CHAPTER 285

AIR POLLUTION

~~SUBCHAPTER I~~
~~DEFINITIONS~~
~~285.01 Definitions.~~
~~SUBCHAPTER II~~
~~GENERAL POWERS AND DUTIES~~
~~285.11 Air pollution control; department duties.~~
~~285.13 Air pollution control; department powers.~~
~~285.14 State implementation plans.~~
~~285.15 Interstate agreement.~~
~~285.17 Classification, reporting and monitoring.~~
~~285.19 Inspections.~~
~~SUBCHAPTER III~~
~~AIR QUALITY STANDARDS, PERFORMANCE STANDARDS; EMISSION LIMITS AND NONATTAINMENT AREAS~~
~~285.21 Ambient air quality standards and increments.~~
~~285.23 Identification of nonattainment areas.~~
~~285.25 Air resource allocation.~~
~~285.27 Performance and emission standards.~~
~~285.29 Best available retrofit technology.~~
SUBCHAPTER IV
VOLATILE ORGANIC COMPOUNDS AND MOBILE SOURCES; EMISSION LIMITS AND STANDARDS
285.30 Motor vehicle emissions limitations; inspections.
~~285.31 Gasoline vapor recovery.~~
~~285.33 Employee trip reduction program.~~
~~285.35 Clean fuel fleet program.~~
~~285.37 Reformulated gasoline.~~
~~285.39 Volatile organic compounds growth accommodation and replenishment.~~
~~SUBCHAPTER V~~
~~SULFUR DIOXIDE AND NITROGEN OXIDE EMISSION RATES AND GOALS~~
~~285.41 Sulfur dioxide emission rates after 1992; major utilities.~~
~~285.43 Sulfur dioxide emission rates; state−owned facilities.~~
~~285.45 Sulfur dioxide emission goals after 1992; major utilities and other large air contaminant sources.~~
~~285.47 Nitrogen oxide emission goal; major utilities.~~
~~285.48 Nitrogen oxide emissions reductions.~~
~~285.49 Trading program for nitrogen oxide emissions credits.~~
~~SUBCHAPTER VI~~
~~WASTE INCINERATORS; OZONE DEPLETING SUBSTANCES; EMISSION LIMITS AND OTHER REQUIREMENTS~~
~~285.51 Solid waste incinerator operator certification.~~
~~285.53 Testing emissions from medical waste incinerators.~~
~~285.54 Medical waste incinerator fees.~~
~~285.57 Emission of ozone−depleting substances.~~
~~285.59 Recovery of ozone−depleting refrigerants.~~
~~SUBCHAPTER VII~~
~~PERMITS AND FEES~~
~~285.60 Air pollution control permits.~~
~~285.61 Construction permit application and review.~~
~~285.62 Operation permit; application, review and effect.~~
~~285.63 Criteria for permit approval.~~
~~285.64 Criteria for operation permits for stationary sources.~~
~~285.65 Permit conditions.~~
~~285.66 Permit duration and renewal.~~
~~285.67 Permit revision, suspension and revocation.~~
~~285.68 Failure to adopt rule or issue permit or exemption.~~
~~285.69 Fees.~~
~~SUBCHAPTER VIII~~
~~MISCELLANEOUS~~
~~285.70 Confidentiality of records.~~
~~285.71 Federal aid.~~
~~285.73 Local air pollution control programs.~~
~~285.75 County program.~~
~~285.76 Notice concerning proposed area redesignations.~~
~~285.77 Machinery use.~~
~~285.78 Registration of early emission reductions.~~
~~285.79 Small business stationary source technical and environmental compliance assistance program.~~
~~SUBCHAPTER IX~~
~~ENFORCEMENT; PENALTIES~~
~~285.81 Hearings on certain air pollution actions.~~
~~285.83 Violations: enforcement.~~
~~285.85 Emergency procedure.~~
~~285.86 Asbestos citations.~~
~~285.87 Penalties for violations relating to air pollution.~~

~~SUBCHAPTER I~~

~~DEFINITIONS~~

~~285.01 Definitions.~~ ~~In this chapter, unless the context requires otherwise:~~

~~(1)~~ ~~"Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.~~

~~(2)~~ ~~"Air contaminant source", or "source" if not otherwise modified, means any facility, building, structure, installation, equipment, vehicle or action that emits or may emit an air contaminant directly, indirectly or in combination with another facility, building, structure, installation, equipment, vehicle or action.~~

~~(3)~~ ~~"Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.~~

~~(4)~~ ~~"Air pollution control permit" means any permit required or allowed under s. 285.60.~~

~~(5)~~ ~~"Allocation of the available air resource" means either:~~

~~(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant in existence at the time the rule promulgated under s. 285.25 becomes effective; or~~

~~(b) The apportionment among air contaminant sources of the difference between an ambient air increment and the baseline concentration if a baseline concentration is established.~~

~~(7)~~ ~~"Allowable emission" means the emission rate calculated using the maximum rated capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.~~

~~(8)~~ ~~"Ambient air increment" means the maximum allowable concentration of an air contaminant above the base line concentration.~~

~~(9)~~ ~~"Ambient air quality standard" means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.~~

~~(9m)~~ ~~"Architectural coating" means a coating applied to a stationary structure, including a parking lot, and its appurtenances or to a mobile home.~~

~~(10)~~ ~~"Attainment area" means an area which is not a nonattainment area.~~

~~(11)~~ ~~"Base line concentration" means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under 42 USC 7475 or the first application for an air pollution control permit under s. 285.60 for a major source located in an attainment~~

~~under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).~~

~~**(2)** EMISSION STANDARDS FOR HAZARDOUS AIR CONTAMINANTS. (a) *Similar to federal standard.* If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard, including administrative requirements that are consistent with the federal administrative requirements, but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).~~

~~**Cross−reference:** See also ch. NR 463, Wis. adm. code.~~

~~(b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. The department may not make this finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:~~

~~1. A public health risk assessment that characterizes the types of stationary sources in this state that are known to emit the hazardous air contaminant and the population groups that are potentially at risk from the emissions.~~

~~2. An analysis showing that members of population groups are subjected to levels of the hazardous air contaminant that are above recognized environmental health standards or will be subjected to those levels if the department fails to promulgate the proposed emission standard for the hazardous air contaminant.~~

~~3. An evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen compliance alternative reduces risks in the most cost−effective manner practicable.~~

~~4. A comparison of the emission standards for hazardous air contaminants in this state to hazardous air contaminant standards in Illinois, Indiana, Michigan, Minnesota, and Ohio.~~

~~(c) *Restrictive standard.* The department may impose a more restrictive emission standard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case−by−case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).~~

~~(d) *Emissions regulated under federal law.* Emissions limitations promulgated under par. (b) and related control requirements do not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under section 112 of the federal clean air act, including a hazardous air contaminant that is regulated under section 112 of the federal clean air act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant.~~

~~**(3)** LIMITATION ON IMPOSITION OF EMISSION STANDARDS. The department may not impose emission standards on a coal−powered car ferry that was manufactured before 1954 and has operated only on Lake Michigan if the coal−powered car ferry does not burn coal with a higher sulfur content than the coal burned before May 2, 1990.~~

~~**(4)** IMPACT OF CHANGE IN FEDERAL STANDARDS. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department may not make this finding for an emission standard for a hazardous air contaminant unless the finding is supported with the written documentation required under sub. (2) (b) 1. to 4. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.~~

~~**Cross−reference:** See also s. NR 462.015, Wis. adm. code.~~

~~**History:** 1995 a. 227 s. 474, 989; 2003 a. 118.~~

~~**Cross−reference:** See also NR 400−, Wis. adm. code.~~

~~The promulgation of emission standards under s. 144.375 (5) (b) [now s. 285.27 (2) (b)] is discussed. Wisconsin Hospital Association. v. Natural Resources Board, 156 Wis. 2d 688, 457 N.W.2d 879 (Ct. App. 1990).~~

~~**285.29 Best available retrofit technology. (1)** CASE−BY−CASE SPECIFICATION. If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case−by−case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.~~

~~**(2)** CONSIDERATIONS. In specifying the best available retrofit technology, the department shall consider:~~

~~(a) The cost of compliance.~~

~~(b) The existing pollution control technology in use at the source.~~

~~(c) The remaining useful life of the source.~~

~~(d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.~~

~~(e) The energy and nonair quality environmental impacts of compliance.~~

~~**History:** 1979 c. 221; 1995 a. 227 s. 469; Stats. 1995 s. 285.29.~~

SUBCHAPTER IV

VOLATILE ORGANIC COMPOUNDS AND MOBILE SOURCES; EMISSION LIMITS AND STANDARDS

285.30 Motor vehicle emissions limitations; inspections. (1) DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) "Federal act" means the federal clean air act, 42 USC 7401 et seq., and regulations issued by the federal environmental protection agency under that act.

(b) "Motor vehicle" has the meaning designated under s. 340.01 (35).

(2) LIMITATIONS. The department shall adopt rules specifying emissions limitations for all motor vehicles not exempted under sub. (5). The limitations may be different for each size, type and year of vehicle engine affected and may not be more stringent than those required by federal law at the time of the vehicle's manufacture. The limitations shall be adopted and periodically revised upon consideration of the following factors:

(a) The emissions reductions necessary to achieve federally mandated ambient air quality standards by any deadline established by the federal act and to maintain those standards after any deadline established by the federal act.

(b) The emissions levels attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices for each model year, size and type of motor vehicle affected.

(c) The requirements for eligibility for a manufacturer's warranty under section 7541 (b) of the federal act.

(d) The requirements of the federal act.

(3) COUNTIES WHERE INSPECTIONS REQUIRED. If the department finds that air quality within a county will not meet one or more applicable primary or secondary ambient air quality standards by any deadline established by the federal act, or that these standards will not be maintained in the county after any deadline established by the federal act and that inspection of emissions from motor vehicles in any part of the county is required by federal law to

attain or maintain these standards, the department shall certify this finding to the department of transportation.

(4) TERMINATION. If the department finds that air quality within a county specified in a certification under sub. (3) has attained all applicable ambient air quality standards and that these standards will be maintained in the county or that control of motor vehicle emissions is no longer required by federal law for attainment and maintenance of these standards, the department shall notify the department of transportation that the county is withdrawn from the certification under sub. (3).

(5) EXEMPTIONS. Emissions limitations promulgated under sub. (2) do not apply to the following motor vehicles:

(a) A motor vehicle of a model year of 1995 or earlier.

(b) A motor vehicle of a model year of 2006 or earlier that has a gross vehicle weight rating exceeding 8,500 pounds, as determined by the manufacturer of the vehicle, and a motor vehicle of a model year of 2007 or later that has a gross vehicle weight rating exceeding 14,000 pounds, as determined by the manufacturer of the vehicle.

(c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g), (h), (j), or (k).

(d) A motor vehicle of a model year of 2006 or earlier that is powered by diesel fuel.

(e) A new motor vehicle not previously registered in any state.

(f) A motor vehicle for which inspection, in the judgment of the department, is not a cost effective method for attaining and maintaining air quality.

(g) A moped as defined in s. 340.01 (29m).

(h) A motorcycle as defined in s. 340.01 (32).

(i) A farm truck as defined in s. 340.01 (18) (a).

(j) An off−road utility vehicle as defined in s. 340.01 (38m).

(k) A low−speed vehicle, as defined in s. 340.01 (27h).

(L) A lightweight utility vehicle as defined in s. 346.94 (21) (a) 2.

(6) TAMPERING WITH POLLUTION CONTROL SYSTEM OR MECHANISM. (a) *Definitions.* As used in this subsection:

1. "Air pollution control equipment" means any equipment or feature which constitutes an operational element of the air pollution control system or mechanism of a motor vehicle.

3. "Tamper" means to dismantle, to remove without replacing with an identical or comparable tested replacement device or to cause to be inoperative any air pollution control equipment.

(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may fail to maintain in good working order or may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

(e) *Rule making.* The department shall promulgate rules that specify the requirements for the inspection of motor vehicles for the occurrence of tampering with air pollution control equipment.

History: 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274; 1981 c. 390; 1983 a. 243; 1987 a. 27; 1991 a. 39; 1993 a. 288; 1995 a. 137; 1995 a. 227 s. 507; Stats. 1995 s. 285.30; 1997 a. 27; 2003 a. 192; 2007 a. 20, 33; 2009 a. 157, 311.

Cross−reference: See also ch. NR 485, Wis. adm. code.

~~285.31 Gasoline vapor recovery. (1)~~ ~~DEFINITIONS. In this section:~~

~~(a) "Gasoline dispensing facility" means a place where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.~~

~~(b) "Retail station" means a gasoline dispensing facility where gasoline is sold at retail.~~

~~(c) "Vapor control system" means a system that gathers vapors of organic compounds, including gasoline and benzene, released during the operation of transfer, storage or processing equipment and processes the vapors to prevent their emission into the atmosphere.~~

~~**(3)** RULES. (a) The department shall promulgate rules, based on requirements under 42 USC 7511a, that require the owner or operator of a retail station that is located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse to install and operate a vapor control system that is approved by the department on the equipment that is used to dispense gasoline to a motor vehicle gasoline tank or other fuel tank.~~

~~(b) The department shall establish vapor recovery efficiency standards for vapor control systems approved under par. (a). The department shall use nationally recognized methods to determine the vapor recovery efficiency of vapor control systems.~~

~~**(4)** IMPLEMENTATION OF REQUIREMENTS. (a) The rules promulgated under sub. (3) shall have an effective date of November 15, 1992. The rules shall apply the requirements under sub. (3) beginning on November 15, 1993, except that the requirements under sub. (3) shall apply beginning on May 15, 1993, to retail stations the construction of which begins after November 15, 1990.~~

~~(b) The department may not require the owner or operator of a retail station that is located in this state to install or operate a vapor control system for gasoline dispensing equipment before November 15, 1993, or, if construction of the retail station begins after November 15, 1990, before May 15, 1993.~~

~~**History:** 1991 a. 39; 1993 a. 16; 1995 a. 27, 144; 1995 a. 227 s. 504; Stats. 1995 s. 285.31; 1997 a. 27.~~

~~285.33 Employee trip reduction program. (1)~~ ~~AREAS. (a) The department shall issue documents that describe the areas of the state in which employee trip reduction programs are required by 42 USC 7511a (d) (1) (B).~~

~~(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require employee trip reduction programs. The department may not require an employee trip reduction program in an area unless that requirement is authorized under s. 285.11 (6).~~

~~(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.~~

~~**(2)** REQUIREMENTS. (a) The department shall promulgate by rule requirements for employers who are located in areas described under sub. (1) (a) or (b) to implement programs to reduce work−related trips and miles traveled by employees. The department shall develop the rules in accordance with 42 USC 7511a (d) (1) (B) and the guidance issued by the administrator of the federal environmental protection agency under 42 USC 7408 (f).~~

~~(b) The rules under par. (a) shall establish reasonable limits on the direct and indirect expenses that an employer may be required to incur to comply with the rules. The rules shall specify a limit for each of the following:~~

~~1. The maximum annual expenses for each worksite subject to the rules.~~

~~2. The maximum annual expenses for each employee subject to the rules at a worksite.~~

~~**(3)** COMPLIANCE PLANS. (a) Except as provided under sub. (4) or (5), if an employer is located in an area that is described before November 15, 1993, by the department under sub. (1) (a) or (b) and is subject to the rules promulgated under sub. (2), the~~