACT provisions to major stationary sources of NO<sub>x</sub>.

Wisconsin was not required to adopt NO<sub>x</sub> RACT rules under the 1-hour ozone standard because all of the ozone nonattainment areas in Wisconsin were

covered by a NO<sub>x</sub> waiver that was approved in the **Federal Register** on January 26, 1996 (61 FR 2428). This NO<sub>x</sub> waiver, issued under section 182(f) of the CAA, exempted the affected areas from the RACT and nonattainment New Source Review requirements for major stationary sources of NO<sub>x</sub>. Wisconsin is, however, required to adopt NO<sub>x</sub> RACT rules for the 1997 8-hour ozone standard because a NO<sub>x</sub> waiver has not been issued under this ozone standard. The NO<sub>x</sub> RACT submittals were due on September 15, 2006.

#### *Approval of Other Non-RACT NO<sub>x</sub> Rules*

Additionally, the Wisconsin Department of Natural Resources (WDNR) submitted minor additions and amendments to other non-RACT NO<sub>x</sub> rules as part of the June 12, 2007 and September 14, 2009 submittals. The non-RACT NO<sub>x</sub> rules that are being changed were originally approved into Wisconsin's SIP on November 13, 2001 (66 FR 56931). These other NO<sub>x</sub> rules were submitted as part of Wisconsin's reasonable further progress SIP for the 1-hour ozone standard.

## **II. What Are the NO<sub>x</sub> RACT Requirements?**

The CAA amendments of 1990 introduced the requirement for existing major stationary sources of NO<sub>x</sub> in nonattainment areas to install and operate NO<sub>x</sub> RACT. Specifically, section 182(b)(2) of the CAA requires States to adopt RACT for all major sources of VOC in ozone nonattainment areas, and section 182(f) requires the RACT provisions for major stationary sources of oxides of nitrogen. "RACT" is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762).

Section 302 of the CAA defines major stationary source as any facility which has the potential to emit 100 tons per year of any air pollutant. For serious ozone nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons of NO<sub>x</sub> per year. For severe ozone nonattainment areas, a major source is defined by section 182(d) as a source that has the potential to emit 25 tons per year.

These requirements can be waived under section 182(f) of the CAA. See EPA memo dated December 16, 1993 from John Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors entitled, "Guideline for Determining the Applicability of

Nitrogen Oxide Requirements Under Section 182(f)." Waivers can be granted if the Administrator determines that any one of the following tests is met:

1. In any area, the net air quality benefits are greater in the absence of NO<sub>x</sub> reductions from the sources concerned;
2. In nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or
3. In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region.

Wisconsin received a NO<sub>x</sub> waiver under the 1-hour ozone standard on January 26, 1996 and, therefore, was not required to adopt NO<sub>x</sub> RACT regulations for that standard. However, there are areas in Wisconsin that are nonattainment for the 1997 8-hour ozone standard. These areas were designated nonattainment on June 15, 2004 (69 FR 23947). Because Wisconsin does not have a waiver for the NO<sub>x</sub> requirements for the 1997 8-hour ozone standard, NO<sub>x</sub> RACT rules are required in the areas that are classified as moderate or above.

Since the only areas in Wisconsin that are required to adopt NO<sub>x</sub> RACT are classified as moderate for the 1997 8-hour ozone standard, the rules that have been adopted only need to address sources with the potential to emit 100 tons per year. The NO<sub>x</sub> RACT rules were to have been submitted September 15, 2006.

## **III. Analysis of Wisconsin's NO<sub>x</sub> RACT Submittal**

### *A. Nature of Wisconsin's Submittal*

On June 12, 2007, Wisconsin submitted rules and supporting material for addressing the NO<sub>x</sub> RACT requirements. WDNR held a public hearing for these rules on March 15, 2007. WDNR also provided a comment period that was announced on February 2, 2007 and ended on March 19, 2007.

On September 14, 2009, Wisconsin submitted a supplemental SIP revision and additional supporting material for addressing the NO<sub>x</sub> RACT requirements. WDNR held a public hearing for these rules on December 5, 2008. WDNR also provided a comment period that was announced on October 30, 2008 and ended on December 10, 2008.

### *B. Summary of Wisconsin's Rules*

#### *June 12, 2007 Submittal*

Chapter NR 428 of the Wisconsin Administrative Code Environmental

Protection Air Pollution Control, entitled, "Control of Nitrogen Compound Emissions," includes provisions limiting the emissions of NO<sub>x</sub> from stationary sources in Wisconsin. While Ch. NR 428 contains many sections, Wisconsin submitted only a portion of them to address the NO<sub>x</sub> RACT requirements. Specifically, Wisconsin submitted rules 428.02(7m), 428.04(2)(h)1. and 2., 428.05(3)(e)1. to 4., 428.20 through 428.26, 484.04(13), 484.04(15m) and (16m), and 484.04(21m), (26m)(bm), (26m)(d), and (27) for Federal approval.

The RACT rules establish NO<sub>x</sub> emission limitations for major sources in the moderate ozone nonattainment areas of Wisconsin, which include the counties of Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Major sources in those counties were required to be in compliance with the NO<sub>x</sub> RACT program by May 1, 2009. The RACT rules have been adopted and passed by all necessary State law-making bodies, and the rules became effective on August 1, 2007.

The RACT rules require individual emission units at a major source to be in compliance with specific emission limitations defined by source category and fuel types. The NO<sub>x</sub> emission limitations are defined based on available control technologies and cost-effectiveness of up to \$2,500 per ton of controlled NO<sub>x</sub>. However, the emission limits are not applicable if the unit operates below an ozone season threshold level that is related to cost-effectiveness of control. Once a unit exceeds the threshold during any ozone season after the effective date of the rule, it is always subject to the RACT requirements. A phased compliance schedule is specified for electric utility coal fired boilers to account for installation and electric reliability needs. All emission limitations across the source categories are expressed on a 30-day rolling basis and are to be met on a year-round basis.

The rules require compliance monitoring, record keeping, and reporting specified for each source category. For units already required to do so, emissions are to be measured according to 50 CFR Part 75 CEMs monitoring requirements. Remaining units are specified by source category to either install and operate continuous NO<sub>x</sub> emission monitors according to 40 CFR Part 60 methods or perform stack testing every two years. The rules specify the methods and calculations used to tabulate emissions under each requirement. Units are required to have

a malfunction and abatement plan for the monitoring system.

The rules establish a number of default exemptions from the emission limits for units meeting certain conditions. The exemptions streamline compliance by identifying sources for which control cost-effectiveness is beyond that considered in the rules. These sources otherwise would likely qualify for a variance to the RACT requirement. The rules identify minimal recordkeeping requirements to ensure continued qualification under the applicable exemption. There are generally two bases for the exemptions: (1) unit types or applications with low operation levels; and (2) units which are meeting the emission limit and have sufficient monitoring requirements in place or are well controlled and for which the incremental control to meet the RACT emission limit is significantly more costly.

Alternative compliance methods in the rule include emissions averaging, a case-by-case RACT determination, and a Clean Air Interstate Rule (CAIR) equivalency provision. These programs have been structured to meet EPA's guidance for economic incentive programs, public notification, and review requirements.

Lastly, to address utility reliability issues, the rules allow an entity to request a temporary waiver of an emission limit. This provision establishes a process to evaluate an emission limit exceedance due to an uncontrollable or unforeseeable event during the course of which service must be maintained to un-interruptible customers. The request for a waiver is after the event and is subject to review and approval of both WDNR and EPA.

The major provisions of the RACT rules are:

- NR 428.02 Definitions
  - NR 428.20 Applicability and purpose.
  - NR 428.21 Emission unit exceptions.
  - NR 428.22 Emission limitation requirements.
  - NR 428.23 Demonstrating compliance with emission limitations.
  - NR 428.24 Record keeping and reporting.
  - NR 428.25 Alternative compliance methods and approaches.
  - NR 428.26 Utility reliability waiver.
- Provisions related to the RACT rule are:
- NR 400 Air pollution control definitions
  - NR 439 Reporting, recordkeeping, testing, inspection, and determination of compliance requirements
  - NR 484.04 Incorporation by reference.

Several non-substantive modifications are included in this package addressing

the units of applicable emission limitations for reciprocating engines under existing NR 428 requirements.

#### September 14, 2009 Submittal

The Wisconsin Natural Resources Board adopted an order to: renumber and amend 428.22(1)(d); amend NR 428.04(1) and (3)(b), 428.05(1) and (4)(b)2., 428.07(intro.), (1)(a) and (b)1. and 3., (3) and (4)(c), 428.08(title) and (2)(title), 428.09(2)(a), 428.20(1), 428.22(2)(intro.), 428.23(1)(b)1., 428.24(1)(b)(intro.) and 428.25(1)(a)1.a. and c. and (3)(b); and to create NR 428.02(7e), 428.08(2)(f), 428.12, 428.22(1)(d)2., and 428.23(1)(b)9., relating to modification of existing rules for control of NO<sub>x</sub> emitted by stationary sources in the ozone nonattainment area in southeastern Wisconsin. The proposed revisions relate to issues for SIP approvability and miscellaneous implementation issues.

The rule revisions address two areas: (1) Incorporating the term and a definition of "maximum theoretical emissions" in place of "potential to emit" in order to adequately identify major sources; and (2) revisions identified by the department and stakeholders which clarify and facilitate implementation of requirements within ch. NR 428.

There are a number of non-substantive revisions in the rule that address clarification and implementation issues, which are consistent with the original intent of the rules. These revisions include:

1. Removal of the reference to the Federal CAIR and usage of standard terms in identifying the appropriate units.
2. Allowance of additional time for sources to submit an application for an alternative emission limit or compliance schedule.
3. Allowance for a source with an approved alternative RACT requirement to participate in emissions averaging for purposes of demonstrating compliance with the original RACT limitation or schedule.
4. The revision avoids triggering *new source* NO<sub>x</sub> limits under rule NR 428.04 when the modification is made solely to comply with *existing source* NO<sub>x</sub> control requirements under rules NR 428.05 or 428.22.
5. Clarification and simplification of monitoring and reporting requirements.
6. Removal of the reference to "modified" sources in the applicability statement in rule NR 428.05(1).
7. Identification of limited periods when the current form of the emission limitation for glass furnaces is not appropriate. During these periods the

numerical emission limit does not apply. Instead, the source is required to minimize NO<sub>x</sub> emissions through combustion optimization techniques described in rule NR 439.096.

There are no changes from the June 12, 2007 submittal that alter the primary emission limitations or that alter those individual emissions units subject to emission requirements.

#### C. Review of Wisconsin Submittal

NO<sub>x</sub> RACT Portion of June 12, 2007 and September 14, 2009 Submittals

The WDNR created Subchapter IV entitled "NO<sub>x</sub> Reasonably Available Control Technology Requirements" to address the NO<sub>x</sub> RACT requirements of the CAA. Subchapter IV consists of rules 428.20 through 428.26.

Rule 428.20 "Applicability and Purpose" establishes the geographic scope of the rule and the sources that are subject to the rule. The rules apply in the nonattainment areas that are classified as moderate under the 1997 8-hour ozone standard. There are no nonattainment areas with a classification higher than moderate in Wisconsin. Therefore, the rules apply in the Milwaukee-Racine area (Kewaunee County, Milwaukee County, Ozaukee County, Racine County, Washington County, and Waukesha County) and Sheboygan County. The requirements apply to the owner or operator of a NO<sub>x</sub> emissions unit which is located at a facility with a combined total potential to emit for all NO<sub>x</sub> emissions units of 100 tons per year or more. This is consistent with the CAA and EPA guidance. Rule 428.20 refers to Wisconsin's definition of "Maximum theoretical emissions" found in Wisconsin rule NR 428.02(7e). These two rules, in combination, satisfy the requirements for adequate applicability.

NR 428.02 "Definitions" adds the definition of "maximum theoretical emissions," rule NR 428.02(7e). This addition is acceptable. It is referred to under NR 428.20, the "Applicability and purpose" section of the NO<sub>x</sub> RACT rules.

NR 428.21 "Emission unit exceptions" exempts certain units from emission limits but still requires monitoring emissions and keeping records for these units. Should these units no longer qualify for an exemption, emission limits will then apply. The rule establishes a number of default exemptions from the emission limits for units meeting certain conditions. The rule identifies minimal recordkeeping requirements to ensure continued qualification under the applicable exemption. There are generally two

bases for the exemptions: (1) Unit types or applications with low operation levels; and (2) units which are meeting the emission limit and have sufficient monitoring requirements in place or are well controlled and for which the incremental control to meet the RACT emission limit is significantly more costly. Wisconsin has justified these exemptions based on cost-effectiveness. The technical support document found in the docket associated with this action has more details on the justification for these exemptions.

The one exemption not based on cost-effectiveness but rather on a technical basis is the exemption under rule NR 428.21(g) for a "gaseous fuel fired unit used to control VOC emissions". The primary consideration in design and operation of such an emissions unit is for the efficient destruction of VOC emissions and not to minimize NO<sub>x</sub> emissions. For this reason this exemption is appropriate.

NR 428.22 "Emission limitation requirements" establishes NO<sub>x</sub> emission rate limits by source category applicable to emission units operating above the

applicability threshold. The source categories, operating levels, and emission limitations are presented in Table 1. The emission limits contained in the rule are a 30-day rolling average requirement applicable on a year-round basis. A unit subject to an emission limitation must demonstrate compliance on an individual basis by May 1, 2009. These limits are consistent with EPA guidance for the various categories for which Alternative Control Technology documents have been issued and with more recent State and Federal NO<sub>x</sub> control programs.

TABLE 1—NO<sub>x</sub> RACT CATEGORICAL EMISSION LIMITS <sup>1</sup>

Source category	Capacity threshold	NO <sub>x</sub> emission limitation (30 day rolling average)
Solid Fuel-Fired Boiler .....	=>1000 mmBtu/hr .....	Tangential-fired, 0.10 lbs/mmBtu. Wall-fired, 0.10 lbs/mmBtu. Cyclone-fired, 0.10 lbs/mmBtu. Fluidized bed-fired, 0.10 lbs/mmBtu. Arch-fired, 0.18 lbs/mmBtu.
	=>500–999 mmBtu/hr .....	Tangential-fired, 0.15 lbs/mmBtu. Wall-fired (low heat release), 0.15 lbs/mmBtu. Wall-fired (high heat release), 0.17 lbs/mmBtu. Cyclone-fired, 0.15 lbs/mmBtu. Fluidized bed-fired, 0.10 lbs/mmBtu. Arch-fired, 0.18 lbs/mmBtu.
	=>250–495 mmBtu/hr .....	Tangential-fired, 0.15 lbs/mmBtu. Wall-fired (low heat release), 0.15 lbs/mmBtu. Wall-fired (high heat release), 0.17 lbs/mmBtu. Cyclone-fired, 0.15 lbs/mmBtu. Fluidized bed-fired, 0.10 lbs/mmBtu. Arch-fired, 0.18 lbs/mmBtu.
	50–249 mmBtu/hr .....	Stoker-fired, 0.20 lbs/mmBtu. Tangential-fired, 0.15 lbs/mmBtu. Wall-fired (low heat release), 0.15 lbs/mmBtu. Wall-fired (high heat release), 0.17 lbs/mmBtu. Cyclone-fired, 0.15 lbs/mmBtu. Fluidized bed-fired, 0.10 lbs/mmBtu. Arch-fired, 0.18 lbs/mmBtu.
Gaseous or Liquid Fuel-Fired Boiler .....	=>100 mmBtu/hr .....	Stoker-fired, 0.25 lbs/mmBtu. Gaseous fuel, 0.08 lbs/mmBtu.
	=>100 mmBtu/hr .....	Distillate oil, 0.10 lbs/mmBtu.
	=>65 mmBtu/hr .....	Residual or waste oil, 0.15 lbs/mmBtu.
Lime Kiln (manufacturing) .....	=>50 mmBtu/hr .....	Gaseous fuel, 0.10 lbs/mmBtu. Distillate oil, 0.12 lbs/mmBtu. Residual oil, 0.15 lbs/mmBtu.
		Coal, 0.60 lbs/mmBtu.
		Coke, 0.70 lbs/mmBtu.
Glass Furnace <sup>2</sup> .....	=>50 mmBtu/hr .....	2.0 lbs/ton of glass.
Metal Reheat, Galvanizing, and Annealing Furnace.	=>75 mmBtu/hr .....	0.08 lbs/mmBtu.
Asphalt Plants .....	=>65 mmBtu/hr .....	Gaseous fuel, 0.15 lbs/mmBtu. Distillate oil, 0.20 lbs/mmBtu. Residual or waste oil, 0.27 lbs/mmBtu.
		Gaseous fuel, 0.10 lbs/mmBtu.
		Distillate oil, 0.12 lbs/mmBtu.
Process Heating .....	=>100 mmBtu/hr .....	Residual or waste oil, 0.18 lbs/mmBtu.
	=>100 mmBtu/hr .....	Natural gas, 25 ppmv @ 15% O <sub>2</sub> .
	=>65 mmBtu/hr .....	Distillate oil, 65 ppmv @ 15% O <sub>2</sub> .
Simple Cycle Combustion Turbine .....	=>50 MW .....	Biologically derived fuel, 35 ppmv @ 15% O <sub>2</sub> .
		Natural gas, 42 ppmv @ 15% O <sub>2</sub> .
		Distillate oil, 96 ppmv @ 15% O <sub>2</sub> .
Combined Cycle Turbine .....	=>25 MW .....	Biologically derived fuel, 35 ppmv @ 15% O <sub>2</sub> .
		Natural gas, 9 ppmv @ 15% O <sub>2</sub> .
		Distillate oil, 142 ppmv @ 15% O <sub>2</sub> .
Reciprocating Engine .....	10–24 MW .....	Natural gas, 42 ppmv @ 15% O <sub>2</sub> .
		Distillate oil, 42 ppmv @ 15% O <sub>2</sub> .
	=>25 MW .....	Biologically derived fuel, 35 ppmv @ 15% O <sub>2</sub> .
	=>500 horsepower .....	Rich-burn units, 3.0 gr/bhp-hr.

TABLE 1—NO<sub>x</sub> RACT CATEGORICAL EMISSION LIMITS <sup>1</sup>—Continued

Source category	Capacity threshold	NO <sub>x</sub> emission limitation (30 day rolling average)
		Lean-burn units, 3.0 gr/bhp-hr. Distillate-fuel units, 3.0 gr/bhp-hr. Natural Gas/Dual fuel, 3.0 gr/bhp-hr.

(1) The compliance deadline for most sources was May 1, 2009. However, electric generating units have interim emission limits and extended compliance time frames. See Table 2.

(2) During periods when the furnace is operating for purposes other than producing glass, NO<sub>x</sub> emissions must be minimized.

For electric utility coal-fired boilers the rule sets a phased compliance schedule with interim emission limits for May 1, 2009 and final RACT emission limits by May 1, 2013. The purpose of the phased compliance schedule is to allow the electric utilities the necessary time to install post

combustion controls while maintaining a reliable electric supply. Some control technologies, like selective catalytic reduction equipment, can take up to two years to install for an individual project. This is compounded by the fact that utilities are subject to limited installation windows that further

restrict the installation schedule. On this basis, multiple installations cannot be fully accomplished on all electric utility boilers within the moderate nonattainment area by 2009. The schedule of phased limitations is provided in Table 2.

TABLE 2—COMPLIANCE SCHEDULE FOR ELECTRIC UTILITY COAL-FIRED BOILERS

Compliance date	Emission limits (lbs/mmbtu)	
	Coal-fired boilers >1000 mmbtu/hr	Coal-fired boilers >500 and <1000 mmbtu/hr
May 1, 2009 .....	wall fired = 0.15 .....	wall fired = 0.20.
	tangential fired = 0.15 .....	tangential fired = 0.15.
	cyclone = 0.15 .....	cyclone = 0.20.
	fluidized bed = 0.15 .....	fluidized bed = 0.15.
	arch fired = 0.18 .....	arch fired = 0.18.
May 1, 2013 .....	wall fired = 0.10 .....	wall fired = 0.17.
	tangential fired = 0.10 .....	tangential fired = 0.15.
	cyclone = 0.10 .....	cyclone = 0.15.
	fluidized bed = 0.10 .....	fluidized bed = 0.10.
	arch fired = 0.18 .....	arch fired = 0.18.

The emission limits for 2009 reflect NO<sub>x</sub> controls which can be installed within the intervening timeframe including combustion modifications and selective non-catalytic reduction systems. The final 2013 compliance date reflects the timing necessary for anticipated installations of selective catalytic reduction systems. The phased approach is also consistent with operating generating units on a system-wide basis and utilization of a multi-facility averaging program. In this manner, the phased emission limits set forth a RACT level of NO<sub>x</sub> control across utilities boilers on a schedule which is expeditious as practicable.

Since the RACT emission limits are implemented on a schedule which is as expeditious as practicable the proposed phasing of electric utility boiler emission limits is acceptable.

NR 428.23 “Demonstrating compliance with emission limitations” requires most sources subject to emission limitations to demonstrate compliance using continuous emissions monitoring. For electric generating unit sources this monitoring is based on 40 CFR part 75 methods, and for industrial

sources monitoring is based on 40 CFR part 60 methods. For a few source categories with low variability in operations or emission rates, compliance is demonstrated by periodic stack testing. The emission monitoring requirements are consistent with existing State and EPA programs. The rule will also allow a source to request approval of an alternative monitoring method. Any alternative monitoring method must be approved by both WDNR and EPA. These compliance methods are acceptable.

NR 428.24 “Record keeping and reporting” requires all affected unit owners and operators to maintain records and submit reports to the WDNR. These records and reports will be used to determine compliance, instances of noncompliance and also to determine if exempt units continue to remain exempt by staying below specific thresholds. These provisions are acceptable.

NR 428.25 “Alternative compliance methods and approaches” provides affected units with several compliance options:

1. Emissions from one or more units subject to a RACT emission limitation may be averaged with other similar units at an affected facility. Except for “new units”, which are excluded from averaging, all similar units, both RACT and non-RACT affected units, at a facility must be included in the averaging program. This is to eliminate a potential shift in generation/production to any unit not subject to the RACT requirements.

2. Emissions averaging applies the current applicable emission limit of each unit on a heat input weighted basis to determine an average facility or system emission limit. EPA requires that averaging programs like the system averaging in the rule have an additional emission reduction applied to the facility or system emission limit as an environmental benefit in lieu of the provided flexibility. (See *Improving Air Quality with Economic Incentive Programs*, EPA-452/R-01-001, Jan. 2001.) Under facility averaging, the environmental benefit is the implementation of an annual and ozone season mass cap.

3. Emissions units may participate in an emission averaging program across multiple units and facilities. Each unit can only participate in one type of averaging program on an annual basis (facility or system-wide). The environmental benefit is the EPA default

of 10% reduction in the emission rate on an annual and an ozone season basis.

4. An individual source may request an alternative emission limitation or compliance schedule, with a determination made on a case-by-case basis by the WDNR. An alternative emission limit may be the result of an engineering assessment that demonstrates RACT controls are not economically or technically feasible for that unit. Any determination of an alternative limit or schedule must also account for a unit's ability to participate in either a facility or system-wide emissions averaging program. These alternative RACT determinations must also have written EPA approval.

As mentioned above, these alternative compliance methods must meet the requirements found in EPA's Economic Incentive Policy or guidance (*Improving Air Quality with Economic Incentive Programs*, EPA-452/R-01-001, Jan. 2001).

Rule 428.25(3) allows sources that are subject to CAIR under 40 CFR Part 97 to demonstrate compliance with NO<sub>x</sub> RACT requirements by complying with CAIR requirements. EPA is not acting on this portion of Wisconsin's rules. At the time these rules were adopted, EPA guidance allowed approval of these provisions. On December 23, 2008, the D.C. Circuit Court remanded CAIR to the EPA. Until EPA issues a replacement rule for CAIR, EPA cannot approve any NO<sub>x</sub> RACT rules making a claim of "CAIR equals RACT." Once a replacement rule for CAIR is issued, EPA can revisit the "CAIR equals RACT" provisions and evaluate them for approvability.

NR 428.26 "Utility reliability waiver" contains a provision that allows an electric or steam utility or natural gas transmission facility to request a waiver from an applicable emission limit for a period of time due to reliability issues. This provision acknowledges that these facilities serve non-interruptible customers and uncontrollable events may occur which result in an increase in emissions. Facilities generating steam for process and manufacturing purposes are not eligible for the waiver.

Non-RACT Portion of June 12, 2007 and September 14, 2009 Submittals

A number of NO<sub>x</sub> regulations were approved into the Wisconsin SIP on November 13, 2001 (66 FR 56931). They were approved as part of fulfilling the reasonable further progress requirements for the Milwaukee-Racine and Sheboygan County 1-hour ozone nonattainment areas. Proposed changes to these "non-RACT" portions of ch. NR 428 are as follows.

NR 428.02 "Definitions" adds the definition of "process heater," rule NR 428.02(7e). This addition is acceptable.

NR 428.04(2)(h)1. and 2., 428.05(3)(e)1. to 4, have been corrected to use the units of "grams per brake horsepower-hour" from "grams per brake horsepower." These corrections are acceptable.

The revision avoids triggering new source NO<sub>x</sub> limits under ch. NR 428.04 when the modification is made solely to comply with existing source NO<sub>x</sub> control requirements under rules NR 428.05 or 428.22. This modification does not alter the original intended emission limitation of the rule and therefore is acceptable.

The revisions make a number of clarifications and simplifications to the monitoring and reporting requirements under 428.23(1)(b)1., 428.23(1)(b)9, and 428.24(1)(b)(intro.). These changes are not substantive in nature nor do they eliminate dual requirements. Therefore these modifications are acceptable.

The applicability statement in rule NR 428.05(1) is being revised to remove the reference to "modified" sources. The use of the term "modified" in this case identified a source modified before February 1, 2001 as an existing source. Some inferred this meant a source existing prior to that date but modified afterwards is not subject to an emission limit. The applicability language is altered to clearly identify units subject to an existing source emission limitation. This correction is acceptable.

#### IV. Proposed Action

EPA is proposing to approve revisions to the Wisconsin SIP submitted on June 12, 2007 and September 14, 2009. These revisions incorporate provisions related to the implementation of NO<sub>x</sub> RACT for major sources in the Milwaukee-Racine and Sheboygan ozone nonattainment areas. The only rule that EPA is not acting on in the Wisconsin submittals is the "CAIR equals RACT" provision found in 428.25(3). This rule is separable from the rest of the NO<sub>x</sub> RACT rules and the rest of the submittal will not be affected if this rule is not acted on.

The SIP revisions that EPA is proposing to approve address the requirements found in section 182(f) of the CAA.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 11, 2010.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

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