



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2025-1377; FRL-13186-01-R5]

Air Plan Approval; Wisconsin; Source-Specific Air Quality

Implementation Plan; Oak Creek Power Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State of Wisconsin's State Implementation Plan (SIP) for the Oak Creek Power Plant located in Oak Creek, Wisconsin. The EPA is proposing to approve alternative nitrogen oxides (NO_x) emissions limits for the Oak Creek facility. The alternative limits will allow the facility to operate in compliance with State and Federal regulations, and emit less NO_x over time as compared to current limits. This proposed action will not interfere with the National Ambient Air Quality Standards (NAAQS) and meets all applicable requirements under the Clean Air Act (CAA).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID

No. EPA-R05-OAR-2025-1377 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mayesha Choudhury, Air and

Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number: (312) 886-5909, email address: *choudhury.mayesha@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. *Organization of this document.* This supplementary information section is arranged as follows:

I. Background of Action and Wisconsin's Submittal

II. The EPA's Analysis

A. Section 110(l) Analysis

B. Additional Considerations

III. What Action is the EPA Taking?

IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Background of Action and Wisconsin's Submittal

The We Energies Oak Creek Power Plant ("Oak Creek" or "facility") is a natural gas-fired electric generation facility located in Oak Creek, Wisconsin. On April 17, 2024, We Energies submitted a construction permit application to the Wisconsin Department of Natural Resources (WDNR) which included plans and specifications for changes at the Oak Creek facility. The project included the construction and operation of five simple

cycle combustion turbine electric generating units and other equipment including the installation of a continuous emission monitoring system (CEMS) on each combustion turbine to monitor for levels of NOx emissions.

Wisconsin's Submittal

This source-specific SIP revision incorporates alternative emission limits for the new Oak Creek turbines into the facility's source-specific SIP. The simple cycle combustion turbines are currently subject to a NOx emission limit in the Wisconsin SIP (NR 428.04 Wisconsin Administrative Code) of 12 parts per million dry volume (ppmdv) based on a 30-day rolling average, and a limit under NR 428.22 for NOx Reasonably Available Control Technology (RACT) of 25 ppmdv. These limits include all modes of operations, including periods of start-up and shut-down. The new turbines will operate as peaking units, with varied daily start-up and shut-down events. We Energies' April 2024 submittal to WDNR included an explanation that the facility cannot achieve current applicable NOx limits due to operational variability of these units. We Energies explains that the new turbines at the Oak Creek facility are designed to be "dispatchable," meaning that the facility can quickly turn them on or off depending on daily energy demand. The units would be

dispatched by the local utility company; the facility would not have complete operational control over the start-up and shut-down events. The facility expects to turn these turbines on and off quickly, and potentially multiple times a day. The new turbines are not designed to operate for long periods of time at a steady state rate, which would be required to achieve compliance with current applicable NOx limits. We Energies estimates that the typical daily dispatch of these turbines is expected to be from one to six hours, including periods of start-up and shut-down with normal operation, with a combined capacity factor limit of 20 percent.¹

The State's submittal contains new emissions limits to accommodate the facility's new operating parameters. Without the change in limits, We Energies specifies that the facility would need to operate the peaking units longer than necessary to achieve the existing NOx limits, thereby emitting more NOx emissions than under the adjusted limits.² With each start-up and shut-down period estimated to take

¹ A unit's *capacity factor* refers to the fraction of the unit's total available capacity that is utilized over a period of time, usually expressed as a fraction. In this case, the new Oak Creek turbines operating at a 20 percent capacity factor produces a fifth of the energy that it could have produced operating at full capacity over all hours.

² Compliance with the applicable limit under NR 428.04 is based on hourly average emissions which are then averaged per day to create a 30-day rolling average. WDNR Submittal at 40.

approximately 20 minutes, We Energies submitted calculations showing that the new turbines would need to operate for six to 38 hours in a steady state to offset one start-up/shut-down event to meet the current SIP-approved 12 ppm_{dv} limit on a daily basis.

We Energies requested approval of an alternative site-specific emission limitation of 9 ppm_{dv} on a 30-day rolling average during normal operation, with NO_x emissions not to exceed 57.1 pounds per start-up event and 31.7 pounds per shut-down event to accommodate the new operating scenarios. These limits were calculated from emission data based on manufacturer specifications.³ To support its request, We Energies calculated potential emissions under these proposed limits and the currently applicable NO_x limits. The resulting calculations estimate that the facility would potentially emit 469.2 tons of NO_x per year under the currently applicable limit of 12 ppm_{dv} within NR 428.04(2)(g)1.a. In comparison, We Energies calculated that total potential emissions from normal operations and start-up/shut-down events will decrease to 463.4 tons per year under the requested alternative NO_x limits.

The construction permit limits combined start-up/shut-

³ See WDNR Submittal at 46-47 (We Energies response to a comment on emissions calculations).

down events to 2,500 per year and also limits a start-up event to 21 minutes and a shut-down event to 13 minutes. It also contains requirements for the facility to report periods of excess emissions to the State on a timely basis.⁴ Should a start-up or shut-down period exceed the permitted amount of time specified for that event, the permit requires the facility to count the additional time spent in start-up or shut-down status as an additional event.⁵ The facility is also required to keep and maintain records of CEMS operation as it monitors each combustion turbine while it is operating and during periods of start-up and shut-down.⁶

WDNR determined that the facility's technical analysis meets the State's requirements for alternative NOx emissions limits and NOx RACT limits, and approved and issued the alternative limits in construction permit 24-JAM-065 on June 17, 2025 in accordance with its EPA-approved construction permit program.⁷ WDNR has submitted the alternative limits to the EPA as a revision to the Oak Creek site-specific SIP.

II. The EPA's Analysis

⁴ Oak Creek Construction Permit 24-JAM-065 Term I.EA.2.a.(4)(b)-(c).

⁵ Oak Creek Construction Permit 24-JAM-065 Term I.EA.2.a.(4)(d).

⁶ Oak Creek Construction Permit 24-JAM-065 Term I.EA.2.c.

⁷ See Wisconsin State rules NR 428.055 and NR 428.25(3)(a).

Based on a review of the State's emissions calculations, and for the reasons described in greater detail in this section, the EPA finds that WDNR and We Energies have demonstrated that the alternative NOx emissions limits will not result in an increase of annual NOx emissions when compared to potential emissions under the current applicable NOx limits.

A. Section 110(l) Analysis

CAA section 110(l) states that the EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) towards attainment of the NAAQS, or any other applicable requirement of the CAA. The EPA will evaluate a facility's request for a site-specific alternative emission limit on a case-by-case basis in accordance with applicable requirements contained within the CAA. To understand whether a SIP revision would interfere with attainment or maintenance of the NAAQS, the EPA assesses whether the SIP revision will potentially allow for an increase in emissions as compared to what is allowed under the existing SIP condition(s). The EPA's evaluation is conducted on a case-by-case basis, considering the nature of the SIP revision, the applicable SIP requirements, and the air quality status of the

affected area.

The EPA has also evaluated this revision in light of the Agency's guidance on establishing alternative emission limits for periods of start-up and shut-down, also known as the "2015 SSM Policy."⁸ The guidance contains seven recommended approvability criteria that encourage a State to consider the technical limitations of the specific source category subject to the alternative limitation, as well as the control technology that is feasible during start-up and shut-down events. The EPA's analysis of the proposed alternative emission limit for the Oak Creek facility can be found in the Technical Support Document for this action.⁹

WDNR submitted an analysis of non-interference for the Oak Creek facility to demonstrate that the proposed alternative limits will result in a decrease in total potential NOx emissions and, therefore, would not contribute to exceedances or violations of the NAAQS. The State concurred with the analysis provided by We Energies to support its request for the alternative NOx limits. The EPA's evaluation of WDNR's analysis relies on a comparison of maximum allowable NOx emissions under the existing SIP-

⁸ See page 33980 of 80 FR 33840.

⁹ The Technical Support Document for this action is found in the corresponding rulemaking docket. Docket ID: EPA-R05-OAR-2025-1377.

approved NOx limits (which establish the baseline for attainment of the NAAQS and other applicable CAA requirements) with the maximum allowable NOx emissions under the proposed alternative NOx limits. As discussed in section I of this preamble, the State estimates that the facility's potential to emit under the previously approved SIP limit of 12 ppmdv NOx is 469.2 tons of Nox per year based on a 30-day rolling average for all five turbines combined. To compare potential emissions under its requested alternative NOx limits, We Energies estimates that under the alternative limit of 9 ppmdv NOx for steady state operation, with a startup limit of 57.1 pounds per startup event and 31.7 pounds per shutdown event, potential emissions will decrease to 463.4 tons per year.

As the Oak Creek Facility is located in an area currently designated as nonattainment for the 2015 ozone NAAQS, the EPA has also considered the effect these alternative limits would have on air quality in the surrounding area. The EPA has reviewed the modeling analysis submitted by the facility and approved by the State. This demonstration relies on a dispersion modeling analysis of potential nitrogen dioxide (NO₂) emissions from the new turbines using the EPA's regulatory air dispersion model, the AMS/EPA Regulatory Model Improvement Committee

Model (also known as AERMOD).¹⁰ The facility modeled the impacts of potential NO₂ emissions from the facility, assuming a background NO₂ concentration that is the highest measured from any monitor in the State. This “worst-case” modeling analysis showed potential NO₂ emissions reaching 85 percent of the 1-hour NO₂ standard, and 48 percent of the annual NO₂ standard, which demonstrates that the operation of these turbines under these alternative limits is not expected to result in violations, or exceedances, of the NAAQS.¹¹

Federal RACT Requirements

The EPA also evaluated the proposed alternative limits per the applicable State NO_x RACT rules found in NR 428.22. This federally approved limit is the lowest a source in the State of Wisconsin like Oak Creek could meet by use of reasonably available control technology (considering technological and economic feasibility). WDNR approved We Energies’ demonstration that the proposed alternative NO_x emissions limits constitute RACT for the Oak Creek facility as required under NR 428.25(3) (a).

Similar to the calculations made under the current 12

¹⁰ AERMOD accounts for facility-specific characteristics such as emission releases and building downwash influences, as well as localized terrain and meteorological conditions.

¹¹ The EPA considers the “worst-case” scenario to be the maximum allowable rate of emissions.

ppmdv NOx limit, We Energies also calculated that Oak Creek would need to operate for two to eight hours to offset one start-up/shut-down event to meet the 25 ppmdv NOx RACT limit on a daily basis.¹² As explained in the EPA's analysis of WDNR's 110(l) demonstration, if operating under the alternative, separate start-up and shut-down limits and a limited capacity for normal operation, the facility would potentially emit less than it would under the applicable Federal NOx RACT limit.

The EPA also compared the proposed alternative NOx limits to State RACT rules and Alternative Control Techniques in other States to ensure the stringency of the proposed alternative NOx limits.¹³ The EPA found that the proposed alternative limits are consistent with similar CTG-categorical rules adopted by other States. Moreover, the EPA finds that the proposed alternative limits are more stringent than the current RACT rules in the SIP, as the facility will emit less NOx under the alternative limits.

The EPA finds that the alternative emission limits on the new Oak Creek turbines will not interfere with attainment or reasonable further progress of the NAAQS.

¹² See WDNR Submittal at 38-42.

¹³ The EPA's analysis is contained within the Technical Support Document for this action, which is found in the corresponding rulemaking docket. Docket ID: EPA-R05-OAR-2025-1377.

Compliance with the alternative limits will not require Oak Creek to unnecessarily operate the new turbines for a longer period as the existing NOx emission limits would. If the facility operates under the alternative limits, the facility will emit less than it would under the currently applicable requirements. In other words, the alternative limits for these new turbines better accommodate the operating scenarios that these peaking units were designed to operate under. Since the proposed limits will not increase allowable emissions when compared to existing SIP limits, the EPA finds that the State has demonstrated that the alternative limits will not interfere with the NAAQS pursuant to section 110(1) of the CAA.

B. Additional Considerations

In reaching the proposed approval of these alternate limits, the EPA also considered the facility's operating procedures and requirements. The construction permit requires the Oak Creek facility to operate a NOx CEMS per turbine, which will analyze and track NOx emissions on a continuous basis (including during periods of start-up and shut-down).¹⁴ The facility will use this real-time data to monitor the performance of the turbines and ensure compliance with applicable permit requirements. The

¹⁴ Oak Creek Construction Permit 24-JAM-065 Term I.EA.2.b.(1)(a).

construction permit also requires the facility to keep and maintain records of CEMS operation during periods of start-up and shut-down (as also required by State and Federal regulations, see NR 439.04(1)(d) and 40 CFR 52.21(r)(6)(iii)), and to count additional time spent in start-up or shut-down status as an additional event, which are limited to 2,500 per year. The EPA finds that these provisions in the permit are crucial emissions control mechanisms and require the State and We Energies to ensure that the Oak Creek facility will not contribute to violations of the site-specific NO_x emissions limits or exceedances of the NAAQS.

III. What Action is the EPA Taking?

The EPA is proposing to approve this site-specific SIP revision for the Oak Creek facility. Based upon the submitted material for this site-specific revision, the EPA finds that WDNR has demonstrated that Oak Creek will emit less NO_x under the alternative NO_x limits. The EPA also finds that WDNR's submittal, which includes potential emissions calculations and a modeling analysis, demonstrates that implementation of the alternative limits will not interfere with attainment or maintenance of the NAAQS.

IV. Incorporation by Reference.

In this rulemaking, the EPA is proposing to amend regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference components of Oak Creek construction permit 24-JAM-065 Conditions I.EA.2.a.(1)-(5), I.EA.2.b.(1)-(10), and I.EA.2.c.(1)-(9) of construction permit 24-JAM-065, issued by the State of Wisconsin and effective June 17, 2025, as discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that

reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the

National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: July 8, 2026.

Anne Vogel,

Regional Administrator, Region 5.