

Meeting Summary
Air Management Advisory Group Meeting

Thursday, September 7, 2023

9:00 am

Renee Bashel, DNR	Maria Hill, DNR
Dan Bell, Alliant Energy	Joe Hoch, Alliant Energy*
John Binder, Plymouth Environmental Action Team and SORA	Jodi Jensen, WTBA
Ron Binzley, DNR	Nathan Kilger, Bad River Band of Lake Superior Chippewa
David Bittrich, TRC	Mike Kolb, WEC Energy Group
Phillip Bower, DNR	Alexis Landfried, Brady Corporation
Eric Bowers, Alliant Energy	Mark Lee, Masonite Corp.
Noelle Brigham, A. O Smith Corporation*	Austin Lesmeister, Xcel Energy
Joe Cebe, Forest Co. Potawatomi	Jason Martin, Foth Infrastructure
Rebecca Clarke, SORA	James Mertes, Michael Best
Molly Collins, American Lung Association	Evan Miller, Office of Sen. Robert Cowles
Natalene Cummings, Forest Co. Potawatomi*	Camden Ogletree, EPA
Craig Czarnecki, DNR	Barb Pavliscak, DNR
Brianna Denk, DNR	Beth Perk, DNR
Bryant Esch, WCMA*	Katie Praedel, DNR
John Foote, Interested party	Josue Rivera-Moreno, Tetra Tech
Ciaran Gallagher, Clean Wisconsin*	John Tadelski, SCS Engineers
Donald Gallo, Gallo Law	Steve Tasch, Trinity Consultants
Joe Geiger, Essity	Brenda Sargent, MGE
John Gibbons, Tetra Tech	Gabriella Schwartz, Ellsworth Corporation
Gail Good, DNR	Andrea Simon, Interested Party
Ashley Gray, DNR	Sheri Stach, DNR
Bob Greco, WEC Energy Group*	Patti Stickney, SEH Inc.
Erik Gulbranson, Dairyland Power Coop	Steve Stretchberry, WEC Energy Group
Mark Hammers, SCS Engineers	Krista Synder, EPA
Art Harrington, Godfrey and Kahn*	David Terpstra, DNR
Rob Harmon, Amcor Flexibles North America	Kate Verbeten, Green Bay Metro Sewerage District
Kristin Hart, DNR	Lisa Ziehlke, Astronautics Corp of America
Curtis Hedman, DHS*	
Marcus Hellenbrand, DNR	

*AMAG member

Meeting Summary

Opening remarks and agenda repair

Program Director Gail Good opened the meeting. Craig Czarnecki ran through meeting procedures.

Proposed Guidance, rules and legislative update

Proposed/Final DNR Rules

NR428 - NR 428 regulates emissions of Nitrogen Oxides (NOx) from facilities in ozone nonattainment areas. The rule is being revised to address implementation issues and to make clarifications and corrections. A public hearing was held May 31, 2023 and the DNR is drafting responses to comments and the final board order. The rule revision will go before the Natural Resources Board (NRB) for adoption at the September meeting.

NR439 – Updates to testing, monitoring, recordkeeping and reporting requirements for compliance. Air Management staff review has ended. A red-line version was sent to EPA Region 5 for a 2-week review on 9/5. Courtesy current red-line version will be sent to Technical Advisory Committee on 9/8. Board Order analysis and Economic Impact Assessment in department review through mid-October.

NR 410 - Updates to construction permit fees to assure compliance with Clean Air Act requirements and to meet business needs of permitted sources. Requesting scope approval at the September NRB meeting

Proposed EPA rules/guidance

Air Emissions Reporting Requirements (AERR) - The proposed rule revision retains the responsibility of states to report criteria air pollutants to EPA, which Wisconsin does via ARS, but also adds the requirement for owners and operators to report federal hazardous air pollutants directly to the EPA. If the rule is finalized as proposed, reporting in both ARS and in the EPA system will begin in 2027 (for calendar year 2026). The EPA is also proposing to require substantial additional data of owners and operators, including individual stack coordinates, federal rule applicability by emissions unit and all performance test data. EPA held a [public hearing on August 30](#). Comments are being accepted by the EPA until October 18: [Federal Register: Revisions to the Air Emissions Reporting Requirements](#).

Q&A: National Groups, do they have similar concerns? National Association of Clean Air Agencies (NACAA) is looking closely at generating comments.

Comment: Power industry emissions reporting tool, and duplicative effort in reporting is not preferred.

Comment: The EPA's proposal will include portable mobile sources at sources, that would be problematic. Daily energy use was also requested as an example of what would be too cumbersome for the sources.

Q&A: Does the department plan to comment? Yes

RICE NSPS and NESHAP - Updates to RICE rules affecting stationary reciprocating internal combustion engines - clarifications and corrections only. Like all MACT standards, addition of requirement to report electronically. Air Management did not submit comments.

Rule updated testing provisions to be every 12 months, instead of each calendar year. This can be a significant change for sources.

Integrated Iron and Steel Manufacturing NESHAP revisions – Air Management does not have any sources that are subject to this rule. However, the changes are significant, requiring control of additional operations and tightening limits on some pollutants and setting limits for new pollutants. It is also proposing fence line monitoring for chromium. Air Management is seeing more proposed NESHAPs from EPA requiring fence line monitoring. Air Management does not plan to comment at this time.

Powerplant GHG Rule – NSPS and EG – EPA proposed new source performance standards (NSPS) and emission guidelines (EGs) for some new and existing fossil fuel-fired power plants. The Air Management prepared comments on this proposed rule and submitted them on August 8th, 2023.

Q&A: Main high points on comments: state plan development and rule timelines, challenges with new technology that EPA was proposing, ensure plan is implementable in Wisconsin.

An attendee shared kudos to the department on engagement during comment development.

Interim Final Rule Ozone Good Neighbor Rule – Response to Judicial Stays – Purpose was to clarify which states the rule in effect for. Comments included lack of impact rule had on Wisconsin's Air Quality.

Corporate Average Fuel Economy Standards (CAFE) Light Duty Vehicles – DOT rule. Partner regulation to EPA's rule. Air Management will be developing comments on this.

Q&A: are the GHG rule comments on DNRs radar? Subpart W Oil and Gas. DNR response: Not yet but feel free to reach out directly.

No updates on SSM from the EPA

Finalized EPA rules/guidance

Emergency Affirmative Defense Provisions removed from Title V - Removes emergency affirmative defense provisions from Part 70 affecting the operation permit program and Title V of the clean air act. The DNR's rules will not need to be revised. There is no affirmative defense language in Wisconsin's operation permit rules or statutes.

When an enforcement action is taken, the source will not be able to assert affirmative defense in an enforcement case to avoid liability for noncompliance with technology-based emission limits contained in the source's title V permit. However, this rule does not prohibit states from exercising enforcement

discretion in cases where facilities may previously have asserted an affirmative defense: if a source believes it is unable to comply with emissions standards as a result of an emergency, the state may use its case-by-case enforcement discretion to determine whether to initiate enforcement, as appropriate.

Proposed Alignment State Implementation Plan (SIP) Revision

Early air rules were promulgated under ch. NR 154 and approved into the Wisconsin SIP. In the 1980s and 1990s, the ch. NR 154 rules were renumbered to the ch. NR 400 rules. The Alignment SIP revision requests that the EPA renumber and revise provisions in Wisconsin's SIP to match the provisions being implemented in the state. On Monday, August 28, the proposed Alignment SIP revision went out for 30-day public comment.

The Alignment SIP does not address the three SIP provisions named in EPA's February 2023 proposed SIP Call relating to startup, shutdown, and malfunction (SSM). DNR plans to address these provisions after EPA finalizes the SIP Call and after gathering stakeholder input. All states were required by EPA to undertake a SIP-alignment process.

Reconciliation process documentation is part of the SIP revision.

Assembly Bill 339 Relating to Restrictions on Use of Certain Refrigerants

The draft bill seeks to ensure that no state agency and no local governmental unit may prohibit or limit use of a refrigerant that the EPA has designated as acceptable for use. The DNR regulates activities during the salvaging, dismantling, or transporting of any equipment containing regulated refrigerants. Regulated refrigerant is defined by EPA and federal code and not the state.

Member asked if this will impact PFAS-related refrigerants.

Hiring Update

Brianna Denk has been hired as the Air Quality Planning and Standards Section Chief.

Quinton LeSage is currently serving as acting Permitting Section Chief while the program recruits to fill the position.

AMAG Membership

AMAG Member Bob Greco, who represents the Wisconsin Utilities Association (WUA) and works for WEC Energy Group is retiring. Joe Hoch (Alliant Energy) will be the new representative for WUA while Mike Kolb (WEC Energy Group) will serve as the alternate.

Air Quality Trends Report Preview

The Wisconsin Department of Natural Resources will publish its annual air quality [trends report](#) Friday, September 29. The 2023 report, which includes state air monitoring data through 2022 shows

improvements in some pollutant concentrations, and ongoing challenges for others. Data from 2023 is not yet complete and therefore not included in this report.

This year's report includes data for air pollutants regulated under the federal Clean Air Act including ground-level ozone, particle pollution, sulfur dioxide, nitrogen dioxide and carbon monoxide. While concentrations of these pollutants have decreased over the last two decades, the report shows two of the most harmful pollutants – ozone and fine particulates, have decreased only modestly in recent years.

The [Trends StoryMap](#) will also be updated with 2022 data. Outreach will include a news release and social media posts on Facebook and LinkedIn.

Environmental Justice (EJ) Update

The Air Program is actively working to establish a process to address EJ in construction permits. To do this, the program is to rely on state and federal rules and guidance. Air Management established a working group and held a series of meetings in July. Meetings included presentations on EJ and Title VI of the civil rights act. The group also went through the existing air construction permit process and EPA's 8 principals for addressing EJ in permits. These meetings also included discussions with other states.

The group also facilitated brainstorming sessions to think about what the program is doing now to address EJ. This includes the public notice and public hearing process for permitting, updates the program has made to [web pages to access documents](#), and materials that are available for the public. Air Management has a goal to have most recommendations completed by the end of the calendar year.

Member Updates

Joe Hoch, Utilities Association - mentioned the cross state rule is in place in Wisconsin and effective now and appreciate working with the DNR on it.

Craig Summerfield, Wisconsin Manufacturers & Commerce - indicated his appreciation for NR 439 updates and the opportunity to review edits to provide written comments.

Curtis Hedman, Department of Health Services (DHS) - highlighted a new key staff, Dr. Sheryl Bedno. She is the Chief Medical Officer for Environmental and Occupational Health. He also shared kudos to the DNR Air Program for the communications on the air quality advisories caused by the Canadian wildfires. As a result of the unprecedented air quality alerts, DHS developed social media messaging to avoid particulate matter on alert days. These were shared with local and tribal communities to communicate.

Rebecca Clarke echoed the kudos regarding the air quality alerts. She plans to work with the local public health department to get messaging out in Sheboygan County.

PM2.5 Wildfire Smoke Impacts

Canadian wildfires are not uncommon. What was uncommon about 2023 is the fires started much earlier in the year (May) than normal, fires were much more widespread, and right meteorology was in

place to bring that smoke to the surface.

Air Management uses pollution and weather models, and current conditions, like monitored pollutant concentrations and satellite imagery to create air quality forecasts. If the department anticipates an exceedance of the NAAQS, an air quality advisory is issued.

Air Management has launched a multi-faceted PM2.5 project that consists of several sub-teams to improve the PM2.5 monitoring network and communication with the public.

1. **Monitoring Network Review:** Provide direction and external communication on the Air Monitoring PM Network Changes proposed in the 2024 Air Monitoring Network Plan.

2. **Webpage Updates:** Provide an update to the air monitoring PM Pollution Webpage to encompass the new PM NAAQS and re-organize to allow for streamlined messaging associated with wildfire smoke impacts.

3. **NAAQS Review:** Review and interpretate the final 2023 PM NAAQS revision and associated guidance documents and provide consistency in the implementation of rule requirements.

4. **Area Designations:** Provide technical and policy support for statewide designation recommendations from the Governor's Office.

5. **Exceptional Events (EE):** Evaluate the need for a Wisconsin EE Demonstration for 2023 PM monitoring data. Create long-term and short-term goals understanding role of the DNR, NACAA, and LADCO.

Smoke Impacts on PM2.5 Exceptional Events

The exceptional events rule allows states to exclude air quality data from regulatory decisions if the data are influenced by events that are not reasonably controllable or preventable. Data can only be excluded through an exceptional events demonstration if it is of 'regulatory significance', meaning a violation of the standard must be occurring. Air Management is tracking smoke-influenced days closely, but it is too soon to know if an exceptional events demonstration will be necessary. Data collected during an event is flagged in the air data reporting system to identify whether an event may be deemed exceptional. Outreach efforts were improved to promote consistency in messaging, working with neighboring states to highlight any differences. Additional messaging was simplified to inform on whether it was safe to go outside or not.

The EPA intends to revise the existing PM standard later this year. The EPA stated it will be releasing guidance on how to handle exceptional events in designations process.

Ozone Topics

Ozone season will conclude at most sites on October 15. The Kenosha County sites will conclude on October 31. Off season maintenance and certification of instruments will then begin.

EPA announced it will initiate a new review of the 2015 ozone NAAQS.

Ozone Transport/Good Neighbor Plan (GNP)

The April 2022 proposed rule did not fully address upwind state contributions, align with attainment dates, or consider the full range of emissions sources impacting Wisconsin. The resulting air quality benefits of the rule for Wisconsin were negligible.

- The DNR commented on these points in detail and also met directly with the Office of Management and Budget on these issues prior to the final rule being released.
- The June 5, 2023 final rule contained changes but did not resolve these concerns.

The final rule fails to require emissions reductions from sources in states upwind of Wisconsin as necessary to prohibit those sources from contributing significantly to exceedances of the 2015 ozone NAAQS in Wisconsin.

Even for the modest emissions reductions that the rule does finally require for the 2015 ozone NAAQS, the rule fails to require those reductions be implemented as expeditiously as practicable and to account for Wisconsin's current and impending obligations to demonstrate attainment or maintenance of the 2015 ozone NAAQS.

By failing to include adequate provisions to control emissions in states upwind of Wisconsin, thereby requiring Wisconsin to undertake measures to account for those upwind contributions, the final rule unlawfully shifts EPA's statutory obligations to Wisconsin and requires the state to implement control measures not required under the Clean Air Act.

By failing to require emissions reductions from mobile sources in states upwind of Wisconsin, the final rule unlawfully fails to "prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant," including from those sources that significantly contribute to Wisconsin's nonattainment with the 2015 ozone NAAQS.

A member noted that the NOx contributions of concern are from Chicago and northern Indiana and suggested that AMAG may want to assist in being more aggressive in legal actions that could be taken to get the reductions needed from those areas.

The DNR noted that the program has been working with counterparts in the EPA and through LADCO. Additionally, the DNR suggested a working subcommittee to provide suggestions. This will be followed up on in future meetings.

A member asked if there were any updates on PFAS in air. Response: not at this time. The program will update the group on the results of the work Air Management did with the Wisconsin State Lab of Hygiene on method development.

Next AMAG Meeting. The next study group meeting will be held on **Thursday, December 7** at 9 a.m.