

# Wisconsin's Proposed Infrastructure State Implementation Plan (SIP) for the 2012 Particulate Matter NAAQS

< Draft for Public Comment >

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## Introduction

The Wisconsin Department of Natural Resources (WDNR) is confirming that the State of Wisconsin retains the authorities necessary to evaluate ambient air quality, develop plans to attain and maintain new and existing air quality standards, meet the requirements of the new source review (NSR) program, and effectively enforce all applicable requirements. Specifically, the current Wisconsin State Implementation Plan (SIP) contains the resources and authority to implement and satisfactorily complete the requirements set forth in Section 110 of the federal Clean Air Act (CAA) commonly referred to as the "Infrastructure SIP" for the 2012 Particulate Matter (PM) National Ambient Air Quality Standard (NAAQS). This document describes Wisconsin's Infrastructure SIP for particulate matter.

The SIP elements addressed in this document are required under CAA Sections 110(a)(1) and (2) and in accordance with EPA's guidance on Infrastructure SIP elements, issued on September 13, 2013. Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) specifies the basic elements and sub-elements that all SIPs must contain. An opportunity for public comment and hearing was provided for this certification of SIP authority, in accordance with 40 CFR Part 51, appendix V2.1(g), and 40 CFR 51.102.

## Required SIP Elements under CAA Section 110(a)(2)

The SIP elements indented below are excerpted from the EPA guidance on Infrastructure SIPs. The WDNR response follows each requirement.

### **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) has authority under Chapters 227 and 285, *Wis. Stats.* to create new rules and implement existing emission limits and controls to meet the requirements on Section 110(a)(2)(A). The authority for WDNR to develop rules and regulations is found in ss. 227.11(2)(a), 285.11(1), and 285.21(1)(a), *Wis. Stats.* Section 227.11(2)(a), *Wis. Stats.*, expressly confers rule making authority to an agency. Section 285.11(1) and (6), *Wis. Stats.*, requires WDNR promulgate rules and establish control strategies in order to prepare and implement the SIP for the prevention, abatement and control of air pollution in the state. Section 285.21(1)(a), *Wis. Stats.*, requires that the WDNR promulgate by rule ambient air quality standard that are similar to, but not more restrictive than the NAAQS.

The following current Wisconsin administrative code contains existing emission limits and control requirements that apply to particulate emissions:

**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 data certification is complete to determine compliance with the NAAQS.

Wisconsin's most recently adopted annual network plan for 2015 was approved by the United States Environmental Protection Agency (U.S. EPA) on October 31, 2014. All monitored data is submitted to the U.S. EPA's Air Quality System (AQS) in a timely manner in accordance with *40 CFR 58.15*. 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 and is participating in a similar process for 2015. 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 dedicated to the implementation of these permit programs through collection of applicable fees as allowed under s. 285.69, *Wis. Stats.*

On October 16, 2014, EPA approved a SIP revision from Wisconsin that identifies precursors for PM<sub>2.5</sub>, include the significant emissions rates for PM<sub>2.5</sub> and PM<sub>10</sub> under Wisconsin's PSD program (ch. NR 405, *Wis. Adm. Code*), and revises the definitions of PM<sub>2.5</sub> and PM<sub>10</sub> to include the condensable emissions.

#### **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 all federal programs required to date in addressing transport of NO<sub>x</sub> and SO<sub>2</sub> impacting PM<sub>2.5</sub>, ozone, and visibility in other states. These programs include the Clean Air Interstate (CAIR) rule and all Haze Rule requirements applicable through the 2018 planning period.

In fulfilling CAIR program requirements, Wisconsin adopted ch. NR 432, *Wis. Adm. Code*, in 2007 for the annual distribution of NO<sub>x</sub> allowances. The SO<sub>2</sub> CAIR program is implemented through the federal implementation program (FIP). EPA is implementing the Cross-State Air Pollution Rule (CSAPR) to replace CAIR requirements beginning January 1, 2015. The CSAPR is fully implemented through a FIP and Wisconsin does not have to take any additional actions regarding this rule. It should be noted that several aspects of the CSAPR are being litigated in the D.C. Circuit Court. Oral arguments were heard February 25, 2015 with final rulings expected during the summer of 2015. If litigants are successful and the CSAPR is delayed or suspended in some fashion, EPA would have to replenish the CAIR allowances in order for Wisconsin's CAIR program to remain effective.

In August 2012, the U.S. EPA approved Wisconsin's Regional Haze SIP applicable for the 2018 planning period. This Haze SIP satisfied Reasonable Progress Goals required under Subpart P of 40 CFR Part 51 and Best Available Retrofit Technology (BART) required under Appendix Y of 40 CFR Part 51.

Wisconsin will continue to work in addressing the transport of pollutants which impede compliance with new and revised National Ambient Air Quality Standards (NAAQS) and will continue Haze work and planning for the 2028 period and beyond. To do this, 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 perform air quality assessments and develop control strategies for regional pollutants, such as NO<sub>x</sub> and SO<sub>2</sub> (PM<sub>2.5</sub> precursors). Together continued implementation of federal regulations and cooperative work with other states will address Wisconsin's Transport and Haze obligations.

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 and program funding to permit GHG emitting sources at the appropriate federal tailoring threshold.

There are three requirements under Section 128 of the CAA:

- a. Any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest;
- b. Do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter; and
- c. Any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

WDNR believes existing Wisconsin state statutes address the CAA Section 128 requirements. Section 15.05, *Wis. Stats.*, vests the administrative powers and duties of the WDNR in the secretary, including issuance of air permits or enforcement orders. The Wisconsin's Natural Resource Board (NRB) functions are purely regulatory, advisory, and policy-making. The NRB never approves, and cannot approve, enforcement orders or permits under the statutes that govern its operations. Section 19.45(2), *Wis. Stats.*, prevents financial gain of a public official which addresses the issue of obtaining a significant portion of income from persons subject to permits and enforcement orders. In addition, Section 19.46, *Wis. Stats.*, prevents a public official from taking actions where there is a conflict of interest. The Secretary of the WDNR is a public official subject to these ethical obligations under ch. 19, *Wis. Stats.*

As requested by EPA, WDNR is preparing a separate SIP revision to EPA to address the concern of whether the state boards in Wisconsin meet the requirements of Section 128 of the CAA for several infrastructure SIPs submitted previously for the earlier versions of this and other NAAQS. WDNR expects to submit this SIP revision to EPA in June 2015.

**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. The monitored PM<sub>2.5</sub> concentrations in Wisconsin has not yet exceeded EPA's current functional emergency episode threshold metric of 140.4 µg/m<sup>3</sup> over a 24-hr period since the first federal method monitors started functioning in Wisconsin. Therefore, no specific emergency episode plans are necessary at this time, according to EPA's SIP guidance on the 2006 PM<sub>2.5</sub> NAAQS dated September 25, 2009.

**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 a plan for the prevention, abatement and control of air pollution that includes 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 (such as “air quality advisory” or “air quality special notice”) is provided at levels associated with the monitored value. 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 PM<sub>10</sub> and PM<sub>2.5</sub> – using models such as AERMOD. The WDNR works with LADCO and the U.S. EPA to perform regional modeling of PM<sub>2.5</sub> precursors – including NO<sub>2</sub> and SO<sub>2</sub> – 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 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 V and NSR programs. The Title V 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 and effective on January 1, 2011. The annual emission fee for Title V sources was revised and effective on July 1, 2013. 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.*

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