BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	R 25-17
AMENDMENTS TO 35 ILL. ADM. CODE 217	)	(Rulemaking – Air)
NITROGEN OXIDES EMISSIONS	)	

NOTICE OF FILING

TO: Mr. Don A. Brown**,**
Clerk of the Board
Illinois Pollution Control Board
60 E Van Buren Street, Suite 630
Chicago, Illinois 60605

Daniel Pauley
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, Illinois 60605

VIA ELECTRONIC MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO POST-HEARING COMMENTS**, copies of which are hereby served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: December 20, 2024

By: /s/ *Trejahn Hunter*

Trejahn Hunter
Illinois Environmental Regulatory Group
215 East Adams Street
Springfield, Illinois 62701
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THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO POST-HEARING COMMENTS

NOW COMES, the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through its attorney Trejahn Hunter, and hereby files its Response to Post-Hearing Comments for the Illinois Pollution Control Board's ("Board") consideration.

I. Introduction

On behalf of its Members, the Illinois Environmental Regulatory Group ("IERG") appreciates this opportunity to provide feedback on the Illinois Environmental Protection Agency's December 16, 2024, Post-Hearing Comments. IERG is an Illinois not-for-profit corporation of approximately fifty (50) Member companies including the chemical, food, pharmaceutical, transportation equipment, energy, heavy manufacturing, steel, oil, and power generation sectors that are regulated by governmental agencies that promulgate, enforce, or administer laws, rules, regulations, and other policies. IERG represents the interests of its Members in the development of environmental laws, regulations, and policies at the state level in Illinois and at the federal level. As IERG's Members include sources that are subject to, or will be subject to, the NOx Reasonably Available Control Technology ("RACT") provisions in Part 217, the proposed amendments will directly impact IERG Members.

On November 21, 2024, the Board held its Second Hearing in the matter. During the Second Hearing IERG posed follow-up questions addressing the Illinois Environmental Protection Agency's ("Illinois EPA" or "Agency") responses to Pre-Filed Questions, some of

which the Agency witness proposed to address in post-hearing comments. The Agency filed post-hearing comments and responses to post-hearing comments on December 16 and 19, 2024, respectively. IERG now submits follow-up responses to the Agency's December 16, 2024, post-hearing comments.

II. Follow-Up Responses to Agency Comments

A. The Board has the authority to, and should, adopt a NOx RACT averaging provision without a 10% environmental benefit factor. guidance.

The Board has the authority to, and should, adopt a NOx RACT averaging provision without a 10% environmental benefit factor. The United States Environmental Protection Agency's ("USEPA") 2015 Ozone National Ambient Air Quality Standards ("NAAQS") Implementation rule authorizes RACT-to-RACT equivalent averaging for an airshed. Proposed 217 emission averaging and associated plans satisfy Clean Air Act requirements without needing to satisfy non-binding EIP guidance. The preamble for USEPA's 2018 implementation rulemaking states the following):

> The EPA is retaining our existing general RACT requirements for purposes of the 2015 ozone NAAQS. These requirements, which are being codified at 40 CFR 51.1312(a) and (b), address the content and timing of RACT SIP submittals and implementation, as well as major source criteria for RACT applicability. Underlying these general RACT requirements are well-established EPA policies and guidance, including existing control techniques guidelines (CTGs) and alternative control techniques (ACTs).[1] Consistent with the EPA's prior guidance (80 FR 12279; March 6, 2015), when determining what is RACT for a particular source or source category, air agencies should also consider all other relevant information (including recent technical information and information received during the state's public comment period) that is available at the time they develop their RACT SIPs. The EPA's adopted RACT approach includes our longstanding policy with respect to ''area wide average emission rates." This policy recognizes that states may demonstrate as part of their NO_X RACT SIP submission that the weighted average NO_X emission rate of all sources in the nonattainment area subject to RACT meets NOx RACT requirements; states are not required to demonstrate RACT-level controls on a source-by-source basis.

[11] Which are statutorily authorized under Clean Air Act Section 182(b)(2), (f).

> This approach for demonstrating RACT through area-wide average emissions rates was recently upheld in South Coast II, 882 F.3d at 1154.

Implementation of the 2015 NAAQS for Ozone: Nonattainment Area State Implementation Plan Requirements, 83 Fed. Reg. 62998, 63007 (Dec. 6, 2018).[2]

In 2022, the current USEPA Administration approved Pennsylvania's NOx RACT averaging SIP. *See Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; RACT Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone NAAQS*, 87 Fed. Reg. 3929 (Jan. 26, 2022). In Pennsylvania's case:

> [a]n evaluation was completed to determine whether the aggregate NO_X emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_X emissions averaging plan using a 30-day rolling average are greater than the NO_X emissions that would be emitted by the group of included sources if each source complied with the applicable presumptive limitation in 25 Pa. Code 129.97 on a source-specific basis.

Id. at 3930. Notably, Pennsylvania's NOx RACT averaging SIP did not include a 10% environmental benefit factor.

In accordance with USEPA's ozone implementation rule, the Board should adopt the proposed amendments to Part 217 without the 10% environmental benefit factor, and the Agency can make a demonstration that Part 217's RACT-to-RACT emission averaging results in equivalent control for each affected airshed. This is demonstrated for each owner/operator of an affected source(s) by the emission averaging plan, as the plan satisfies the following equation found in proposed 35 IAC 217.158(g) and 217.390(h):

$$N_{act} \leq N_{all}$$

When each source's plan demonstrates equivalent control, the collective of sources has equivalent control.

[2] All Federal Registers cited herein are publicly accessible at https://www.govinfo.gov/app/collection/fr/.

B. The 2001 discretionary EIP guidance is non-binding guidance and USEPA's mandate to include a 10% environmental benefit factor in NOx RACT averaging as a condition of SIP approval is an unauthorized rule.

As testified to by the Agency, USEPA's 2001 guidance "Improving Air Quality with Economic Incentive Programs" ("EIP Guidance") is non-binding guidance that did not undergo public notice and comment. *See* Illinois Environmental Protection Agency's Responses to IERG's Pre-Filed Questions for Illinois EPA Witness at Second Hearing, PCB R 25-17, at 8-9 (November 20, 2024). Further, Section 1.5 of the EIP Guidance entitled "How does this guidance affect the EPA's 1994 EIP rule?" states that "EPA will remove section 51.490(b) of EPA's 1994 EIP rule when the final version of this guidance is published." "Improving Air Quality with Economic Incentive Programs," USEPA EPA-452/R-01-001, at 8 (Jan. 2001).[3] To date, USEPA has not proposed or finalized revisions to the 1994 version of 40 CFR 51, Subpart U. Where the non-binding EIP Guidance is inconsistent with the 1994 EIP rule, the 1994 rule applies and not the EIP Guidance.

Subpart U, per 40 CFR 51.493(e), "Source requirements", addresses a 10% environmental benefit, requiring a trading ratio of 1.1 to 1 for scenarios involving RACT/non-RACT trading. There is no RACT/non-RACT trading allowed in proposed Part 217. Instead, only RACT to RACT emission averaging is allowed. As such, there is no authority under Subpart U to impose the 10% environmental benefit that has been proposed. By requiring a 10% environmental benefit as a component of NOx RACT averaging and as a condition of SIP approval, USEPA is establishing a new substantive rule that imposes extra obligations, alters a standard and affects individual rights. Such a new substantive rule is subject to the general notice and comment rulemaking process under the Administrative Procedure Act (APA) (5 USC 553).

[3] Publicly accessible on USEPA's website at https://www.epa.gov/sites/default/files/2015-07/documents/eipfin.pdf.

This 10% environmental benefit is not found in any provision of the federal Clean Air Act ("CAA"). Any interpretation by USEPA regarding CAA meaning in this regard is simply not within the plain meaning of the CAA and is no longer entitled to *Chevron* deference. Furthermore, this 10% environmental benefit component devised by USEPA has not been consistently applied. In its non-binding EIP Guidance, USEPA indicated it would revise 40 CFR Part 51, Subpart U, "soon" to make the rules consistent with the EIP Guidance, but, for over 20 years, USEPA failed to do so. Moreover, over the course of time, as testified to by the Agency, USEPA has acted inconsistently with its EIP Guidance insofar as not requiring state NOx RACT averaging provisions to include a 10% environmental benefit. *See* Second Hearing Transcript, PCB R 25-17, at 8 (November 21, 2024). Consistency is the very foundation of the rule of law and USEPA has not justified its lack of consistency here. It is clear from the record in this matter, which is littered with comments and questions relative to the 10% environmental benefit component, that this component is a matter of central and significant concern and debate, yet it is also clear that the record contains no reasoned justification for the component. Just as telling, during this rulemaking process, multiple requests were made by IERG member companies to engage in meaningful discussion with the Agency and USEPA regarding the USEPA-required 10% environmental benefit, but those requests were met with opposition to the removal of the 10% environmental benefit requirement.

It is clear from the record in this matter that USEPA is enforcing or attempting to enforce a policy as though it was a duly adopted rule. Because this mandatory 10% environment benefit component of NOx RACT averaging has not been adopted through the general notice and comment rulemaking process of the APA, it cannot have the full force of law. It is equally clear from the record in this matter that the Agency is including this 10% environmental benefit

component without a reasoned justification and not on its own, but under duress in the form of threat of SIP disapproval from the outgoing USEPA Administration and sanctions. The Agency is seemingly at this time the only agency in the nation that is not willing to move forward without a 10% environmental benefit component in its NOx RACT averaging provision or willing to consider alternatives, which it states it may. In its second hearing Post-Hearing Comments, the Agency states, "[t]here is no utility in the Board adopting a rule that will be unapprovable by USEPA." Post-Hearing Comments of Illinois EPA, PCB R 25-17 at 4 (Dec. 16, 2024). Yet this suggests that the Agency has failed to consider that other states have received SIP approval for NOx RACT averaging provisions without a 10% environmental benefit from the current USEPA Administration and that a new USEPA Administration is forthcoming.

C. The Agency has made no demonstration that the 10% environmental benefit is technologically and economically feasible and necessary for attainment or reasonable further progress.

Under federal CAA rules, RACT and RACM are to be established based not only on what is technologically and economically feasible, but also what is necessary for attainment and meeting any reasonable further progress (RFP) requirements. *See* Initial Filing, PCB R 25-17, TSD at 2 (July 08, 2024); *see also*, 42 USC 7502(c)(1), 42 USC 7511a(b)(2) and (f), and 40 CFR 51.1312(c). For decades through publication in the Federal Register, the USEPA has addressed the RACM/RACT requirement by describing the CAA's Part D SIP requirement as providing for implementation of all RACM, including RACT, as expeditiously as practicable, insofar as necessary to assure RFP and attainment by the required date. *For example, see,* 44 Fed. Reg. 20372 at 20375 (April 4, 1979). Even when assuming that the Agency is attempting to establish RACT for the serious nonattainment reclassification, the Agency has not provided adequate discussion or substantive support that emission averaging with an additional 10% reduction is

necessary to achieve attainment or meet any RFP requirements and, further, that it is economically reasonable. Separate from the current rulemaking, the Agency has posted on its website its attainment demonstration that will accompany the final rule from this proceeding as part of a SIP submittal. *See* "Attainment Demonstration for the 2015 Ozone National Ambient Air Quality Standard for the Chicago Nonattainment Area" (December 11, 2024);[4] *see* "Attainment Demonstration for the 2015 Ozone National Ambient Air Quality Standard for the Metro-East Nonattainment Area" (December 11, 2024).[5] That modeling demonstration does not include or account for the proposed 10% reduction as part of the basis for attaining the 2015 ozone standard.

In its Response to Post-Hearing Comments, the Agency asserts in relation to IERG's post-hearing comments regarding lack of modeling, that modeling is not directly relevant to this rulemaking and because RACT is a technology-based, no inventory analysis or modeling is necessary. Illinois EPA's Response to Post-Hearing Comments, P.C. #9, PCB R 25-17 at 3 (Dec. 19, 2024). IERG respectfully disagrees. In USEPA's 2018 implementation rulemaking for the 2015 ozone standard, USEPA indicated the following:

> "In regard to the use of photochemical grid modeling, the *EPA is retaining the same modeling and attainment demonstration requirements as established in the final 2008 Ozone NAAQS SIP Requirements Rule*. CAA section 182(c)(2)(A) contains specific requirements for states to use photochemical modeling or another analytical method determined to be at least as effective in their SIPs for Serious and higher classified nonattainment areas. Since *photochemical modeling is the most scientifically rigorous technique to determine NOX and/or VOC emissions reductions needed to show attainment* of the NAAQS and is readily available, we are requiring photochemical modeling (or another analytical method determined to be at least as effective) for all attainment demonstrations (including Moderate areas). We continue to believe that photochemical modeling is the most

[4] Publicly accessible on Illinois EPA's website at: https://epa.illinois.gov/content/dam/soi/en/web/epa/public-notices/documents/general-notices/2024/chicago-attainment-demonstration-20241104.pdf
[5] Publicly accessible on Illinois EPA's website at: https://epa.illinois.gov/content/dam/soi/en/web/epa/public-notices/documents/general-notices/2024/metro-east-moderate-attainment-demonstration-20241104.pdf

> technically credible method of estimating future year ozone concentrations based on projected VOC and NOX precursor emissions" (emphasis added).

See 83 Fed. Reg. 62998 at 63004 (Dec. 6, 2018). Furthermore, in its 2008 implementation rule, USEPA indicated the following regarding RACT and attainment demonstrations:

> An attainment demonstration consists of: (1) Technical analyses, such as base year and future year modeling of emissions which identifies sources and quantifies emissions from those sources that are contributing to nonattainment; (2) analyses of future year emissions reductions and air quality improvement resulting from existing (i.e., already adopted or ''on the books'') national, regional and local programs, and potential new local measures needed for attainment, including RACM and RACT for the area; (3) a list of adopted measures (including RACT) with schedules for implementation and other means and techniques necessary and appropriate for demonstrating attainment as expeditiously as practicable but no later than the outside attainment date for the area's classification; and (4) a RACM analysis to determine whether any additional RACM measures could advance attainment by 1 year.

See 80 Fed. Reg. 12264 at 12268 (March 15, 2015). An attainment demonstration would be used to show what level of NOx reduction is needed to show attainment of the ozone standard and is integral to the justification of RACT.

Furthermore, while IERG does not disagree that RACT is a technology-based standard, such a standard is either a specified control requirement or an emission standard (e.g. 25 ppmv). But what the Agency is proposing is an emission standard *plus* an extra 10% environmental benefit. That is not an emission standard, but unjustified overcontrol. Therefore, modeling is especially relevant where the rulemaking proposal seeks to apply additional emission reductions over and above a technology-based standard for RACT. It is noteworthy that IERG is not alone in raising the question of modeling. The Board raised the question of accompanying modeling to demonstrate need and impact of controls at the first hearing in this matter.

Economic reasonableness is a required Board consideration in conducting rulemaking and adopting new standards per the rulemaking provisions of the Illinois Environmental

Protection Act ("Act") and associated Board procedural rules. 415 ILCS 5/27(a), 5/28.5(h) and 35 Ill. Adm. Code 102.202(b). Section 102.202(b) of the Board's regulations states, with respect to a rulemaking proposal, that, "the statement must include, to the extent reasonably practicable, all affected sources and facilities and the economic impact of the proposed rule." 35 Ill. Adm. Code 102.202(b). In this rulemaking, the Agency made no good-faith effort to evaluate overall economic reasonableness for the proposed rule. In multiple instances, the Agency claims that applying emission standards to previously unregulated units (e.g., 50 – 100 mmBtu/hr boilers and process heaters in 35 IAC 217.164 and 217.184, respectively) is "economically reasonable …, especially given the additional flexibility provided by averaging plans". The basis does not explain how this is economically reasonable when, per the proposal language, utilizing an emission average for additional compliance flexibility for two or more process heaters would, with the 10% environmental benefit, require further emission reduction from 0.08 lb/mmBtu (the emission standard for gas-fired process heater) to 0.072 lb/mmBtu (with an added 10% reduction of 0.008 lb/mmBtu). Practically speaking, this evaluation would have required pre-proposal technical outreach, such as an owner/operator information request to potentially affected sources. In this instance, the Agency relied on the efforts of other states that did not evaluate the added expense of additional emission reductions to achieve the additional 10% environmental reduction.

Given the lack of justification, the Board has not been provided a basis to retain the proposed 10% environmental reduction in emission averaging plan provisions in 35 IAC 217.158 and 35 IAC 217.390. However, with removal of the 10% environmental benefit component, the record contains support and the necessary justification.

D. The Agency has incorrectly claimed that Illinois' nonattainment areas are needing and lacking approved attainment demonstrations.

In its post-hearing comments, the Agency states that USEPA's EIP Guidance requires a 10% environmental benefit because Illinois' nonattainment areas do not have an approved attainment demonstration. *See* Post-Hearing Comments of The Illinois Environmental Protection Agency, PCB R 25-17, at 3 (December 16, 2024). Per the EIP Guidance, the Agency's characterization is incorrect. Section 4.3 of the EIP Guidance states the following:
"If your trading or CAIF EIP covers a nonattainment area that is ***needing and lacking an approved attainment demonstration*** (NALD) then your EIP *must* meet the environmental benefit requirement by requiring 10% extra reduction in emissions" "Improving Air Quality with Economic Incentive Programs" at 51. NALD is defined in EIP Guidance Section 15.1 "Glossary" as follows: "Needing and lacking demonstration (NALD)--means a non-attainment area for which a State is currently required under the CAA to submit an SIP for attainment demonstration but ***has not done so***." *Id*. at 168.

Whereas the Agency claims that the guidance requires a 10% extra reduction when a nonattainment area does not have an approved attainment demonstration, the guidance ties that requirement to nonattainment areas that are NALD, as they ***have not submitted*** an attainment demonstration. As noted earlier, the Agency has posted on its website attainment demonstrations for both the Chicago and the Metro-East nonattainment areas. As these attainment demonstrations are to accompany the proposed Part 217 NOx rule, the attainment demonstrations will have been submitted at the time of USEPA review and would not be classified as NALD. The Agency can clearly state this claim as part of its SIP submittal package.

As the Agency notes in its post-hearing comments, including the attainment demonstration (i.e., not NALD), the Agency has the discretion to address the environmental

benefit in a variety of other ways. *See* Post-Hearing Comments of The Illinois Environmental Protection Agency, PCB R 25-17, at 3 (December 16, 2024). As the Agency misunderstood the meaning of NALD in the EIP guidance, it has not evaluated these alternatives as part of its justification for this rulemaking.

E. The Non-Binding EIP Guidance itself does not claim to be required to satisfy the Clean Air Act.

The EIP Guidance includes Section 1.9, "What does the EPA mean when it says this is guidance?" "Improving Air Quality with Economic Incentive Programs" at 12. In that section, USEPA states that this is only guidance, is not required, and includes the following language on how USEPA will address SIP submittals:

> If you submit a program that does not contain the elements of this guidance for that type of program, EPA would still seek to determine whether the applicable CAA requirements were met, and, if so, EPA would approve the submission. The EPA would make this determination through notice-and-comment rule making.

Id. at 12-13. As noted earlier, USEPA has approved numerous SIPs without all the bells and whistles called out in the 2001 EIP Guidance. Illinois can finalize and submit its Part 217 rule without the 10% emission reduction and USEPA can, as it has before, approve it in accordance with the 1994 rule provisions for discretionary EIPs and in spite of the 2001 non-binding EIP Guidance.

F. Inclusion of a 10% environmental benefit factor in Illinois NOx RACT averaging provisions is the antithesis of regulatory certainty and is disadvantageous to the Illinois business community.

It is adverse for Illinois business to be subjected to non-binding guidance with no demonstrated need. Throughout this rulemaking, the Agency has not produced any clear and convincing evidence establishing that other states seeking USEPA SIP approval, on a similar timeline to Illinois, have been required to include a 10% environmental benefit factor, and that

those states have made compelling efforts to do so. Rather, the available information demonstrates that other states do not plan to include this 10% environmental benefit factor, and that SIP approval is possible without it. For example, the Agency has testified that Wisconsin's SIP (NR 428) does not comport and will need to be revised, however, Wisconsin revised their SIP, NR 428, in 2023 as part of its ozone SIP submittal and has not mentioned or initiated any revisions to incorporate a 10% environmental benefit factor in NR 428.25(b) "Facility Averaging." See Hearing Notice (May 31, 2023) attached hereto as Attachment 1.[6] Additionally, Pennsylvania, located in the Ozone Transport Region ("OTR"), had SIP approval of RACT averaging plan by the current USEPA Administration and the approved SIP did not impose a 10% environmental benefit. USEPA's mandate to include a 10% environmental benefit factor as a condition of SIP approval for the Agency's NOx RACT averaging provision exemplifies executive overcontrol. Illinois should not put its business community at a competitive disadvantage by imposing discretionary emission reductions with no demonstrated need and where other states are not imposing them. As noted above, multiple requests were made by IERG member companies to the Agency during this rulemaking process to engage in meaningful discussion with the Agency and USEPA regarding the USEPA-required 10% environmental benefit, but those requests for collective discussion went unanswered by the Agency.

III. Conclusion

For reasons articulated above, IERG's submits the above follow-up responses to the Agency's December 16, 2024, comments and respectfully requests that the Board remove the 10% environmental benefit factor in the proposed Part 217 NOx RACT emission averaging provisions. In the alternative, IERG respectfully requests the Board to remove the 10%

[6] Also publicly accessible on Wisconsin DNR's website at https://dnr.wisconsin.gov/sites/default/files/topic/Rules/AM0521HearingNotice.pdf.

environmental benefit factor from this rulemaking since it is clearly not required by the CAA, adopt the remaining amendments, and open a second docket pursuant to Section 28.5(i) of the Act that includes a proposal for a 10% environmental benefit factor to further address this factor as appropriate and necessary. IERG appreciates the opportunity to submit these follow-up comments.

Respectfully Submitted,

THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP

Dated: December 20, 2024

By: /s/ Trejahn Hunter

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ATTACHMENT 1

Notice of Hearing

The Department of Natural Resources announces that it will hold a public hearing on a permanent rule to revise chs. NR 400, 428 and 484, relating to nitrogen compound emissions regulations (Board Order AM-05-21), at the time and location shown below.

The public hearing concerns the proposed revision of Wisconsin's State Implementation Plan (SIP) developed under s. 285.11(6), Stats. Final rules affecting chs. NR 400, 428 and 484, Wis. Adm. Code, promulgated under this rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval and incorporation into Wisconsin's SIP.

This public hearing notice and request for comments satisfies requirements in ch. 227, Stats., for rulemaking and 40 CFR Part 51.102 for submittal of the final rules to EPA as a revision to Wisconsin's SIP.

Hearing Information

Date: Wednesday, May 31, 2023

Time: 9:30 a.m. central time

Virtual Location Link:

- Online via Zoom: https://us02web.zoom.us/j/82014995015
- Call in: 1 305 224 1968
- Meeting ID: 820 1499 5015

Rule Information

Nitrogen oxides (NO_X) react with volatile organic compounds in the presence of sunlight to form ground-level ozone. Concentrations of ozone above the National Ambient Air Quality Standards (NAAQS) are known to adversely impact human health and the environment. The U.S. Environmental Protection Agency has designated several areas along the Lake Michigan shoreline in eastern Wisconsin as "nonattainment areas" due to ozone concentrations violating the NAAQS. Emissions sources located in nonattainment areas are subject to more stringent controls under the Clean Air Act. Chapter NR 428, Wis. Adm. Code, regulates the emissions of NO_X from certain stationary sources located in current ozone nonattainment areas and areas with a history of ozone nonattainment.

Since the last time ch. NR 428, Wis. Adm. Code, was revised in 2007, the department has identified several implementation issues associated with certain parts of the chapter. The department is proposing revisions to the chapter to ensure clear and consistent implementation of this rule. The proposed changes include:

- Correcting the emission limit for certain categories of combined cycle combustion turbines and incorporating a site-specific emission limit alternative. These changes are necessary to ensure that limits are achievable in practice at all times of operation.
- Clarifying emission limits and monitoring requirements that apply when a facility uses more than one type of fuel.
- Combining and streamlining redundant monitoring requirements in s. NR 428.04(3)(a) and (b), Wis. Adm. Code.
- Clarifying monitoring requirements for kilns, furnaces, asphalt plants, process heating units, engines, and other types of units under s. NR 428.08(2), Wis. Adm. Code.

- Providing stationary sources the option to request an alternative time period to the default 180-day waiting period between the compliance monitoring plan submittal deadline and initial operation of a facility.
- Clarifying that the unit exception in s. NR 428.21(3), Wis. Adm. Code, applies only to units constructed before August 1, 2007, as originally intended.
- Updating cross references to federal methods for determining NOx emissions from stationary sources.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. Pre-registration is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, either use the Zoom link above prior to the day of the hearing or download and complete the fillable hearing appearance form and send it to olivia.salmon@wisconsin.gov.

Comments on the proposed rule must be received on or before June 7, 2023. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing.

Written comments and any questions on the proposed rules should be submitted to:

Olivia Salmon – AM/7
Bureau of Air Management
Department of Natural Resources,
101 S. Webster Street
Madison, WI 53703
(608) 630-5264
olivia.salmon@wisconsin.gov

The rule may be viewed at: https://dnr.wi.gov/news/input/ProposedPermanent.html

Comments can be made at: DNRAdministrativeRulesComments@wisconsin.gov

The rule may be reviewed, and comments made at: http://docs.legis.wisconsin.gov/code/chr/hearings.

Initial Regulatory Flexibility Analysis

The proposed revisions are intended to clarify existing requirements and to ensure clear and consistent implementation of ch. NR 428, Wis. Adm. Code. The proposed changes to ch. NR 428, Wis. Adm. Code, will not result in any existing facility, small business or otherwise, becoming newly subject to NOx RACT emission limits upon promulgation of this rule.

Agency Small Business Regulatory Coordinator:

Emma Esch (608) 266-1959
emma.esch@wisconsin.gov

CERTIFICATE OF SERVICE

I, the undersigned, on oath state the following: That I have caused to be served the attached **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S RESPONSE TO POST-HEARING COMMENTS** via electronic mail upon:

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That my email address is thunter@ierg.org.

That the number of pages in the email transmission is 19.

That the email transmission took place before 4:30 p.m. on December 20, 2024.

Date: December 20, 2024

/s/ *Trejahn Hunter*
Trejahn Hunter