



July 11, 2014

U. S. Environmental Protection Agency
1301 Constitution Avenue NW.
Washington, DC 20503
Attention: Docket ID No. EPA-HQ-OAR-2013-0711

Subject: Proposed Data Requirements Rule for the 1-hour Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS)

The Wisconsin Department of Natural Resources (WDNR) is submitting comments on the U.S. Environmental Protection Agency's (EPA) proposed data requirements rule for the 1-hour SO₂ primary NAAQS (79 FR 27445; May 13, 2014). In this letter, WDNR presents comments in two categories: (1) comments regarding characterization, modeling and monitoring of sources potentially subject to the 1-hour SO₂ primary NAAQS, and (2) comments regarding the demonstration and reporting of attainment after sources attain the 1-hour SO₂ NAAQS.

In addition to these comments, WDNR reminds EPA that the state previously commented on EPA's Draft SO₂ Monitoring Technical Assistance Document (TAD) and Draft SO₂ Modeling TAD on July 22, 2013. These comments are still relevant and are related to the issues discussed in the proposed data requirements rule. WDNR asks that EPA revisit these previous comments in light of EPA's current proposal and the comments submitted by the department today, particularly in regard to monitoring.

Finally, the state of Wisconsin has previously made designation recommendations to EPA for the 1-hour SO₂ NAAQS.¹ In these letters, the state recommended to EPA that Wisconsin counties currently demonstrating a 3-year design value below the NAAQS, as well as those counties reporting less than 20 tons per year of SO₂ emissions (or with no individual sources reporting greater than 20 tons per year of SO₂ emissions) be designated as attainment. WDNR reiterates these recommendations here and asks that they be considered by EPA in the context of WDNR's comments on the proposed data requirements rule.

Comments regarding the characterization, modeling, and monitoring of sources potentially subject to the 1-hour SO₂ primary NAAQS

1. States should not be required to submit a list of potential sources until January 1, 2017

EPA is proposing that each state submit, by January 15, 2016, a list of sources that exceed the proposed emissions thresholds or otherwise exhibit the potential to violate the NAAQS. This list is

¹ Governor Scott Walker's letter of May 26, 2011 and WDNR Secretary Cathy Stepp's letter of April 8, 2013.

intended to identify sources that may eventually be designated nonattainment using either modeling or monitoring.

The WDNR believes submitting a list is unnecessary, as it may prematurely identify sources as potentially violating the NAAQS. EPA admits in its preamble that it expects the list to change between January 15, 2016 and January 1, 2017, because sources will either have shut down or taken enforceable limitations. From the WDNR's perspective, it does not make sense to establish a list for SIP submittal that is expected to change. Further, January 1, 2017 is the proposed deadline for designations of sources or areas that are being modeled. This 2017 submittal will provide the first full analysis justifying attainment status for individual sources or areas; any distinction or listing of a source should wait until this analysis is complete. Finally, as a complete list of sources emitting SO₂ is publicly available each year through the national emissions inventory, the generation and maintenance of a separate list for this purpose seems redundant.

However, should EPA decide to continue its proposed path, WDNR supports the removal of sources from the preliminary list based on scheduled control installation prior to January 1, 2017.

2. Sources should have until the attainment date to complete any enforceable actions that would keep them out of nonattainment, provided those actions are committed to by January 1, 2017

EPA proposes that sources showing attainment due to a shutdown or an enforceable limit must be meeting that condition by January 1, 2017. The proposed rule should go further and allow sources to utilize any enforceable condition that is in place by January 1, 2017 and which becomes effective prior to the attainment date, thereby allowing them to be classified as attaining the NAAQS during the 2017 designation process.

EPA has indicated they want to encourage sources to avoid nonattainment by implementing controls early. However, between now and January 1, 2017 there is insufficient time for sources to take all the actions needed to implement these controls (including conducting modeling, determining the required reductions and control strategies, procuring capital funds, obtaining permits and installing equipment). Requiring sources to commit only to enforceable limits and a schedule for compliance by January 1, 2017 is reasonable and consistent with the timeframes necessary in developing the required modeling information. Further, allowing sources to implement controls after January 1, 2017 but before the attainment date supports EPA's desired outcome of achieving emission reductions as quickly as possible. Under EPA's proposal, sources unable to have enforceable limits in place by the January 1, 2017 deadline have little incentive to take any action prior to the monitoring attainment deadline of 2020.

Alternately, requiring sources to implement controls prior to submittal of the required state implementation plan, as opposed to the attainment date, would also encourage sources to make emission reductions while allowing sufficient time to implement these actions.

3. EPA should give states until January 1, 2017 to decide whether to use monitoring to characterize the attainment status of a source or area

The proposed rule requires states to declare by January 15, 2016 whether they will use modeling or monitoring to determine the attainment status of sources. States should instead have until January 1, 2017 to make this determination, so they can have the benefit of using initial modeling results to inform this decision.

A likely scenario is that a state will conduct modeling as an initial step to gather the necessary information to determine the attainment status of potential sources. This initial modeling may reveal that the attainment status of a particular source (or cluster of sources) cannot be sufficiently determined via modeling; therefore, the state may decide that monitoring is required. However, this conclusion may not be evident until the state completes its full modeling analysis. If the rule is finalized on January 1, 2015, EPA cannot expect the modeling analysis for all potential sources to be completed prior to the January 15, 2016 deadline of declaring whether modeling or monitoring will be used to determine attainment. Instead, EPA should simply let the states declare sources that must be monitored as part of the state's January 1, 2017 submittal. At a minimum, the rule should allow for states to declare a source or area for monitoring after January 15, 2016 on a case-by-case basis. WDNR notes that if EPA were to allow for this flexibility, it would not affect the agency's proposed attainment dates.

4. EPA should identify an alternate compliance path for electrical generation facilities that are required to operate for reliability purposes

There exist situations where power plants are required by independent system operators (ISOs) to operate at certain levels to ensure grid reliability, regardless of the state or source's preference. This can potentially lead to the situation where a generation facility is fully controlled for SO₂, yet still shown (via modeling or monitoring) to exceed the NAAQS. In this case, the best remaining enforceable measure to achieve attainment would be for the state to establish operating limits on that source. However, this may place the state and source in conflict with the ISO, which could otherwise require the plant to operate beyond those limits to ensure grid reliability. A similar conflict could arise when the operator has planned to shut down the facility altogether, yet the ISO requires its continued operation. EPA should acknowledge the potential for these situations to occur, describe how states should address these cases, and offer a way for sources to attain and maintain the NAAQS under these particular conditions.

5. The rule should allow states additional time and flexibility when establishing monitors

EPA proposes that if a state selects to use monitoring to determine attainment, but does not have the monitors operational by January 2017, the source(s) in question must be automatically moved to the modeling pathway. EPA must allow additional flexibility for the following reasons. First, as noted in comment #3, it may not be apparent that monitoring is required until a lengthy round of initial modeling is complete. Second, siting monitors is a lengthy process which involves, among other steps, working with EPA to determine where monitors should be located, obtaining access

to sites, identifying funding, and procuring and installing equipment. In this context, it is unreasonable for EPA to assume monitoring plans can be submitted by the proposed July 1, 2016 deadline.

Even if monitoring plans are submitted on time, the EPA approval process could prevent a state from having monitors operational by the 2017 deadline. EPA approval of state monitoring plans generally occurs in the fall of each year, but in some cases has not occurred until very late in the year. This means that EPA approval of an SO₂ monitoring plan under this proposal may not occur until late 2016. In Wisconsin, monitor siting and set-up can generally only occur until late fall due to winter weather (snowfall and frozen ground); a late 2016 approval of a monitoring plan by EPA would simply not allow sufficient time for Wisconsin and other areas with winter weather concerns set up a monitoring network by January 1, 2017. EPA should make it clear that any EPA delay on approval will not contribute to a state or local agency requiring modeling where monitoring had been selected as the state's preferred SO₂ approach.

An alternative option is to allow monitoring to begin later, such as between May 1, 2017 and July 1, 2017, for all sources being designated under the monitoring pathway. This approach would be consistent with allowing states to declare the monitoring pathway for sources up to January 1, 2017, as discussed in comment #3. WDNR recognizes this approach would likely require delaying the attainment date, since design values are based on three calendar years of monitoring data.

If the state could not have its monitors operational by the deadline, another alternative to use modeling to estimate values for the period of missing monitoring data in order to create a full data period for design value calculation purposes. In any case, WDNR does not believe states should be forced by EPA to move to a modeling pathway due to circumstances beyond their control.

6. States should be able to discontinue operation of monitors as soon as attainment is demonstrated

EPA proposes conditions that must be met before discontinuing operation of a monitor after attainment of the SO₂ NAAQS has been demonstrated for a site or area. This process will likely result in the operation of monitors longer than necessary, thereby incurring costs and using limited resources. Therefore, WDNR requests that EPA make the following modifications in monitor shutdown requirements:

EPA proposes that a monitor cannot be shut down unless the three-year design value is either less than either 50% or 80% (alternative proposal) of the NAAQS. WDNR encourages EPA to proceed with a third option, which would allow for shutdown as long as the three-year design value is below the NAAQS at any level. A more restrictive approach is unnecessary, as the rule also proposes that states will have to continue to identify and evaluate any increases of SO₂ emissions each year in areas designated as attainment. The states understand that the ability to continue demonstrating attainment if SO₂ emissions increase is contingent on the relationship of monitoring air quality to emissions when operation of the monitor is discontinued. EPA should leave this decision to the state.

The rule also proposes that EPA's approval must first be obtained before shutting down a monitor. As an example, EPA notes that, based on monitoring through 2019 showing attainment, a source may not be able to shut down its monitor before sometime in 2021 – more than a year after demonstrating attainment. The WDNR believes this approach should be changed to allow a state to shut down a monitor once three years of data for attainment is certified. Further, the state should be able to proceed with this shut down without undergoing a second EPA approval process beyond certification of the data. The state should simply be able to notify EPA that the criteria have been met and that the monitor is being discontinued. At a minimum, this process should be as definitive as possible, and EPA should be clear that states can shut down monitors if and when the criteria are met.

7. EPA should identify Federal funding sources to support monitoring activities related to the SO₂ NAAQS

WDNR is concerned about the costs associated with monitoring for the SO₂ NAAQS. In its proposal, EPA estimates the cost to install a new SO₂ monitoring station in the range \$92,614. The proposed rule also refers back to the Monitoring Technical Assistance Document, which discusses situations where more than one monitor may be necessary to characterize ambient concentrations. EPA's "Option 1" threshold for source designation, if finalized as proposed, would require characterization of at least 14 sources in the state of Wisconsin. Assuming EPA would accept just one monitor per source, and using the estimate provided in the proposed rule, Wisconsin may face \$1.3 million in start-up costs alone, with no additional funding forthcoming from EPA to offset this new expense.

Even if sources voluntarily set up and operate their own monitors, state and local agencies will still need to dedicate resources to administer the program, provide technical assistance, conduct performance audits, ensure data quality, and submit the data to EPA's AQS database each year. These activities are funded by each state's Section 105 grant from EPA. Section 105 funding is diminishing, while federal requirements continue to mount. WDNR believes EPA should fully fund any monitoring activities that states determine are needed to comply with this rule, initially through a Section 103 grant in order to establish the monitoring sites, with ongoing funding provided through each state's Section 105 grant.

Comments concerning the demonstration and reporting of attainment after sources attain the 1-hour SO₂ NAAQS

In its proposal, EPA presents several approaches for demonstrating ongoing attainment when attainment is demonstrated using either modeling or monitoring. The WDNR provides the following comments for each case.

8. Demonstrating ongoing attainment when using the modeling approach

The proposed rule proposes three policy verifications for states using the modeling approach, as noted in the following paragraph. All of the options would require the annual emissions of SO₂ to

be quantified and evaluated; if emissions increase, this would trigger additional actions, e.g., a screening analysis or modeling.

Under Option 1, the rule proposes that the state will have to model sources every three years, regardless of whether or not they have an emissions increase. Similarly, Option 3 proposes a screening analysis every three years. The WDNR disagrees with having any default requirement, especially for a screening analysis that will not provide definitive information. A better alternative is EPA's Option 2, which would require modeling only if there is a significant increase, as identified by the state or local agency, in SO₂ emissions for the source or area. However, under this option, states should have discretion to determine whether the increases in emissions are significant.

In addition, any modeling verifications should be driven by actual emission increases or permit applications that are contingent on changes within a source's control. The WDNR agrees with EPA's proposal that verification should not be required for sources or areas that are modeled based on the maximum allowable emissions or adopted enforceable emission limits.

9. Demonstrating ongoing attainment when using the monitoring approach

To demonstrate ongoing attainment after monitoring is discontinued, EPA again proposes a requirement to quantify SO₂ emission changes each year for the source or area in question. This approach is similar to the trigger for additional action under modeling, and is supported by the WDNR. However, as before, states should be provided the discretion to determine what constitutes a significant change in emissions and therefore additional modeling or monitoring. The rule should not require additional modeling or monitoring unless the states and EPA make this determination.

10. Reporting attainment status to EPA

WDNR encourages EPA to leave the procedural options open as to what works best for each state or local agency. The WDNR also encourages EPA to let the states decide how best to solicit public comment and submit each part of the demonstration for ongoing attainment, after either modeling or monitoring, to their respective Regional Administrator.

Thank you for the opportunity to comment on the proposed 1-hour SO₂ primary NAAQS data requirements rule. Please contact Mike Friedlander of my staff at (608) 267-0806 or Michael.Friedlander@wisconsin.gov if you have any questions concerning these comments.

Sincerely,



Bart Sponseller
Director, Bureau of Air Management