

Meeting Summary
Air Management Advisory Group Meeting

Thursday, March 14, 2024

9:00 am

David Bittrich, TRC	Mike Kolb, WEC Energy Group*
Philip Bower, DNR	Ashley Korrer, WEC Energy Group
Noelle Brigham, A.O. Smith Corp*	Jeremy Luebke, Geosyntec Consultants
Joe Cebe, FCPC	Jason Martin, Foth
Nathan Chenux, TC Energy	James Mertes, WTBA*
Rebecca Clark, SORA	James Meverden, Meverden Environmental Inc
Megan Corrado, DNR	Rita Neff, Manitowoc Public Utilities
Natalene Cummings, Forest Co. Potawatomi Community*	Bill Nelson, Godfrey and Kahn*
Cheryl Elkinton, Vegan Haven Central Inc.	Todd Palmer, Michael Best & Friedrich*
Curtis Hedman, WI DHS*	Katie Praedel, DNR
Ciaran Gallagher, Clean Wisconsin	Mary Recktenwalt, Mead & Hunt
Ashley Gray, DNR	Brenda Sargent, MGE
John Gibbons, ERM	Jay Selden, Mead & Hunt
Mark Hammers, SCS Engineers	Henry Seroogy, Wisconsin Eye
Rob Harmon, AFNA	Andrea Simon, Interested party
Art Harrington, Godfrey and Kahn*	Sheri Stach, DNR
Kristin Hart, DNR	Pat Stevens, WI Paper Council*
Chris Hiebert, SEWRPC*	Patti Stickney, SEH
Joe Hoch, WUA*	Steve Stretchberry, WEC Energy Group
Jodi Jensen, WTBA	Craig Summerfield, WMC*
Nathan Kilger, Bad River Band of Lake Superior Chippewa	John Tadelksi, SCS Engineers
Matthew Knippen, Michels Corporation	Steve Tasch, Trinity Consultants
	Kate Verbeten, GBMSD
	Sophia Ziehr, DNR

*AMAG member

Meeting Summary

Opening remarks and agenda repair

Program Director Gail Good opened the meeting. Craig Czarnecki ran through meeting procedures. Good also recognized the 11-year anniversary of the advisory group. The groups first meeting was held May 2013.

Fiscal Update

Gail Good gave a summary of the program budget and financial update. There will be a subgroup as a result.

Proposed Guidance, rules and legislative update (Notetaker: Sheri/Steve)

Proposed/Final DNR Rules

AM-05-21 NOx Reg – updates to Reasonably Available Control Technology rules to control emissions of Nitrogen compounds goes into effect 4/1/2024

AM-05-22 Compliance Demonstration Rule – Updates to NR 439 testing, monitoring, recordkeeping, and reporting requirements for compliance [Rulemaking to Revise Chapter NR 439 | Wisconsin DNR](#). The public comment period began 3/18/2024.

AM-10-23 NSR Fee Rule - Updates to construction permit fees to assure compliance with Clean Air Act requirements and to meet business needs of permitted sources. Public comment period on economic impact of rule closes 4/2/2024.

Proposed EPA rules/Guidance

Permit guidance for RNG processors - Guidance on how to determine air permit needs when installing renewable natural gas (RNG) systems associated with digesters. This guidance is currently under department review and will be posted for a 21-day comment period when ready.

Renewable natural gas (RNG) is generated using the biogas exhaust from anaerobic digesters and can be pumped to a natural gas pipeline or stored and processed in a gas-to-liquid (GTL) system to create diesel fuel.

The guidance document is intended for dairy farm operators, canneries, cheese and dairy processors, and energy companies partnering with such businesses.

Q&A: Is this typically injection into a pipeline? Typically, yes, but also there may be other applications as well, such as biodiesel.

Q&A: Who will this be applicable to? Mostly dairy farms will be interested.

NR 410

The public comment period on the economic impact analysis (EIA) of rule closes 4/2/2024. The public comment period for the proposed rule is currently scheduled for Summer 2024. More information can be found on the [NR 410 Rulemaking page](#).

NR 439

The economic impact analysis (EIA) has been updated based on EAI comments and response to comments. The Natural resources board has completed a 15-day passive review. Legal Council's 20-day review is in progress. The public comment period on the rule runs from 3/18/2024 - 4/25/2024. A public hearing on the rule is scheduled for 4/18/2024. More information can be found on the [NR 439 Rulemaking page](#).

Q&A: How would the transition period be reflected between Title V and NR 439? Still under discussion within the program and the program will create outreach materials for distribution when appropriate.

Proposed EPA rules/Guidance

[EPA-HQ-OAR-2023-0401](#) - Clarifying the Scope of "Applicable Requirements" Under State Operating Permit Programs and the Federal Operating Permit Program. Comments due 4/10/2024.

Q&A: Does DNR plan to submit comments to EPA? Yes, DNR plans to submit comments.

Q&A: If finalized as is, will this create any changes? Wisconsin is fairly well aligned with the position on New-Source-Review-related applicable requirements that this rule would codify. No significant change is anticipated.

[EPA-R09-OAR-2023-0626-0001](#) - Air Quality Implementation Plans; South Coast Basin. Contingency measure disapproval. Comments due 4/3/2024.

[EPA-HQ-OAR-2021-0663](#) - Supplemental Federal Good Neighbor Plan Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards. Comments due 5/16/2024

[EPA-HQ-OAR-2017-0183](#) - NSPS and EG: Large Municipal Waste Combustors. Comments due 3/25/2024.

Revisions to Regulations Related to Project Emissions Accounting – no docket yet, comments will be due 60 days after publication in the federal register.

Finalized EPA rules/Guidance

[EPA-HQ-OAR-2022-0513](#) - Request from States for Removal of Gasoline Volatility Waiver. Finalized 2/29/2024

Q&A: What is the impact going to be? Re-vapor pressure of the gas. This will allow the gas to be blended from the same feedstock from both summer and winter with a balance on the amount of ether in that fuel supply.

[EPA-HQ-OAR-2015-0072](#) - Final Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (PM). Finalized 2/7/2024

Power Plant GHG Rule- NSPS and EG – sent to Office of Management and Budget (OMB) for review
2/29/2024

Members Update (Notetaker: Brianna)

Utilities keeping close eye on Startup, shutdown, malfunction (SSM) and ozone transport litigation.

American College of Environmental Lawyers mentorship program for student lawyers or engineers on environmental law - Contact [Todd Palmer](#) for more information.

Ozone Topics – Legal Updates (Notetaker: Ron)

Good Neighbor Plan (GNP) Updates

EPA promulgated two interim final rules to stay the Good Neighbor Plan implementation in 12 states. The DNR did develop comments on both rules. Currently, the rule is being fully implemented in 10 states including Wisconsin. In January, EPA proposed to disapprove SIPs for interstate ozone reduction from Arizona, Iowa, Kansas, New Mexico and Tennessee, and to instead include these states in the GNP. The DNR will likely develop comments similar to comments on the GNP.

A number of states petitioned US Supreme Courts for a national stay.

U.S. Supreme Court heard argument on Feb. 21 on whether to stay the GNP. Wisconsin was part of multi-state coalition opposing the stay; NY argued on behalf of coalition.

Status of active Wisconsin DOJ litigation in D.C. Circuit:

- *Utah v. EPA*, Case No. 23-1157
- Briefing schedule was extended due to U.S. Supreme Court argument
- Petitioners' opening briefs are due April 1, 2024 (including Wisconsin)
- Briefing concludes Aug. 22, 2024
- Oral argument anticipated to take place in fall 2024
- The U.S. Supreme Court decision may have an impact on this litigation.

Wisconsin issues with the GNP

1. 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.

2. 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.

3. 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.

4. 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.

EPA Proposed SIP Call for Wisconsin

On February 24, 2023, EPA proposed to find three Wisconsin SSM rule provisions substantially inadequate. Seven other states were included in EPA's proposed 2023 SIP Call. EPA labeled Wisconsin's SMM provisions as "automatic and director's discretion" provisions which violated the CAA that emission limitations in a SIP be continuous.

EPA's finding that these provisions may be "substantially inadequate" does not mean the entire Air Program or SIP is deficient. This is a technical determination that narrowly applies only to this specific issue.

SSM Provisions in the proposed SIP call are opacity limits in ss. NR 431.05(1) and (2) and the exceptions to emission limitations in s. NR 436.03(2)

If finalized, the SIP call would require Wisconsin to revise its SIP within 18 months. The proposed SIP call has not yet been finalized.

D.C. Circuit Decision

D.C. Circuit decided *Environmental Committee of the Florida Electric Power Coordinating Group v. EPA* (15-1239) on March 1, 2024. Petitioners challenged EPA SIP Calls related to four types of SSM provisions:

- Automatic Exemptions – exclude SSM periods from otherwise applicable emission rules
- Director's Discretion – allow state officials to independently and conclusively decide excess emissions are not violations during SSM periods
- Overbroad Enforcement Discretion (Tennessee only) – could be read to allow state official to excuse emission violations during SSM periods in a way to foreclose EPA or citizen enforcement
- Affirmative Defenses for excess emissions during SSM periods – some protect against all liability, while others only against certain forms of relief

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The EPA primarily argued that:

- Automatic Exemptions and Director's Discretion provisions violate CAA requirement that emission limitations must be continuous.
- Overbroad Enforcement Discretion and Affirmative Defense provisions unlawfully interfere with the CAA's enforcement scheme.

Court interpreted 42 USC s. 7410(a)(2)(A):

- a SIP shall “include enforceable emission limitations and other control measures, means, or techniques..., as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.”

D.C Court Decision – SSM Holdings

Automatic Exemptions and Director’s Discretion provisions

EPA’s blanket Call of these provisions set aside. A measure that is not an emission limitation can be included in a SIP if it is not “necessary or appropriate” that the measure qualify as an emission limitation for the state to meet other applicable requirements of the CAA. The EPA did not make “necessary or appropriate” determinations in the Calls. Court leaves door open for the EPA to make additional determinations subject to judicial review.

Affirmative Defenses

- Complete affirmative defense to an action brought for non-compliance if source complies with conditions – SIP call set aside
- Affirmative defenses against certain remedies such as injunctive relief or monetary penalties – SIP call upheld because block CAA’s enforcement regime

Overbroad Enforcement (Tennessee only) – EPA’s Call upheld

An AMAG member raised the issue of SSM for the state – they suggested that the department engage with stakeholders further on the department’s understanding of Wisconsin rules, as they do not allow for exceptions during startup and shutdown.

Ozone Topics – AM Updates (Notetaker: Maria)

Ozone Season Start Up

Statewide Ozone Monitoring Season Starts 4/1/2024. Kenosha County Monitors started 3/1/2024. Enhanced Ozone Monitoring will begin 5/1/2024.

Ozone Planning Update

Finding of Failure to Submit on Moderate area planning requirements - Due May 2025

- Attainment demonstration
- RACT
- Contingency measures
- Reasonable further progress
- Transportation conformity budgets

Moderate area attainment date for 2015 NAAQS is 8/3/2024.

Reclassification to Serious based on 2021-2023 data by 2/3/2025.

Particulate Matter (PM) NAAQS (Notetaker: Kristin)

On March 6, 2024 EPA revised the level of the annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) from 12 µg/m³ to 9.0 µg/m³ to meet the Clean Air Act requirement that standards be set at a level that is “requisite to protect public health with an adequate margin of safety,” including the health of at-risk populations. The revised standard is effective May 6, 2024.

PM Monitoring Updates

Along with revising the PM_{2.5} NAAQS, the EPA proposed changes to the PM_{2.5} monitoring network including the establishment of network design criteria for some large metropolitan areas to ensure adequate monitoring in 'at risk' communities.

The EPA will also update the Air Quality Index (AQI) to reflect proposed changes to the PM_{2.5} standards and latest science. These updates to the Air Quality Index will account for the annual standard change, essentially lowering the lower threshold for moderate (yellow AQI) to 9 instead of 12 µg/m³.

Wisconsin does not anticipate any changes will be needed to its monitoring network.

PM NAAQS Permitting Impacts

Beginning on the effective date of the new standard – May 6, 2024, the department must consider the level of the revised standard when conducting air dispersion modeling for major construction (PSD) air pollution control permit applications that are major for PM_{2.5} or one of its precursors (NO_x and SO₂). The department may not issue such a permit unless it makes a finding that the source will not cause or contribute to a violation of a NAAQS including the new PM_{2.5} standard.

The revised standard will not affect reviews of operation permit applications and minor construction (NSR) permit actions. In those cases, the DNR uses a weight of evidence approach rather than dispersion modeling to make a finding that a source will or will not cause or exacerbate violation of the PM_{2.5} NAAQS.

Next Steps in the PM_{2.5} Process – Nonattainment Designations

In the next two years, the EPA needs to make final determinations of which areas of the country are meeting or ‘attaining’ the new PM_{2.5} standard and which are not meeting the standard. Areas determined to not meet the standard will be designated by the EPA as ‘nonattainment’.

While it is too early to say with certainty whether Wisconsin will have any areas designated ‘nonattainment’ for the revised standard, the most recent preliminary monitoring data from the Appleton, Madison-University Ave, Milwaukee 16th St., Milwaukee-College Ave, Waukesha and Potosi air monitors show design values over the 9 µg/m³ standard.

The data for 2023 is preliminary.

Teledyne Monitor Update

On 2/15/2024, the EPA released a "Proposal to Update PM_{2.5} Data from T640/T640X PM Mass Monitors". Wisconsin uses T640/T640x monitors at many of its PM_{2.5} monitoring sites.

The EPA is proposing a data alignment acknowledging that the T640 and T640X monitors do not meet method quality objectives when compared to federal reference method monitors. If the EPA finalizes this proposal and applies the data correction, it could lead to reductions in past PM_{2.5} design values across the nation. Because T640s have been in use in Wisconsin since 2019 this could mean changes in Wisconsin's 2019 - 2023 design values.

Exceptional Events

Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, state or local air agencies may implement in order to attain and maintain the National Ambient Air Quality Standards (NAAQS).

Exceptional events may include high wind dust events, prescribed fires, and wildfires. Air agencies can request exclusion of data influenced by exceptional events from use in regulatory decisions, such as initial designations of a revised NAAQS.

On 1/11/2024 the EPA announced new resources to use when completing an exceptional events demonstration.

- Data Visualization and comparison tools
- PM_{2.5} Wildfire Exceptional Events Tiering Supplement
- Prescribed Fire Demonstration Example

The comment period (on new tools above) ended on February 2/2/2024. The DNR commented that a streamlined process is valuable and necessary and asked for some technical clarifications.

The DNR will determine if and how many exceptional events to submit to EPA once monitoring data is finalized considering data alignment. LADCO is assisting the states in the Great Lakes region by providing some of the data analysis necessary for the exceptional event submittal process.

Q&A: How many exceptional events were submitted by Wisconsin in 2022? The DNR responded that the data has to be regulatory significant in order to submit an exceptional event determination. Because there was no regulatory action taking place based on 2022 data, EPA would not consider any demonstrations for that year. There were also minimal smoke impacts in Wisconsin in 2022 compared to 2023.

Air, Air Everywhere Poetry Contest (Notetaker: Craig)

The Air, Air Everywhere poetry contest launches 3/18/2024. It is open to all third, fourth and fifth grade students in Wisconsin. Any form of original poetry or riddle is acceptable.

Entry must be 200 words or less and describe air and/or the importance of clean air.

Email entries to: DNRAirEducation@wisconsin.gov

Submit entries by **Friday, May 3, 2024**, to be eligible. More info can be found on the [poetry contest page](#).

Clean Air Month

Every May DNR celebrates Clean Air Month, which serves as an important reminder of our collective responsibility to protect the air we breathe. Throughout the month, the DNR's Air Management Program will be offering information and sharing resources promoting awareness and action towards improving air quality.

A News release will go out at the beginning of May - highlighting some of our work over the past year and highlighting resources people can use to take part all month long.

Social media posts will be going out throughout the month for Air Quality Awareness Week, Bike to Work week and more.

The Clean Air Month Web updates – links and resources, info on EJ efforts, federal funding, podcasts, videos, ways to stay informed and get involved

2024 Priority Topics

Emerging federal regulation

- Emerging contaminants (PFAS)
- Federal permit actions
- PM2.5 NAAQS
- Long term planning at the federal level
- Climate initiatives

Ongoing efforts

- Environmental Justice
- 2015 ozone NAAQS implementation
- Ozone transport
- SIP submittals and redesignation requests
- Regional haze
- Rulemaking

Opportunities

- Inflation Reduction Act

- Transparency in information
- Goals and vision of DNR
- Working with other states and organizations

Next AMAG Meeting. The next study group meeting will be held on **Tuesday, June 4** at 9 a.m.