

Meeting Summary
Air Management Study Group Meeting

Thursday, November 4, 2021

9:00 am

Sarah Arra, EPA	Joe Hoch, Alliant Energy
Renee Bashel, DNR	Erik Hoven, Dairyland Power Cooperative
Rob Bermke, Georgia-Pacific	Erik Kanter, Clean Wisconsin
Ron Binzley, DNR	Nathan Kilger, Bad River Band of Lake Superior Chippewa
David Bittrich, TRC	Mike Kolb, WEC Energy Group
David Bizot, DNR	Jason Martin, Foth
Philip Bower, DNR	Dave Minkey, DNR
Carrie Brown	Rita Neff, Manitowoc Public Utilities
Michael Cassidy, Kohler Co*	Jessica Palmer
Patrick Cardiff, Grande Cheese	Todd Palmer, Michael Best*
Michelle Castile	Katie Praedel, DNR
Rebecca Clarke, SORA	Samuel Ridders, WEDC
Michael Cloyd, EPA*	Tamara Sands, Tetra Tech
Molly Collins, ACLU	Sean Schnepfer, John Deere
Craig Czarnecki, DNR	Andrea Simon, Interested Party
Jack Dallal, John Deere	Brad Sims, Exxon Mobil
Brianna Denk, DNR	Sheri Stach, DNR
Gregory Eirschele, TRP Environmental Associates	Patrick Stevens, Wisconsin Paper Council*
Donald Gallo, Axley Brynelson LLP	Andy Stewart, DNR
Gail Good, DNR	Patti Stickney, Short-Elliot Hendrickson, Inc.
Ashley Gray, DNR	Steve Stretchberry, WEC Energy Group
Erik Gulbranson, Dairyland Power Coop	Troy Stucke
Rob Harmon, Amcor Flexibles North America	Craig Summerfield, WMC*
Art Harrington, Godfrey and Kahn*	Steve Tasch, Trinity Consultants
Kristin Hart, DNR	Mark Thimke, Foley
Curtis Hedman, WI DHS*	Jason Treutel, DNR
Maria Hill, DNR	

*AMSG member

Action Items

Next AMSG Meeting. The next study group meeting will be held on **Thursday, February 3** at 9 a.m.

Meeting Summary

Opening remarks and agenda repair

Gail Good opened the meeting. Craig ran through Zoom procedures.

Proposed Guidance, rules and legislative update

DNR Guidance

An Air Program team of permit and compliance inspectors is working with the Waste Program to update guidance for landfills based on new NSPS, NESHAPs, and Emission Guidelines. As rules are finalized, the team will be moving forward on finalizing draft guidance.

The draft Emissions Reduction Fact Sheet was made available during the meeting. The fact sheet describes emission reduction credits (ERCs) and their generation, maintenance and use in nonattainment area new source review (NNSR). A final fact sheet will be published to the web on November 16, 2021.

Kristin Hart and the permitting section continue to work through comments on the non-road engine testing technical support document. The goal is to have this document completed by the end of November.

Next Day Deviation guidance was published on August 31, 2021.

Proposed/Final DNR Rules

VOC RACT Revisions (AM-20-18) – The rule was in Legislative review since the last AMMSG meeting, however Air Management pulled the rule to make a minor change to make sure the applicability date matched the intent. The rule will need to go back through Natural Resources Board (NRB) approval, planned for December, before being sent back for legislative review.

2015 Ozone NAAQS (AM-10-19) – Governor Evers signed the rule on August 26. The legislative review period has begun. The Assembly Committee on the Environment held a hearing on October 6. Legislative review is the final stage of the rule making process.

Emissions Inventory Rule (AM-31-19) - NRB & Legislative Council Rules Clearinghouse (LCRC) completed review. Public review period has opened, and a public hearing was held on October 29. The next step is to conclude the public comment period on November 5, address any comments received and finalize the rule for NRB adoption, scheduled to be requested at the December NRB meeting, but is dependent on the quantity of comments received.

NOx RACT Rule (AM-05-21) - NRB authorized a preliminary hearing on the scope statement which was conducted on November 5. The next step is to attend to the December NRB meeting to request scope statement approval; once approval is received, rule development will begin.

Proposed EPA rules/guidance

DNR has commented on a pair of transportation rules from EPA and NHTSA. These proposals focus on GHG emissions and fuel efficiency standards.

DNR commented that the most stringent alternatives maximize GHG reductions and minimize short term increases in NOx and VOC; also commented that increases in NOx VOC and SO2 emissions should be offset

DNR has commented on a Proposed Consent decree and is preparing comment on a second related to EPA taking action on outstanding 2015 ozone transport state implementation plans. Comments note that EPA should act on all outstanding 2015 ozone transport SIPs and that non-approvals should be followed by a finalized FIP to provide necessary control measures in upwind states.

The department is still waiting on EPA's proposal for reclassification of 2008 areas to Severe and 2015 nonattainment areas to Moderate. The latest information received is that this will come later this month with finalization by the due dates.

Pyrolysis and gasification rule is under review, comments were due November 8, 2021 (update: comment period was extended).

Finalized EPA rules/guidance

Reclassification of Once in Always In (OIAI) was effective 1/19/21, however it was challenged and held in abeyance. EPA is considering next steps. The rule was not stayed and is in effect.

Project Emissions Accounting rule was finalized on 12/24/2020 and petitioned for reconsideration the following month. On 10/18/2021 EPA denied the petition for reconsideration and the administrative stay. The rule is currently effective with EPA considering rule revision.

EPA issued a Guidance memo on Startup, Shutdown, and Malfunction (SSM) on 09/30/2021. This was discussed in more detail later in the meeting.

EPA has approved Wisconsin's attainment plan for the Rhinelander SO2 nonattainment area, with an effective date of 12/31/21.

NR439 Listening Sessions

DNR hosted a series of NR439 listening sessions over the last few months. The sessions were attended by about 65 interested parties. The sessions included an overview of the rule review process and summary of chapter NR439. Attendees also provided feedback on the rule. Comments included support for the review of the rule, requests for reduction in reporting burden, consolidation of reporting requirement, review of redundancy in between federal and state rules and modernizing monitoring requirements to include new technology.

The Air Management review team will ensure awareness and incorporation of comments, where possible.

Startup, Shutdown, Malfunction (SSM) Recap

A recap of the relevant history regarding SSM was presented. The U.S. Court of Appeals for the District of Columbia Circuit in *Sierra Club v. Johnson* (2008) finds that the inclusion of startup, shutdown, and malfunction (SSM) exemptions in section 112 standards is not allowed under the Clean Air Act (CAA) and vacates affirmative defense provisions in EPA's regulations.

Sierra Club filed a petition for rulemaking with EPA in 2011 regarding how state agency rules in EPA approved SIPs treat excess emissions during periods of SSM. Wisconsin was not initially identified, but Sierra Club did later comment that they should have been. In 2014 Sierra Club filed a notice of intent to sue EPA regarding the exclusion of Wisconsin and a few other states from the SIP call. EPA contacted DNR to say that Wisconsin was inadvertently excluded. In 2015 EPA finalized the SIP call for the initially identified 36 states.

During 2020 EPA regions 4, 6 and 7 took final action by withdrawing SIP calls issued for North Carolina, Texas and Iowa. Administrator Wheeler issued a guidance memorandum explaining how SSM provisions comply with Clean Air Act requirements. This memo also included the withdrawal of the other 33 SIP calls.

In September of 2021 new Deputy Administrator McCabe issued a guidance memo reinstating EPA's prior position and reinstating or affirming the original 36 states' SIP calls. At this time Wisconsin still has not officially received a SIP call; but is preparing for a potential SIP call. Wisconsin rules noted as deficient in the original Sierra Club petition are the exceptions included in admin rule ss. NR 436.03(2) and NR 431.05(1) and (2).

To date, DNR has not been including NR 436.03(2) in permit language. When writing Best Available Control Technology (BACT) requirements, Air Management is making sure that startup and shutdown periods are specifically addressed. As New Source Review (NSR) permits are revised, Air Management is including alternative emissions limitations or operational requirements for startup/shutdown periods as appropriate. The program is also updating operation permits during renewals to remove any problematic language and assuring up to date federal NESHAPs requirements are included.

Looking ahead, DNR will review EPA's 2015 policy on SSM and will determine if the administrative code is consistent with the "director's discretion provisions." If the findings are adequate, DNR will prepare a discussion on the adequacy of the requirements laid out in the 2015 policy. If the findings are inadequate, DNR will consider options such as withdrawing rules from the SIP (rules become state only provisions) or starting rulemaking to revise rules to align them with CAA requirements.

Dispersion Modeling Updates

The Air Program has updated information on dispersion modeling on [DNR's website](#) to reflect updates from EPA. EPA regularly provides updates to dispersion models. Meteorological data used in AERMOD was updated, background concentrations were updated with census information and methods used for the analysis of 1-hour NO₂ impacts were also updated. The updated models, backgrounds and met data will be used in all permits going out to public notice after November 4, 2021.

A question was asked if the new models established for use need to go through rule making.

The DNR follows dispersion modeling guidance issued by EPA and for air quality models.

Greenhouse Gas Inventory Report

DNR provided an update on greenhouse gas inventory reporting.

The Step 1 report was a starting point where DNR utilized default data in EPA's State Inventory Tool (SIT). This report focused on comparing inventory years 2005 and 2017 and looked at trends from 1990 through 2017. This report was published November 2020.

The DNR has been working on a Step 2 report which goes beyond the defaults provided in the SIT and uses state specific data for certain industry sectors. The inventory years were similar to Step 1, but focused on 2018 values instead of 2017 values. The final draft of this report is now in review and is expected to be published in December.

Some of the methodology between the two reports is different, so each report should be looked at independently rather than compared directly. The Step 2 report utilizes a more refined data set and is expected to provide an accurate picture of inventories and trends in Wisconsin. Step 2 enhancements included a variety of improvements beyond the default data included in the SIT.

To improve the quality of the inventory inputs DNR relied on collaboration with an extensive team of stakeholders including: DNR staff from External Services, Forestry, and Solid Waste Programs as well as external partners such as DOT, DATCP, UW Researchers and others.

The Step 2 Inventory Report represents an enhanced product over the previous report. Results will be shared with AMSG in 2022.

Member Updates

Erik Kanter is a new Air Management Study Group member representing Clean Wisconsin. He recently joined Clean Wisconsin as the government relations director. He is the alternate for Katie Nekola.

A study group member mentioned EPA recently issued an objection to the Oak Management Co Title V operation permit. The objection noted issues over "plans", use of parametric monitoring, requiring parametric monitoring to accompany annual stack tests, among other items. He asked if the department reviewed this and if it had a reaction to this decision? Kristin Hart indicated the Air Program meets with EPA monthly and was made aware of this Title V petition at its most recent monthly meeting. The program is looking at how this would affect permit requirements or what the program needs to be aware of.

A study group member mentioned there is a Wisconsin Environmental Equity update session on November 4 and asked if the DNR is part of this effort and the Air Bureau in particular? Gail Good mentioned the [Wisconsin Environmental Equity tool](#) information is available on Wisconsin Economic Development Corporation (WEDC) webpage. Several partners are working on this effort; the DNR is one of them. There are air quality information items, but the Air Program has not been included yet. The program anticipates being involved in the future. Today is the second listening session.

A study group member noticed from the link provided in the meeting chat that written comments are also being accepted by WEDC on the environmental mapping tool until November 30.

Emissions Reduction Credits

The Air Management Program unveiled a new [Emissions Reduction Credit \(ERC\) Registry website](#).

Designations for the 2015 ozone NAAQS were finalized in April 2018. These areas were limited in geographic scope and were mainly along the Lake Michigan shoreline. Due to a court issued remand, EPA finalized revised nonattainment areas in May 2021 that were much larger in scale, particularly for the five-county Milwaukee metro area.

The enlarged area impacts a larger number of existing facilities and new facilities that may move into the impacted area. These facilities may be required to use ERCs to meet offset requirements under the Nonattainment New Source Review (NNSR) program. The enlarged area also means that more facilities are eligible to establish ERCs for trade or sale.

- A review of permitting requirements in nonattainment areas was provided during the meeting.

Any facility located in a nonattainment area can reduce emissions and generate ERCs as long as the reductions are:

- Surplus - reductions not required by other clean air act regulations, i.e., like RACT or NSPS
- Quantifiable - need to have records to establish baseline emissions. annual emissions calculated by averaging emissions across the 24 consecutive month period immediately preceding the reduction or a different 24 consecutive month period if the facility can show that is more representative of emissions.
- Permanent and federally enforceable - accomplished through a construction permit action

ERCs are generated by issuing a construction permit that makes them permanent and federally enforceable. ERCs are held in an elective operation permit (EOP) which documents the amount of credits, the location of emissions reductions and requirements the holder must meet to maintain the credits. The EOP is easily transferable through administrative revisions.

ERCs that are generated and banked in an EOP to be held for the future have limitations on their use. Banked ERCs must have been established after the base year used for SIP planning or included in the baseline inventory used for the SIP. Any credits that were generated under the 1979 and 1997 standards were not maintained as actual emissions in inventories which is a Clean Air Act requirement. They were not reported annually by the owners and they were used to demonstrate attainment with these standards.

Another limitation on the usability of ERCs occurs when attainment areas are reclassified or “bumped up”. While DNR prepares and submits an attainment plan in response to a bump up in classification, banked ERCs are not usable until EPA approves DNR’s new attainment plan. This period is called a blackout period.

ERCs generated at the same time, or after receipt of the NNSR application that will use them, are not subject to blackout periods and thus, are much more flexible in their use. The DNR is setting up its ERC Registry so that it will list “potential ERCs”. These are reductions that are being planned but have not been made permanent and enforceable yet through permit issuance.

In order to help stakeholders understand and navigate the process of ERCs, DNR has created an ERC Registry Website. The website contains:

- Up to date listings of banked and potential ERCs
- A form that facilities can use to identify potential ERCs; this also fulfills a requirement that source notify DNR prior to making reductions
- A factsheet with detailed information on ERCs
- DNR contact information

Air Management understands there is complexity in the ERC process and strongly recommend that facilities looking to create, maintain, acquire and use ERCs work with DNR to answer any questions and coordinate timing of permit applications for NNSR permit projects with permits to generate ERCs.

Air Management invited members to review the site and submit any comments to the program by November 11. A listening session was also held November 11 for AMMSG members to give their feedback on the ERC site, Fact Sheet and Form.

Questions:

Q: Given that Kenosha is part of the Chicago nonattainment area (which includes parts of Illinois and Indiana as well), is there any mechanism here for transferring credits across state lines?

A: DNR has worked with EPA to establish that credits that are generated in the Chicago CBSA can be used in the Milwaukee area as the upwind area and contributes to the Milwaukee area and the areas are of similar classification.

Q: Regarding reduction credits generated in the Kenosha nonattainment area, can those credits be traded into the Chicago metropolitan market?

A: Yes

Q: Can sources in Kenosha nonattainment area buy credits generated in the Chicago market?

A: Yes. Milwaukee credits for use in IL or IN would need to meet demonstration requirements determined by EPA.

Q: What is DNR's role in such transactions?

A: DNR does not hold ERCs or broker trades. The website and process is intended to facilitate communication for sources wishing to obtain ERCs.

Q: For a facility that may obtain a Registration G permit which is in an area that moves to serious non-attainment and major level is reduced so 80% of major is now lower than facility emissions. What will happen -- Registration Permit revoked? New permit with offsets required? Of just new permit?

A: The emission thresholds in a registration permit are reduced when the nonattainment area designation results in a reduction the major source threshold as would happen if Kenosha County is bumped up from a serious to severe ozone nonattainment classification. Facilities covered under the registration permit must be able to continue to demonstrate compliance with eligibility requirements of the permit they are covered under. For the Type G Registration Permit the emission threshold would decrease from 80 tons to 40 tons of VOC and NOx for facilities located in an area bumping up from moderate to serious ozone nonattainment. If the facility is not comfortable keeping actual annual emissions under the new emission thresholds, the facility must apply for a new permit. The DNR will notify any facilities whose eligibility for permits or exemptions may be affected by a change in ozone nonattainment classification.

Q: With respect to the blackout period discussion, what constitutes a "fully approved attainment plan" and what happens if there is a subsequent bump up when attainment is not timely? Does that subject the area to new attainment planning and return to blackout status?

A: Milwaukee will likely be bumped-up to moderate in early 2022. This will require a new attainment plan and inventory that will start a blackout period. Once the attainment plan is approved, the credits are usable again.

Q: Assume that a source generates ERCs by voluntarily installing pollution control equipment. Assume that years later a new rule is promulgated that makes the formerly voluntary pollution control equipment mandatory. Are the ERCs affected?

A: Yes. DNR must re-evaluate ERCs at the time of use to ensure that they remain surplus. This is why sources looking for and providing ERCs should work with DNR as early as possible when planning a NNSR permitting project.

Q: If I understand EPA's position, Wisconsin ERCs cannot be used in Illinois because Wisconsin emissions are not contributing to ozone nonattainment in Illinois. Yet I understood that EPA expanded the Wisconsin nonattainment areas, in part, based upon a conclusion that Wisconsin emissions ARE causing nonattainment problems in Illinois. What am I missing?

A: According to EPA, the expansion of the ozone NAAs were not due to contribution to the Chicago area, rather that more of the Milwaukee area contributed to its own nonattainment. EPA would say that the revised areas have more to do with WI contribution than out of state contributions .

Link to website: <https://dnr.wisconsin.gov/topic/AirPermits/ERC.html>

Air Quality Trends Report

The 2021 trends report shows that concentrations of monitored pollutants are decreasing throughout the state and shows that most of the state is meeting all federal air quality standards. This year's report includes official state monitoring data through 2020 for air pollutants regulated under the federal Clean Air Act, including ground-level ozone, particle pollution, sulfur dioxide, nitrogen dioxide and carbon monoxide.

The most recent data shows statewide reductions in ozone values, including along Wisconsin's Lake Michigan shoreline, an area historically impacted by elevated ozone concentrations. While nine Lake

Michigan shoreline counties are not currently meeting national standards, that region has seen the largest reduction in the state in ozone concentrations since 2001 at 25%.

Wisconsin has also seen dramatic reductions from industrial sources of air pollutants. Since 2002, industrial source emissions of volatile organic compounds (VOCs) have dropped 39%. VOCs react in the air to form ozone, so this decline in emissions is very important to meeting state ozone goals. Emissions of sulfur dioxide have decreased dramatically by 92%.

Finally, the DNR fielded many questions on how COVID-19 “Safer at Home” orders of 2020 impacted air quality. Impacts on air quality were measurable but not significant compared to long term air quality trends. The timeframe of the “Safer at Home” orders was relatively short in duration compared to long term air quality goals and trends.

Preliminary data from the Milwaukee near road monitoring site, along I-94 on College Avenue showed a reduction in daily peaks of Nitrogen Dioxide (NO₂) and Carbon Monoxide (CO) associated with rush hour traffic. A snapshot data analysis, at Milwaukee’s near road site suggested that NO₂ concentrations temporarily dropped by an additional 14% for the period following Governor Evers “Safer at Home” order (enacted March 25, 2020) compared to a similar 2019 timeframe.

Emissions from vehicles are only one factor contributing to air quality. Emissions from other sectors, such as industry, power generation, and non-road mobile sources; sources that may or may not have seen as steep or any decrease during the Safer at Home order, are also important factors on air quality.

Trends outreach efforts included web page updates, a news release, social media posts on Facebook, Twitter and LinkedIn. The Facebook post had more than 200 likes and reached more than 26,000 Facebook users.

The news release went out the morning of Tuesday, October 5 and by Thursday afternoon Air Management completed 6 media interviews, including Wisconsin Public Radio, WQOW in Eau Claire, WSAW and WAOW in Wausau, and a two local radio stations in the Fox Valley.

The entire report can be found on the trends page:
<https://dnr.wisconsin.gov/topic/AirQuality/Trends.html>

Ozone Season Conclusion

Enhanced Ozone Monitoring (EOM) wrapped up on September 30. Data from EOM will be quality assured and made available by January 1, 2022. Visit the [Air Monitoring Data page](#) to view monitoring data and results.

Ozone season for most of the state occurs annually from April 1 to October 15. Ozone Season in Kenosha County runs March 1 through October 31. States are required to review and certify this data for submittal to EPA by May 1 of each year. DNR is working on early certification of data, to be completed by December for Manitowoc County, two sites in Kenosha County, and Door County. Early certification is being sought because Preliminary Design Values show that all areas are meeting the 2008 ozone standard and several areas are now attaining the 2015

standard in Wisconsin.

Of note, the highest design value monitor in Chicago Area is at 75 parts per million. This means the 3-state Chicago NAA is showing attainment of the 2008 standard. While the program does anticipate proposal from EPA to bump up the 3-state Chicago area to severe later this year, DNR has prepared a redesignation request for Kenosha that went to public comment on November 1, 2021. If approved, this would prevent the Kenosha area from bumping up to severe.

The attainment date for the 2015 standard was August 2021. Sheboygan, Milwaukee and the Chicago 3-state area did not attain by August 2021 so these areas are expected to bump up to moderate by early Spring of 2022.

The Door County nonattainment area also did not attain the 2015 ozone standard by the August 2021 date but has since shown attainment. Although EPA will have to propose a bump up to moderate, DNR will be submitting a redesignation request to attainment that may halt this action.

The Manitowoc nonattainment area did attain the 2015 standard by the August date and a request to redesignate to attainment under the 2015 standard was submitted to EPA on October 29.

AMSG Survey

Air Management surveyed AMSG attendees on the quarterly meetings, how they are going, what attendees would like to hear more about, and suggestions on future membership.

The survey went out in late September and was available to all those who have attended an AMSG meeting in the last two years. The program received 31 responses.

- 68% attend at least 3 meetings per year
- 32% 1-2 meetings per year
- 100% either agreed or strongly agreed that the current meetings are valuable.
- 90 percent either agreed or strongly agreed that the meetings offer useful, actionable information.

Air Management reviewed the survey results and discussed next steps for the membership initiative.

In addition to looking at survey results, Air Management is also reviewing the [AMSG charter](#) and plans to host a membership meeting in early 2022.

2022 Priority Topics

Priority topics for 2022 include:

- Emerging federal regulation

- Emerging contaminants (PFAS)
- Federal permit actions
- Long term planning at the federal level
- Climate initiatives
- Environmental justice
- Ongoing efforts
 - 2008/2015 ozone NAAQS implementation
 - SIP submittals and redesignation requests
 - Regional haze
 - Rulemaking
- Opportunities
 - Transparency in information
 - Goals and vision of DNR
 - Working with other states and organizations

2022 Meeting Dates

AMSG meeting dates for 2022:

- Thursday, February 3
- Thursday, May 5
- Thursday, August 4
- Thursday, November 10