

SUBJECT:

Request the authorization of public hearings for Board Order AM-11-10, proposed rules affecting NR 406, 407, and 445 pertaining to the exemption of emissions from animal agricultural waste, and the solicitation of economic impact information from entities that may be affected by the proposed rule.

FOR: JUNE 2011 BOARD MEETING

TO BE PRESENTED BY / TITLE: Bart Sponseller, Air Monitoring Section Chief

SUMMARY:

The proposed permanent rule making involves changes to chs. NR 406, 407 and 445. In 2010, best management practices (BMPs) that reduce hazardous air emissions from agricultural waste were identified through a collaborative advisory group process. The proposed rule amendments will exempt hazardous air emissions from the control requirements of NR 445 and, will eliminate consideration of these emissions when determining applicability of permitting requirements in NR 406 and NR 407. Existing provisions requiring compliance with NR 445 and related permitting requirements on and after July 31, 2011 for emissions from animal agricultural waste will be removed.

The Joint Committee for Review of Administrative Rules suspended temporarily portions of NR 406, 407, and 445 related to emissions from animal agricultural waste on May 24, 2011. The suspension has the effect of exempting animal agricultural waste from state hazardous air emissions control requirements under NR 445 and, eliminates consideration of these emissions, when determining applicability of permitting requirements in NR 406 and NR 407. The Department's proposed rule making is consistent the suspension of rule provisions by JCRAR.

While proposing the exemptions, the Department also proposes to move forward with a voluntary approach to achieve emission reductions from animal agricultural waste. Given the success the Department has achieved in the advisory group process, and the uncertainty over future federal regulatory approaches and timing, the Department believes this is the best approach at this time.

In February 2008, the last action the NRB took on this issue was to extend the NR 445 compliance deadline for animal agricultural waste to July 31, 2011.

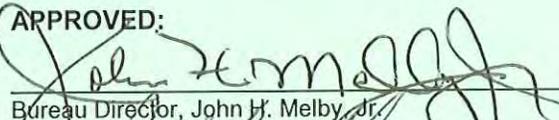
RECOMMENDATION: That the Board authorize the Department to hold hearings on Order NR-11-10 and to solicit economic impact information from entities that may be affected by the proposed rule.

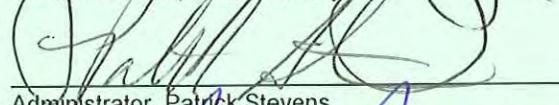
LIST OF ATTACHED MATERIALS:

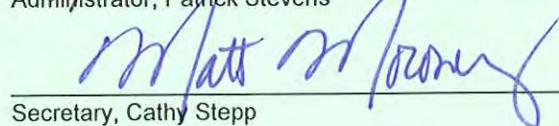
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director, John H. Melby, Jr.


 Administrator, Patrick Stevens


 Secretary, Cathy Stepp

6/2/2011
 Date

6/3/2011
 Date

6/8/11
 Date

CORRESPONDENCE/MEMORANDUM

DATE: June 2, 2011

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary

SUBJECT: Background Memo to request authorization of public hearings for Board Order AM-11-10, proposed rules affecting NR 406, 407, and 445 pertaining to the exemption of emissions from animal agricultural waste and the solicitation of economic impact information from entities that may be affected by the proposed rule

Why is the rule being proposed?

The current extension to the compliance deadline for air permit and hazardous air contaminant control requirements associated with agricultural waste, under chs. NR 406, 407 and 445, expires on July 31, 2011. The extension was established to coincide with the anticipated completion of air emission monitoring studies of large livestock farms at the federal level. The purpose of the studies was to develop reliable air emission estimating methodologies, so that federal requirements for the animal feeding operation sector can be addressed. Data from the federal studies was made publicly available in January 2011, and US EPA intends to complete the emissions estimation methodology development process in mid-2012. In addition to emissions estimation, the study results will be used to clarify Clean Air Act issues. These clarifications include defining agricultural sources under the Act, determining source applicability thresholds, assessing control technology effectiveness as well as defining monitoring, reporting, and recordkeeping requirements. It will likely take a few additional years for US EPA to settle these Clean Air Act policy decisions. The absence of the emission estimation methodologies information and uncertainty over future federal regulatory approaches and timing create a strong potential for future inconsistency between federal and state policies.

Pursuant to s. 227.26(2)(d), the Joint Committee for Review of Administrative Rules (JCRAR) suspended temporarily portions of NR 406, 407, and 445 related to emissions from animal agricultural waste on May 24, 2011. The suspension was based on testimony received on April 27, 2011 and on the grounds that the rule provisions impose an undue hardship on Wisconsin's dairy industry as stated in s. 227.19(4)(d)6. The suspension has the effect of exempting animal agricultural waste from state hazardous air emissions control requirements under NR 445 and, eliminates consideration of these emissions, when determining applicability of permitting requirements in NR 406 and NR 407. The Department's proposed rule making is consistent the suspension of rule provisions by JCRAR.

During the summer of 2010, the Department investigated fence-line air concentrations of ammonia and hydrogen sulfide at a few small-to-medium dairy confined animal feeding operations (CAFOs), a single small swine CAFO, and a large egg laying CAFO in southern Wisconsin. Results of the study indicate generally low fence-line concentrations of ammonia and hydrogen sulfide relative to ambient air action concentrations listed in NR 445.

In 2004, the Department revised NR 445 to update the standards based on recent scientific information and to streamline the rule approach. At that time, the Department introduced the concept in NR 445 of using best management practices (BMPs) as an emission control strategy for agricultural sources instead of the control requirements in the rule developed for traditional industrial sources. With this concept in place, the Department convened an Agricultural Waste BMP Advisory Group in April 2010 with the

purpose of evaluating management practices for the reduction of hazardous air contaminants. A final report was completed in December 2010 and is publicly available. The highly collaborative process, involving the agricultural industry, environmental groups, academia and government, identified thirty (30) specific management practices for dairy, beef, swine, egg layer poultry, and broiler poultry (including turkeys) that are expected to reduce hazardous air emissions. As a result of this successful process and the uncertainty of the timing and final requirements at the federal level, the Department believes it is best to move forward with a voluntary approach to achieve emission reductions. Members of the Advisory Group have agreed to continue participating with the Department in a process that will identify and develop informational and outreach decision-making tools that encourage the voluntary use of the BMPs by the agriculture livestock industry. The completed BMPs, in conjunction with decision-making tools, will position Wisconsin to be a national leader in preparation for federal requirements.

Summary of the rule

The proposed rule making involves changes to chs. NR 406, 407, and 445. The changes pertain to pending implementation of existing air permit and emission control requirements for sources of state hazardous air contaminant emissions from agricultural waste. In 2010, best management practices (BMPs) that reduce hazardous air emissions from agricultural waste were identified through a collaborative advisory group process. The proposed permanent rule amendments will exempt state hazardous air emissions of animal agricultural waste from the control requirements of NR 445 and, will eliminate consideration of these emissions, when determining applicability of permitting requirements in NR 406 and NR 407.

Because of the proposed exemptions, existing provisions, requiring compliance with NR 445 and related permitting requirements on and after July 31, 2011 for emissions from animal agricultural waste, will be removed.

While proposing the exemptions, the Department also proposes to move forward with a voluntary approach to achieve emission reductions from animal agricultural waste. Given the success the Department has achieved in the advisory group process, and the uncertainty over future federal regulatory approaches and timing, the Department believes this is the best approach at this time.

In February 2008, the last action the NRB took on this issue was to extend the NR 445 compliance deadline for animal agricultural waste.

How does this proposal affect existing policy?

This proposal addresses the existing compliance deadline of July 31, 2011 for state air permit and hazardous air contaminant requirements associated with agricultural waste, under chs. NR 406, 407 and 445 by exempting hazardous air emissions from agricultural waste from the control requirements of NR 445, and eliminating consideration of these emissions when determining applicability of permitting requirements in NR 406 and NR 407.

Has the Board dealt with this issue before? If so, when and why?

In July 2004 and again in February 2008, revisions to chs. NR 406, 407, and 445 were published to extend the compliance deadline for sources of state hazardous air contaminant emissions from agricultural waste due to the lack of federal emissions estimation methodologies.

Who will be affected by the proposed rule? How will they be affected?

The animal agricultural industry will be affected by this proposed rule. The proposed rule will remove permitting, reporting, and compliance requirements for sources of emissions of state hazardous air contaminant emissions from agricultural waste.

Information on environmental analysis

As provided under s. NR 150.03(6) (b)3.b., Wis. Adm. Code, an environmental analysis is not required. The proposed rule will not have material impacts on the human environment.

Small business analysis

Exempting agricultural waste hazardous air emissions will prevent small businesses from having to implement mandatory control requirements. This will help small agricultural businesses save money.

A.1. Describe the compliance and/or reporting requirements imposed on small business.

The proposal removes potential compliance and/or reporting requirements that otherwise might have been imposed on small businesses that have hazardous air contaminant emissions from handling agricultural waste.

2. Can these compliance and/or reporting requirements be made less stringent for small business? Explain.

This is not applicable, as there are no requirements.

B.1. Describe the schedules or deadlines for compliance or reporting imposed on small business.

This is not applicable, as there are no requirements.

2. Can these schedules or deadlines be made less stringent for small business? Explain.

This is not applicable, as there are no requirements.

C. Can the compliance or reporting requirements for small business be consolidated or simplified. Explain.

This is not applicable, as there are no requirements.

D. Can performance standards be established for small businesses in lieu of design or operational standards? Explain.

This is not applicable, as there are no requirements.

E. Can small business be exempted from any or all requirements of the rule? Explain.

Small business with hazardous air contaminant emissions, that otherwise would have become subject to emission standards and permitting requirements, will no longer be subject to regulation.

Fiscal Estimate — 2011 Session

| | | |
|---|-------------|--|
| <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental | LRB Number | Amendment Number if Applicable |
| | Bill Number | Administrative Rule Number NR 406, 407, and 445 |

Subject

Revisions to NR 406, 407, and 445, relating to permitting and hazardous air contaminant control requirements associated with agricultural waste.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
- Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Rule Summary:

This proposal addresses the July 31, 2011 expiration of the existing compliance deadline for state air permit and hazardous air contaminant requirements associated with agricultural waste, under chs. NR 406, 407 and 445. The proposed rule revisions would exempt emissions from animal agricultural waste from NR 445 and from construction and operation permitting requirements in NR 406 and 407, respectively, as the requirements related to animal agricultural waste only.

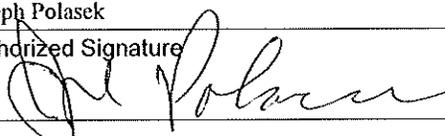
Fiscal Summary:

State and Local Government Impact - The proposed rule changes will have no fiscal impact on state or local government.

Private Sector Impact - Relative to the current compliance extension, no additional costs would be incurred by the agricultural sector under this proposal.

Long-Range Fiscal Implications

None

| | | |
|---|---------------------------|---|
| Prepared By: Joseph Polasek | Telephone No. 266-2794 | Agency Department of Natural Resources |
| Authorized Signature  | Telephone No. 266-2794 | Date (mm/dd/ccyy) 07-02-11 |

Fiscal Estimate Worksheet — 2011 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

| | |
|-------------|--|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number NR 406, 407, and 445 |

Subject

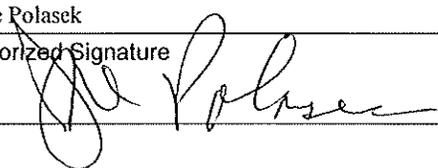
Revisions to NR 406, 407, and 445, relating to permitting and hazardous air contaminant control requirements associated with agricultural waste.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

| Annualized Costs: | | Annualized Fiscal Impact on State Funds from: | |
|--|---|---|-------------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | | |
| State Operations — Salaries and Fringes | | \$ 0 | \$ - 0 |
| (FTE Position Changes) | | (0.00 FTE) | (- 0.00 FTE) |
| State Operations — Other Costs | | 0 | - 0 |
| Local Assistance | | 0 | - 0 |
| Aids to Individuals or Organizations | | 0 | - 0 |
| Total State Costs by Category | | \$ 0 | \$ - 0 |
| B. State Costs by Source of Funds | | | |
| GPR | | \$ 0 | \$ - 0 |
| FED | | 0 | - 0 |
| PRO/PRS | | 0 | - 0 |
| SEG/SEG-S | | 0 | - 0 |
| State Revenues | Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Revenue | Decreased Revenue |
| GPR Taxes | | \$ 0 | \$ - 0 |
| GPR Earned | | 0 | - 0 |
| FED | | 0 | - 0 |
| PRO/PRS | | 0 | - 0 |
| SEG/SEG-S | | 0 | - 0 |
| Total State Revenues | | \$ 0 | \$ - 0 |

Net Annualized Fiscal Impact

| | State | Local |
|------------------------|-------|-------|
| Net Change in Costs | \$ 0 | \$ 0 |
| Net Change in Revenues | \$ 0 | \$ 0 |

| | | |
|---|---------------------------|---|
| Prepared By: Joe Polasek | Telephone No. 266-2794 | Agency Department of Natural Resources |
| Authorized Signature  | Telephone No. 266-2794 | Date (mm/dd/ccyy) 07-02-11 |

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 406.04 (3) (e), 445.01 (1) (a) (Note), and 445.08 (3) (c) and (6) (d); to **renumber** 445.02 (1); to **amend** NR 407.03 (2) (d) and 445.08 (6) (a) and (c); and to **create** NR 406.04 (1) (zj) and 445.07 (5) (g) relating to the exemption of emissions from animal agricultural waste, and affecting small business.

AM-11-10

Analysis Prepared by the Department of Natural Resources

1. **Statute interpreted:** Sections 227.11(2)(a), 285.11 (1), (6) and (16), 285.14 (1) Wis. Stats. The State Implementation Plan developed under s. 285.11 (6), Stats., is revised to include 406.04 (1) (zk).
2. **Statutory authority:** Sections 227.11 (2) (a), and Section 285.11 (1), (6), and (16) Wis. Stats.
3. **Explanation of agency authority:** Section 227.11 (2) (a), Stats., gives state agencies general rulemaking authority. Section 285.11 (1), Stats., gives the Department authority to promulgate rules consistent with ch. 285, Stats. Section 285.11 (6) gives the Department authority to prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. Section 285.11 (16) gives the Department authority to 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 that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants. Section 285.14(1) requires the Department not to submit a control measure or strategy that imposes or may result in regulatory requirements to the federal environmental protection agency for inclusion in a state implementation plan under 42 USC 7410 unless the Department has promulgated the control measure or strategy as a rule.
4. **Related statute or rule:** There are no related statutes or rules that pertain to regulation of hazardous air emissions from agricultural waste.
5. **Plain language analysis:**

On Tuesday, May 24, 2011, the Joint Committee for Review of Administrative Rules suspended, through executive action, portions of NR 406, 407, and 445 related to agricultural waste. The proposed rule making involves changes to NR 406, 407, and 445. The changes pertain to pending implementation of existing air permit and emission control requirements for sources of state hazardous air contaminant emissions from animal agricultural waste. The proposed permanent rule amendments will exempt these hazardous air emissions from the control requirements of NR 445, and will eliminate consideration of these emissions when determining applicability of permitting requirements in NR 406 and NR 407.

Because of the proposed exemptions, existing provisions requiring compliance with NR 445, and related permitting requirements on and after July 31, 2011 for emissions from animal agricultural waste, will be removed.

While proposing these exemptions, the Department also proposes to move forward with a voluntary approach to achieve emission reductions from animal agricultural waste. The Department convened an Agricultural Waste BMP Advisory Group in April 2010 with the purpose of evaluating management practices for the reduction of hazardous air contaminants. A final report was completed in December 2010

and is publicly available. The process, involved the agricultural industry, environmental groups, academia and government. Thirty specific management practices for dairy, beef, swine, egg layer poultry, and broiler poultry (including turkey), which are expected to reduce hazardous air emissions, were identified. As a result of this successful process and the uncertainty of the timing and final requirements at the federal level, the Department believes it is best to move forward with a voluntary approach to achieve emission reductions. Members of the Advisory Group have agreed to continue participating with the Department in a process that will identify and develop informational and outreach decision-making tools that encourage the voluntary use of the BMPs by the agriculture livestock industry.

6. Summary of, and comparison with, existing or proposed federal regulation: The rule changes proposed herein do not affect existing federal permit requirements. This proposal only affects implementation of state only permit requirements and emission limits for sources of hazardous air contaminants associated with animal agricultural waste.

Under the federal Clean Air Act, new and existing major stationary sources of federally regulated air pollutant emissions are subject to federal air permit requirements. Included are permit requirements under the federal "Prevention of Significant Deterioration" and "Non-Attainment Area" New Source Review programs, along with the applicable requirements for "Best Available Control Technology", and "Lowest Achievable Emission Rate" technology and offsets, respectively. Emissions associated with agricultural waste are not categorically exempt from these requirements.

Under the federal Clean Air Act, 187 hazardous air pollutants are regulated through National Emission Standards for Hazardous Air Pollutants (NESHAPs) established by industry sector. No such standards have been established specifically for agricultural waste. Furthermore, ammonia and hydrogen sulfide, two air pollutants associated with agricultural waste, are not regulated as federal hazardous air pollutants under the Clean Air Act.

The Department is not aware of any proposed federal air regulations pertaining to animal agricultural waste emissions.

7. Comparison with similar rules in adjacent states (Illinois, Iowa, Michigan and Minnesota):

A summary of similar rules in Minnesota, Iowa, Illinois, and Michigan is provided below.

No other neighboring state has a state-based air toxics program like Wisconsin's, which regulates over 600 hazardous air contaminants at the fence line.

In brief, Minnesota and Iowa have established air quality standards for hydrogen sulfide that apply to livestock operations; these standards are more stringent than Wisconsin's. Iowa does not engage in the review and issuance of air permits for livestock operations, while Minnesota incorporates enforceable conditions related to hydrogen sulfide within Minnesota water quality permits. Illinois and Michigan have adopted a siting standards approach to regulating livestock operations, similar to the Wisconsin siting standards for new and expanding livestock operations established in ATCP 51. As in Illinois and Michigan, the Wisconsin siting standards of ATCP 51 include odor standards and set back requirements. The siting standards are administered by the Department of Agriculture in Illinois and Michigan.

Minnesota

In 1969, the State of Minnesota promulgated Minnesota Ambient Air Quality Standards (MAAQS) for hydrogen sulfide. These standards are more restrictive than the Wisconsin standard. The Minnesota

ambient air quality standards for hydrogen sulfide are: 70.0 micrograms per cubic meter, half-hour average not to be exceeded over 2 times per year; and 42.0 micrograms per cubic meter half-hour average not to be exceeded over 2 times in any 5 consecutive days. The Wisconsin ambient air quality standard for hydrogen sulfide is, 335 micrograms per cubic meter, over a 24-hour average at the property boundary.

The original intent of the MAAQS was to regulate hydrogen sulfide emission impacts from stationary sources, such as paper mills. It now applies to all animal feeding operations in the state, as well. The hydrogen sulfide MAAQS has not been updated since promulgation in 1969.

The Minnesota Pollution Control Agency has conducted environmental assessments of new and expanding animal feeding operations. The assessment includes an air quality dispersion modeling analysis of odor, hydrogen sulfide and ammonia impacts, using the CALPUFF dispersion model.

Minnesota does not have an ambient air quality standard for ammonia.

Iowa

In 2002, the Iowa Legislature directed the Iowa Department of Natural Resources (Iowa DNR) to perform a field study to determine airborne levels of ammonia, hydrogen sulfide, and odor near animal feeding operations. The Iowa DNR then established a health based standard for hydrogen sulfide to compare against monitoring data to determine if levels pose a risk to public health. If levels measured at separated locations such as homes, public areas, schools, or religious buildings pose health risks, the DNR may develop plans and programs to reduce emissions at animal feeding operations. The standard does not apply to industrial stationary sources and no standard was set for ammonia.

The Iowa DNR health effects standard for hydrogen sulfide is 30 parts per billion (42.0 micrograms per cubic meter) daily maximum one-hour average concentration, not to be exceeded more than seven times per year. This is more restrictive than the Wisconsin ambient air quality standard for hydrogen sulfide of 335 micrograms per cubic meter, over a 24-hour average at the property boundary. Furthermore, in Wisconsin, the use of best management practices as approved by the Department of Natural Resources is an alternative compliance demonstration method for sources of hazardous air pollutant emissions associated with agricultural waste.

In 2004, the Iowa DNR Animal Feeding Operations Technical Workgroup published a report on technologies to reduce air emissions from livestock operations. The report outlines "best management practices" which, if adopted by producers, will benefit the air quality on the farms themselves, at nearby residences, and overall environment by reducing air emissions. In addition, the report includes recommendations on the characterization of air emissions from animal feeding operations and a dispersion model that can be used to estimate the concentrations of pollutants near animal feeding operations.

Illinois

The Illinois Livestock Management Facilities Act, adopted in 1996 and amended in 1998 and 1999, is administered by the Illinois Department of Agriculture. The Act establishes requirements for the design, construction and operation of livestock management and livestock waste-handling facilities. It also establishes specific procedures and criteria for the siting of such facilities and outlines the public information meeting process. The Livestock Management Facilities Act establishes eight siting criteria that must be met by a new livestock management or waste-handling facility. These siting criteria include odor control plans and set back distances, but do not specifically address emissions of hydrogen sulfide or ammonia.

The Illinois EPA involvement with livestock operations is limited, mainly to investigation of odor complaints. The Illinois EPA air toxics rule does not include any standards for hydrogen sulfide or ammonia.

Michigan

In simple terms, air emissions from livestock operations located in Michigan are not regulated under the Michigan Department of Natural Resources air toxics and air permit rules, so long as they comply with the Generally Accepted Agricultural and Management Practices (GAAMPs) as administered by the Michigan Department of Agriculture.

The Michigan legislature passed into law the Michigan Right to Farm Act (Act 93 of 1981), which requires the establishment of GAAMPs. These practices are written to provide uniform, statewide standards and acceptable management practices based on sound science. These practices can serve producers in the various sectors of the industry to compare or improve their own managerial routines. New scientific discoveries and changing economic conditions may require necessary revision of the GAAMPs. The GAAMPs were developed with industry, university, and multi-governmental agency input. As agricultural operations continue to change, new practices may be developed to address the concerns of the neighboring community. Agricultural producers who voluntarily follow these practices are provided protection from public or private nuisance litigation under the Right to Farm Act.

8. Summary of factual data and analytical methodologies used and how any related findings support the regulatory approach chosen:

On Tuesday, May 24, 2011, the Joint Committee for Review of Administrative Rules suspended, through executive action, portions of NR 406, 407, and 445 related to agricultural waste. In addition, the proposed approach is supported by the current uncertainty of the timing and final requirements at the federal level. There is a compliance extension for hazardous air emissions from agricultural waste under NR 445 and related permitting requirements through July 31, 2011. The extension was established to coincide with the anticipated completion of air emission monitoring studies of large livestock farms at the federal level. The purpose of the studies was to develop reliable air emission estimating methodologies, so that federal requirements for the animal feeding operation sector can be addressed. Data from the federal studies was made publicly available on US EPA's website in January 2011, and US EPA intends to complete the emissions estimation methodology development process in mid 2012. In addition to emissions estimation, the study results will be used to clarify Clean Air Act issues including defining agricultural sources under the Act, determining source applicability thresholds, assessing control technology effectiveness as well as defining monitoring, reporting, and recordkeeping requirements. It will likely take a few additional years for US EPA to settle these Clean Air Act policy decisions. The absence of the emission estimation methodologies information and uncertainty over future federal regulatory approaches and timing create a strong potential for future inconsistency between federal and state policies.

In 2004, the Department introduced the concept in NR 445 of using best management practices (BMPs) as an emission control strategy for agricultural sources instead of the control requirements in the rule developed for traditional industrial sources. With this concept in place, the Department convened an Agricultural Waste BMP Advisory Group in April 2010 with the purpose of evaluating management practices for the reduction of hazardous air contaminants. A final report was completed in December 2010 and is publicly available on the Department's website. The highly collaborative process, involving the ag industry, environmental groups, academia and government, identified thirty (30) specific management practices for dairy, beef, swine, egg layer poultry, and broiler poultry (including turkeys) that are expected

to reduce hazardous air emissions. As a result of this successful process and the uncertainty of the timing and final requirements at the federal level, the Department believes it is best to move forward with a voluntary approach to achieve emission reductions.

9. Analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact report:

The proposed rule is not expected to have a significant effect on small business. The proposed voluntary approach would not place any additional required costs or regulatory burden on small businesses.

10. Effect on small business (initial regulatory flexibility analysis):

The proposed elimination of applicability of animal agricultural waste from NR 445 requirements and elimination of permitting requirements in NR 406 and 407, as it pertains to state hazardous air contaminants in NR 445, is not expected to have a significant effect on small farm businesses. Proposed use of voluntary best management practices to address reductions of hazardous air emissions will not require small businesses (farms) to adopt BMPs. There will be no required reporting, bookkeeping or other compliance procedures, and therefore no professional skills will be required to comply.

11. Agency contact person:

Bart Sponseller
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707-7921
E-mail: Bart.sponseller@wisconsin.gov
Phone: 608-266-1058
Fax: 608 267-0560

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Mr. Bart Sponseller
Department of Natural Resources
Bureau of Air Management
PO Box 7921
Madison WI 53707
Fax: (608) 267-0560

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 406.04 (3) (e) is repealed:

SECTION 2. NR 406.04 (1) (zj) is created to read:

NR 406.04 (1) (zj) Any source that processes, stores, disposes of, applies, or otherwise handles agricultural waste if the sole need for a permit under this chapter is due to emissions from the agricultural waste of hazardous air contaminants listed in ch. NR 445.

SECTION 3. NR 407.03 (2) (d) is amended to read:

NR 407.03(2)(d) The maximum theoretical emissions from the source for any hazardous air contaminant listed in Table A, B or C of s. NR 445.07 do not exceed the emission rate listed in the table for the hazardous air contaminant for the respective stack height. For the purposes of determining emissions under this paragraph, the owner or operator of a source is not required to ~~consider~~ include emissions of hazardous air contaminants ~~associated with~~ from agricultural waste ~~prior to July 31, 2011.~~

SECTION 4. NR 445.01 (1) (a) (Note) is repealed.

SECTION 5. NR 445.02 (1) is renumbered NR 400.02 (11m).

SECTION 6. NR 445.07 (5) (g) is created to read:

NR 445.07 (5) (g) Agricultural waste.

SECTION 7. NR 445.08 (3) (c) and (6) (d) are repealed.

SECTION 8. NR 445.08 (6) (a) and (c) are amended to read:

NR 445.08 (6) (a) ~~Except as provided for agricultural waste in par. (d), the~~ The owner or operator of a source subject to an emission limitation or control requirement in s. NR 445.07 and constructed or last modified on or after July 1, 2004, shall achieve compliance upon startup of the source.

(c) ~~Except as provided for agricultural waste in par. (d), the~~ The owner or operator of a source constructed or last modified prior to July 1, 2004, with non-exempt, potential to emit emissions of a hazardous air contaminant greater than the applicable threshold in column (c), (d), (e) or (f) of Table A, B or C of s. NR 445.07 or subject to s. NR 445.07 (4) shall do all of the following:

SECTION 9. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 10. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)