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September 14, 2018

Ms. Cathy Stepp
Regional Administrator
U.S. EPA-Region 5 (R19J)
77 West Jackson Boulevard
Chicago IL 60604-3507

Subject: Wisconsin State Implementation Plan (SIP) Revision - Infrastructure SIP for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)

Dear Ms. Stepp:

The Wisconsin Department of Natural Resources (WDNR) submits this SIP revision to confirm the WDNR has sufficient authorities and resources to implement, maintain, and enforce the 2015 ozone NAAQS. WDNR requests EPA's approval of this revision.

This SIP revision submittal contains documents that satisfy the SIP requirements contained in Sections 110(a)(1) and 110(a)(2) of the Clean Air Act (CAA). The WDNR has the legal authority under Wisconsin law to adopt and implement the requested SIP revision under s. 285.11(6), Wis. Stats.

The WDNR conducted a public hearing in Madison, Wisconsin, on July 17, 2018 regarding this SIP submittal. A copy of the public comment and hearing notice is enclosed. No public comments were received on the proposal.

This SIP is being submitted using EPA's SPeCs submission system. If you have any questions regarding this submittal, please contact Cami Peterson of my staff at (608) 267-7546 or cam.peterson@wisconsin.gov.

Sincerely,

A handwritten signature in blue ink that reads "Gail E. Good". The signature is written in a cursive, flowing style.

Gail E. Good
Director
Air Management Program

cc: David Bizot – AM/7
Cami Peterson – AM/7
James Bonar-Bridges - LS/8
Doug Aburano – U.S. EPA Region 5 (via email)

Attachments:

1. Wisconsin Infrastructure SIP for the 2015 Ozone NAAQS
2. Public hearing notice
3. Proof of publication for public comment period and public hearing
4. SIP revision certification

Wisconsin's Infrastructure State Implementation Plan for the 2015 Ozone National Ambient Air Quality Standard (NAAQS)

Introduction

The Wisconsin Department of Natural Resources (DNR) is submitting this SIP revision to confirm that the State of Wisconsin has the authority 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 2015 Ozone National Ambient Air Quality Standard (NAAQS).

The SIP elements addressed in this document are required under CAA Sections 110(a)(1) and (2) and in accordance with the U.S. Environmental Protection Agency's (EPA's) guidance on infrastructure SIP elements¹. 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 will be provided for this certification of SIP authority, in accordance with 40 CFR part 51, appendix V, paragraph 2.1(g), and 40 CFR 51.102.

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

The sections below include descriptions of the required SIP elements excerpted from the EPA guidance on infrastructure SIPs.¹ The italicized text is from the CAA. The DNR response follows each requirement.

1. Element A – 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 DNR has authority under Chapters 227 and 285, *Wis. Stats.* to create new rules and implement existing emission limits and controls to meet the requirements of Section 110(a)(2)(A). The authority for DNR to develop rules and regulations is found in ss. 227.11(2)(a), 285.11(1), 285.17(1)(a) and 285.21(1)(a), *Wis. Stats.* Section 227.11(2)(a),

¹ Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2), memo from Stephen D. Page to Regional Air Directors, Regions 1-10, September 13, 2013.

Wis. Stats., expressly confers rule making authority to an agency. Section 285.11(1) and (6), *Wis. Stats.*, requires that DNR 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 285.17(1)(a), *Wis. Stats.*, requires DNR to classify sources or categories of sources that may cause or contribute to air pollution. Section 285.21(1)(a), *Wis. Stats.*, requires that DNR promulgate by rule ambient air quality standards that are similar to, but no more restrictive than, the federal NAAQS.

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

- Chapters NR 419 through NR 425, *Wis. Adm. Code*, control VOC as an ozone precursor.
- Chapter NR 428, *Wis. Adm. Code*, controls nitrogen oxides (NO_x) as an ozone precursor.

2. Element B – 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 DNR operates a fully-approved air monitoring network in accordance with EPA's ambient air quality monitoring network requirements (40 CFR part 53 and 40 CFR part 58). After the monitoring data has been certified, it is used to determine compliance with the NAAQS. All monitored data is submitted to the EPA's Air Quality System in a timely manner in accordance with 40 CFR part 58. Authority for air 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 EPA under its Section 103 and 105 grant programs supporting federal monitoring requirements specified in 40 CFR 58.10.

Wisconsin's most recently adopted annual network plan for 2018 was approved by EPA on September 1, 2017. The DNR continues to provide EPA Region 5 notice of any proposals to remove or move monitoring stations in its network plan, pursuant to 40 CFR part 58.10. In addition, DNR actively participates in the development of five-year regional network assessments for EPA Region 5 states; the most recent assessment was completed in 2015.

3. Element C – Section 110(a)(2)(C): Programs for enforcement of control measures and for construction or modification of stationary sources

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 DNR Air Management and Environmental Enforcement programs work together to ensure compliance with Wisconsin 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 DNR follows a stepped enforcement process to address violations. The enforcement response ranges from issuance of a Letter of Inquiry (the state counterpart to an EPA “114 request”) when additional information is needed to determine compliance or confirm the significance of a violation, up through referral to the Wisconsin Department of Justice for civil or criminal enforcement, as appropriate.

The Environmental Performance Partnership Agreement (EnPPA) between the Wisconsin Air Management Program and EPA Region 5 addresses implementation of the EPA’s High Priority Violation (HPV) and Federally Regulated Violations (FRV) policies. The process for prosecution of violations is also addressed in a May 22, 2015 Air Management Program Compliance and Enforcement Memorandum of Understanding (MOU) between EPA Region 5 and the DNR 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 DNR regulates modification and construction of stationary sources through its EPA approved nonattainment NSR, Prevention of Significant Deterioration (PSD), and Title V permit programs under s. 285.11, s. 285.13, s. 285.17, s. 285.19, and ss. 285.60 through 285.69, *Wis. Stats.* The DNR collects revenue dedicated to the implementation of these permit programs through applicable fees under s. 285.69, *Wis. Stats.*

On February 7, 2017, EPA approved revisions to Wisconsin’s SIP that meet EPA’s requirements for Wisconsin’s PSD and NSR program (82 FR 9515). In this action, EPA fully approved the PSD-related infrastructure requirements for previous Wisconsin submittals. In addition, EPA’s approval confirmed that Wisconsin’s PSD program continues to require that PSD permits (that would otherwise be required based on emissions of pollutants other than greenhouse gases (GHGs)) contain limitations on GHG emissions based on the application of Best Available Control Technology, consistent with the June 23, 2014 U.S. Supreme Court decision in *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. Wisconsin 2015 Act 33 modified language related to GHGs in ch. NR 405, *Wis. Adm. Code* to reflect the 2014 Supreme Court decision. DNR submitted a request to EPA on November 29, 2017 to incorporate the revised administrative code provision into the state SIP.

4. Elements D(i)(I) and (II) – Section 110(a)(2)(D)(i): Interstate pollution transport

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 DNR has adopted and implemented all federal programs required to date in addressing transport of NO_x and sulfur dioxide (SO₂) impacting ozone, fine particulate matter (PM_{2.5}) and visibility in other states. These programs include the Clean Air Interstate Rule (CAIR), Cross State Air Pollution Rule (CSAPR), CSAPR Update Rule, and all regional haze rule requirements applicable for the 2008-2018 planning period.

In fulfilling CAIR program requirements, Wisconsin adopted ch. NR 432, *Wis. Adm. Code*, in 2007 for the annual distribution of NO_x allowances. The SO₂ CAIR program is implemented through a federal implementation plan (FIP). EPA implemented CSAPR to replace CAIR requirements beginning January 1, 2015. CSAPR and the CSAPR Update are fully implemented through a FIP, and Wisconsin does not have to take any additional actions regarding this rule.

In August 2012, EPA approved Wisconsin’s regional haze SIP applicable for the 2008-2018 planning period. This haze SIP satisfied Reasonable Progress Goals required under Subpart P of 40 CFR Part 51 and Best Available Retrofit Technology 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 NAAQS and will continue regional haze work and planning for the 2018-2028 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_x and SO₂ (PM_{2.5} precursors). Together, continued implementation of federal regulations and cooperative work with other states will address Wisconsin’s transport and regional haze obligations.

If needed, section 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 regulations; these regulations satisfy the PSD-related elements of Section 110(a)(2)(D)(i), as well as those of Section 110(a)(2)(C).

5. Element D(ii) – Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution

Each such plan shall [...] contain adequate provisions [...] ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

Wisconsin's SIP contains adequate provisions to ensure compliance with Section 126 of the CAA relating to interstate pollution abatement. Neighboring states and tribes are notified regarding new or modified sources per 285.61(5), *Wis. Stats.* No source or sources within Wisconsin are the subject of an active finding under section 126 of the CAA with respect to any NAAQS. There are no final findings under section 115 of the CAA against Wisconsin with respect to ozone.

6. Element E – Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies

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.

Wisconsin's basic air management duties and authorities are described in s. 285.11, *Wis. Stats.* Funding and personnel for the DNR is provided through the state's biennial budget process. The DNR 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 DNR Air Management Program receives is the Section 105 Air Pollution Control Grant. This grant is monitored extensively by EPA; in addition, DNR and EPA negotiate priorities and grant commitments under the EnPPA, which is a two-year agreement itemizing performance measures and outcomes across various funding sources and grants.

Section 128 of the CAA requires that:

- 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 and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this Act; and
- b. 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.

Existing Wisconsin state statutes address these CAA Section 128 requirements. Section 15.05, *Wis. Stats.*, vests the administrative powers and duties of DNR in the secretary, including issuance of air permits or enforcement orders. Wisconsin's Natural Resources Board (NRB) functions are purely regulatory, advisory, and policy-making. The NRB 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 and Section 19.46, *Wis. Stats.*, prevents a public official from taking actions where there is a conflict of interest. The Secretary of DNR is a public official subject to these ethical obligations under ch. 19, *Wis. Stats.*

On February 22, 2016, EPA finalized approval of DNR's SIP revision incorporating ss. 15.05, 19.45(2) and 19.46, *Wis. Stats.* into the Wisconsin SIP to meet Section 128 requirements for state boards.

7. Element F – 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 sources, and

(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 DNR 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 of Wisconsin's emission statement SIP. Wisconsin has a web-based monitoring, reporting, permits and compliance database called the Wisconsin Air Resources Program to help ensure efficient operation of these functions. Authority for these activities 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. Element G – Section 110(a)(2)(G): Emergency powers

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 DNR to act upon a finding that episode or emergency conditions exist. This language authorizes DNR to seek immediate injunctive relief in circumstances of substantial danger to the environment or to public health. Air pollution episode levels and episode emission control action programs are codified in ch. NR 493, *Wis. Adm. Code*.

9. Element H – Section 110(a)(2)(H): 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 DNR 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, which includes responding to any deficiencies that may be identified in these plans, rules, or control strategies.

10. Element I – Section 110(a)(2)(I): Plan revisions for nonattainment areas

Each such plan shall –

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

According to EPA's interpretation of the CAA, this element is subject to a different submission schedule and will be reviewed and acted upon through a separate process. Therefore, the DNR is not addressing this element in this submission.

11. Element J – Section 110(a)(2)(J): Consultation with government officials, public notification, and 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 DNR 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 DNR is the officially-charged agency.

DNR follows an administrative rulemaking process for public input, adoption by the Wisconsin NRB, and legislative review on rule-based SIP revisions for air quality control programs or measures. Non-rule SIP revisions also allow for public review and input under the authority of s. 285.13(1), *Wis. Stats.*, and as required by 40 CFR 51.102. In addition, for any SIP revision not related to a single source, DNR is required under 285.14(2), *Wis. Stats.*, to provide the proposed revision to the standing committees of the Wisconsin State Legislature with jurisdiction over environmental matters for their review at least 60 days prior to submittal to EPA and to respond within 15 days to any written comments received from the chairpersons of the committees.

These processes ensure that potentially impacted public entities are identified and have an opportunity to provide input in the SIP development process. In addition, the DNR Air Management Program routinely engages stakeholders (through formal bodies such as the Air Management Study Group, or otherwise) when developing SIP revisions.

As provided for under s. 285.11, *Wis. Stats.*, public notice (such as an air quality advisory) is provided at specified monitoring levels associated with the Air Quality Index as air quality conditions warrant. Public notification is provided through the department's website and through a contracted e-mail subscription service known as "GovDelivery." Wisconsin also actively participates in development of regional air quality forecasts and EPA's AirNow air quality data outreach program.

The DNR'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, DNR intends the same provisions to satisfy the applicable requirements of Section 110(a)(2)(J).

12. Element K – Section 110 (a)(2)(K): Air quality modeling and submission of 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 DNR has the authority and capacity to perform air quality modeling to predict the effect of emissions of pollutants covered by the NAAQS and/or their precursors. The DNR works with LADCO and EPA to perform regional modeling of ozone from consistent emissions inventory and meteorology platforms. This regional modeling supports SIP development for Wisconsin, quantifies interstate pollutant transport contributions, and supports visibility impact assessments. The DNR requires source-specific modeling or modeling-based assessments for permitting for the construction of major sources and some minor sources. The DNR also conducts source-specific modeling for some major and minor operation permits. These authorities reside under ss. 285.11, 285.13 and 285.60-285.69, *Wis. Stats.*

13. Element L – 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

fees for Title V sources were revised and effective on January 1, 2014. Authority for these activities is established under s. 285.69, *Wis. Stats.*

14. Element M – Section 110(a)(2)(M): Consultation and 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. The formal public processes used to develop and adopt both rule and non-rule SIP revisions allow for consultation and participation by the public, including local government entities and political subdivisions.