

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board approve the statement of scope for Board Order AM-15-14, and conditionally approve a public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse for proposed permanent rules affecting chs. NR 400, 404, 405, and 420 related to maintaining consistency with the U.S. EPA air pollution control regulation, and repealing obsolete rules.

FOR: January 2015 Board meeting

PRESENTER'S NAME AND TITLE: Bart Sponseller, Director, Bureau of Air Management

SUMMARY:

This proposed rulemaking addresses changes needed to maintain consistency with U.S. EPA regulations and repeals obsolete rules. More specifically, the Department proposes:

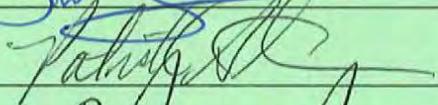
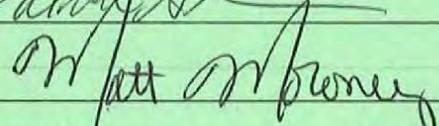
1. Changes related to the prevention of significant deterioration (PSD) permit program that applies to new major stationary sources and major modifications to existing stationary sources located in attainment areas. The inclusion of fine particulates (PM2.5) in certain definitions related to baseline emissions and the addition of ambient air increments for PM2.5 are proposed as are updates to global warming potentials for certain greenhouse gases.
2. Adding compounds to the list of those excluded from the definition of volatile organic compound (VOC), based on U.S. EPA determinations and action to exclude these compounds from the federal definition.
3. The repeal of obsolete rules requiring gasoline stations in certain counties to use gasoline vapor recovery equipment, typically referred to as stage 2 vapor recovery. This proposed action is consistent with current statutory provisions which terminated the further implementation of stage 2 vapor recovery equipment requirements and is consistent with current U.S. EPA state implementation plan (SIP) policy.

This proposed rulemaking is compatible with existing policy to maintain consistency between state rules and U.S. EPA regulations and between state rules and state statutes. These proposed rule changes do not reflect new policies or a change in any existing policies. Also, the Department does not believe the proposed rule changes would have adverse environmental impacts. The change to the definition of volatile organic compounds could have a positive economic impact on small businesses.

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse for permanent rule Board Order Board Order AM-15-14.

LIST OF ATTACHED MATERIALS:

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Bart Sponseller, Bureau Director		12/22/2014
Patrick Stevens, Division Administrator		12/23/14
Cathy Stepp, Secretary		1/8/15

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: Revising Chapters NR 400, 404, 405, and 420. (NRB Order AM-15-14)

Relating to: Maintaining consistency with U.S. Environmental Protection Agency air pollution control regulations and repealing obsolete rules.

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

The Department of Natural Resources (Department) is proposing rulemaking related to state air pollution control rules affecting chs. NR 400, 404, 405, and 420, Wis. Adm. Code. The objective of this rulemaking is twofold; to address changes needed to maintain consistency with U.S. Environmental Protection Agency (EPA) regulations and to repeal obsolete rule provisions. During the rulemaking process the Department may identify a need for changes not specifically described but related and necessary to properly implement proposed changes included in this statement of scope.

The Department may also propose non-substantive corrections of a clean-up nature, such as punctuation, grammar and spelling, and changes necessary to ensure consistency with administrative rule drafting guidance issued by the Legislative Reference Bureau and the Legislative Council. Any such proposed changes would not affect Department policy.

1.1 The Department proposes to make changes to the following rules to maintain consistency with existing U. S. EPA regulations:

(1) Chapter NR 405, Wis. Adm. Code, establishes requirements and procedures for reviewing and issuing air pollution control construction permits for any new major stationary source and any major modification to an existing stationary source located in areas designated as in attainment with national ambient air quality standards or as unclassifiable. This permit program is referred to as prevention of significant deterioration or PSD and is based on U.S. EPA regulations in 40 CFR 51.166. The Department is the implementing authority in the state for this permit program and Department rules must be consistent with U.S. EPA regulations to maintain that authority. The Department proposes changes to the following rule provisions related to the PSD permit program to ensure that consistency:

(A) Section NR 405.02 (3), (21m), and (22m), Wis. Adm. Code, to include particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers, commonly referred to as PM_{2.5}, in the definitions of "baseline area", "major source baseline date", and "minor source baseline date", respectively. These terms are defined by the U.S. EPA in 40 CFR 51.166 (b) (14) (i) and (ii) and (15) (i).

(B) Sections NR 405.02 (21) (a), (22) (b), (27) (a) (6) and 405.07 (8) 5., Wis. Adm. Code, to specifically identify that in addition to volatile organic compounds, nitrogen oxides (NO_x) are a precursor to ozone formation consistent with U.S. EPA requirements in 40 CFR 51.166 (b) and (i).

(C) Table B in s. NR 405.07 (9), Wis. Adm. Code, to update greenhouse gas global warming potentials (GWPs) consistent with those currently in affect at the federal level under Table A-1 of 40 CFR Part 98, Subpart A. Of the 70 greenhouse gases currently listed, the Department proposes to increase the GWPs for 19 greenhouse gases and decrease the GWPs for 4 greenhouse gases. Global warming

potentials are used to quantify emissions of greenhouse gases on an equivalent basis for regulatory and reporting purposes.

(D) Section NR 404.05, Wis. Adm. Code, to establish ambient air increments for PM2.5. Ambient air increments for pollutants with national ambient air quality standards, including PM2.5, are established by the U.S. EPA in 40 CFR 51.166 (c).

(2) Chapter NR 400, Wis. Adm. Code, establishes definitions for terms commonly used throughout chs. NR 401 to 499, Wis. Adm. Code. A definition for the term 'volatile organic compounds' or 'VOC' is included in s. NR 400.02 (162), Wis. Adm. Code. In the ambient air these compounds can participate in photochemical reactions to produce ozone, more commonly referred to as smog, and are therefore subject to emission control requirements and may trigger the need to obtain a construction or operation permit. The U.S. EPA has determined that certain organic compounds have negligible photochemical reactivity in the atmosphere and therefore excludes them from the federal definition of VOC in 40 CFR 51.100 (s). The Department proposes to add eight such compounds to the list of excluded compounds in the state definition. These compounds are:

- (A) trans-1,3,3,3-tetrafluoropropene (HFO-1234ze).
- (B) HCF₂OCF₂H (HFE-134).
- (C) HCF₂OCF₂OCF₂H (HFE-236cal2).
- (D) HCF₂OCF₂CF₂OCF₂H (HFE-238pcc13).
- (E) HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040X or H-Galden ZT 130 or 150 or 180).
- (F) trans-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)).
- (G) 2,3,3,3-tetrafluoropropene (HFO-1234yf).
- (H) 2-amino-2-methyl-1-propanol (AMP; CAS number 124-68-5).

1.2 The Department proposes to repeal s. NR 420.045, Wis. Adm. Code. This rule establishes stage 2 vapor recovery requirements at gasoline dispensing facilities in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. Stage 2 vapor recovery equipment captures volatile organic compounds that evaporate into the air when vehicle gasoline tanks are filled and returns the vapors to the underground gasoline storage tank where they condense. Beginning with 1998 model year vehicles, the U.S. EPA began requiring manufacturers to equip new vehicles with on-board gasoline vapor recovery systems. These systems serve the same purpose as the stage 2 vapor recovery equipment at gasoline dispensing facilities. The U.S. EPA therefore authorized states to remove stage 2 vapor recovery equipment requirements from their ozone state implementation plan (SIP). On November 4, 2013, the U.S. EPA approved, effective December 4, 2013, a request by the Department to remove stage 2 vapor recovery equipment requirements from Wisconsin's SIP.

In addition, the state legislature promulgated s. 285.31 (5), Wis. Stats., effective April 17, 2012, terminating the further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code.

The Department therefore proposes to repeal s. NR 420.045, Wis. Adm. Code.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

The proposed rule changes are compatible with existing policy to maintain consistency between state rules and U.S. EPA regulations and between state rules and statutes, and are necessary to do so. The proposed rules do not include any new policies. Since the proposed rule changes are appropriate and necessary the Department did not consider alternatives to the proposed rulemaking.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Sections 285.11 (1), (6), (16), and 17, 285.21 (2) and (4), 285.25 (1), and 285.31 (5), Wis. Stats., establish the authority for promulgation of the proposed rules.

3.1 Section 285.11 (1), Wis. Stats., requires that the Department promulgate rules implementing and consistent with ch. 285, Wis. Stats., and thereby establishes authority for the proposed changes to ch. NR 405, Wis. Adm. Code, as described in section 1.1 (1) related to the PSD construction permit program as affected by ss. 285.60, 285.61, and 285.63, Wis. Stats. More specific authority for these proposed changes is established as follows:

(1) Section 285.25 (1), Wis. Stats., supports the Department's proposed changes described in section 1.1 (1) (A) to add PM_{2.5} to select definitions in ch. NR 405, Wis. Adm. Code, related to a pollutant's baseline concentration. This statute requires that the Department promulgate rules designating procedures and criteria to determine the allocation of available air resources in an attainment area. The terms affected are used in these procedures and the proposed inclusion of PM_{2.5} in the relevant definitions is necessary and appropriate when the Department determines the allocation of air resources for PM_{2.5}.

(2) Section 285.11 (16), Wis. Stats., requires that the Department promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and limit the classification of a major source to specific air contaminants. Section 285.11 (17), Wis. Stats requires the Department to promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specific air contaminants. The proposed changes to ch. NR 405, Wis. Adm. Code, described in section 1.1 (1) (B) and (C) make Department rules consistent with federal clean air act requirements regarding what contaminants to consider when determining whether a source is a major source and describe when an increase in a given air contaminant is considered a modification.

(3) Section 285.21 (2) and (4), Wis. Stats., supports the Department's proposed change to s. NR 404.05 to establish ambient air increments for PM_{2.5} included in section 1.1 (1) (D). These statutory provisions require that the Department promulgate by rule ambient air increments for air contaminants consistent with and not more restrictive than those under the federal clean air act for attainment areas. The Department must keep these rules consistent with any modifications to these increments made under the clean air act.

3.2. Section 285.11 (6), Wis. Stats., establishes authority for the proposed change to s. NR 400.02 (162), Wis. Adm. Code, as described in section 1.1 (2), in that it requires that the Department develop a plan for the prevention, abatement, and control of air pollution. For control of atmospheric ozone, the plan, with limited exceptions, must conform with the federal clean air act. Since VOC are a precursor to ozone, the addition of the proposed compounds to the list of excluded compounds to ensure the state definition of VOC conforms to the federal definition is consistent with s. 285.11 (6), Wis. Stats.

3.3 The repeal of s. NR 420.045, Wis. Adm. Code, included in section 1.2 is consistent with the legislature's mandate under s. 285.31 (5), Wis. Stats., to terminate the further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Department estimates that up to 300 hours of state employee time will be needed to complete the promulgation of the proposed rules.

5. Description of all entities that may be affected by the proposed rule:

5.1 Under Section 1.1 (1) the Department is proposing changes related to the PSD permit program to ensure consistency with existing U.S. EPA regulations. Entities primarily affected by these proposed changes are as follows:

(1) The proposed changes described in Section 1.1 (1) (A) would have no effect since under current rules and implementation practices, the Department is consistent with U.S. EPA regulations and policy with regard to PM2.5

(2) The proposed change described in Section 1.1 (1) (B) would have no effect since under current rules and implementation practices, the Department already recognizes that nitrogen oxides are a precursor to ozone formation. The change is proposed to satisfy U.S. EPA state implementation plan requirements.

(3) The proposed changes to global warming potentials for certain greenhouse gases as described in Section 1.1 (1) (C) could affect the calculation of total facility greenhouse gas emissions, which would then be used for reporting and other regulatory purposes. Any effect on total facility calculated emissions from the proposed changes would depend on what greenhouse gases the source emitted or would emit, the amount of emissions of each greenhouse gas, how much the global warming potential changed, and whether the change was an increase or decrease.

(4) The proposed change described in Section 1.1 (1) (D) would have no effect since under current implementation practices for the prevention of significant deterioration permit program under ch. NR 405, Wis. Adm. Code, the Department already recognizes the federal PM2.5 ambient air increments consistent with U.S. EPA requirements.

5.2 Under Section 1.1 (2) the Department is proposing to add certain compounds to the list of compounds excluded from the definition of volatile organic compounds. Entities primarily affected by this proposal are as follows:

(1) For the compound listed in Section 1.1 (2) (A), those entities involved in the manufacture or use of refrigerants, aerosol propellants, and blowing agents for insulating foams.

(2) For the compounds listed in Section 1.1 (2) (B) to (E), those entities involved in the manufacture or use of fire suppressants and specialized refrigerants.

(3) For the compound listed in Section 1.1 (2) (F), those entities involved in the manufacture or use of refrigerants, aerosol and non-aerosol solvents and blowing agents for insulating foams, and manufacturers of refrigeration equipment, hot water heaters and waste heat recovery equipment.

(4) For the compound listed in Section 1.1 (2) (G), those entities involved in the manufacture or servicing of automobiles or automotive air conditioning systems.

(5) For the compound listed in Section 1.1 (2) (H), those entities involved in the manufacture or use of pigments in water-based coatings, additives in metalworking fluids and in food contact paper, neutralizers in personal care products, and intermediates in chemical synthesis.

By taking this action those entities described above would no longer have to consider emissions of these compounds when determining applicability of emission control requirements relating to attaining the ozone national ambient air quality standards and the emissions would no longer be counted in determining whether a proposed new or modified source would exceed the volatile organic compound thresholds that trigger permit requirements. In addition, entities would no longer be required to report or pay fees based on the emissions of these compounds as volatile organic compounds.

5.3 Under Section 1.2, the Department is proposing to repeal s. NR 420.045, Wis. Adm. Code. No entities would be affected by this action since the state legislature has terminated further implementation of stage 2 vapor recover equipment requirements under s. NR 420.045, Wis. Adm. Code, under s. 285.31 (5), Wis. Stats., effective April 17, 2012.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

One of the main objectives of this proposed rulemaking is to address changes needed to maintain consistency with U.S. EPA regulations. Section 1 contains descriptions of the specific changes the Department is proposing.

The second objective is to repeal Department rules that apply to gasoline dispensing facilities to control fumes that evaporate into the air when vehicle gasoline tanks are filled. The U.S. EPA has authorized states to remove these requirements from state ozone implementation plans. The proposed Department action is therefore consistent with federal regulatory policy.

7. Anticipated economic impact of implementing the rule:

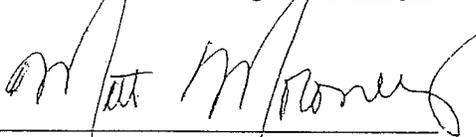
The Department anticipates that the statewide economic impact of the proposed rules will be minimal.

8. Anticipated number, month and locations of public hearings:

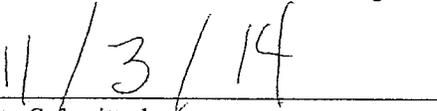
If approved to develop the proposed rules, the Department anticipates holding one public hearing in Madison during the fall of 2015.

9. Contact Person:

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Department Head or Authorized Signature



Date Submitted



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STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

December 1, 2014

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for Chapter NR 400, 404, 405, and 420 relating to maintaining consistency with the U.S. Environmental Protection Agency air pollution control regulations and repealing the obsolete rules

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on November 14, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapters NR 400, 404, 405, and 420 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor