

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT:

Request authorization for public hearing for Board Order AM-27-09, proposed rules affecting NR 400 pertaining to the definition of volatile organic compound.

FOR: JANUARY 2010 BOARD MEETING

TO BE PRESENTED BY: Larry Bruss, Chief - Regional Pollutant and Mobile Source Section

SUMMARY:

The Bureau of Air Management proposes to amend s. NR 400.02(162)(a), Wis. Adm. Code, to add two organic compounds, dimethyl carbonate and propylene carbonate, to the list of those excluded from the regulatory definition of volatile organic compound (VOC). Currently, 50 compounds are excluded from the regulatory definition of VOC because they have been shown to have negligible photochemical reactivity. The U.S. Environmental Protection Agency (EPA) has recently determined that these two compounds make a negligible contribution to tropospheric ozone formation. As such, EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437). The proposed revision of s. NR 400.02(162)(a), Wis. Adm. Code, is necessary so the state definition of VOC conforms to and is consistent with the federal definition.

The Bureau of Air Management does not consider this a significant rule revision and does not expect any controversy associated with the proposed rule changes. Ensuring that state and federal regulations are similar is consistent with past actions taken by the Board.

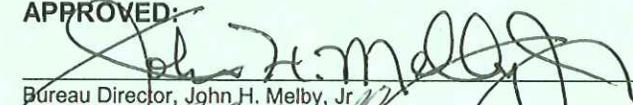
RECOMMENDATION: That the Board authorize the Department to hold hearings on Board Order AM-27-09.

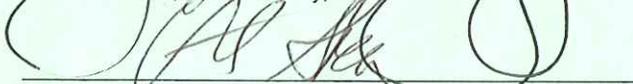
LIST OF ATTACHED MATERIALS:

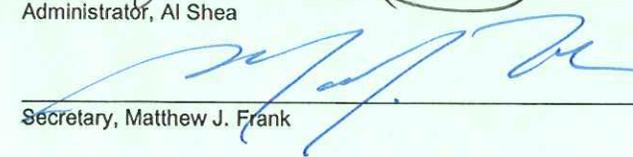
- No Fiscal Estimate Required
- No Environmental Assessment or Impact Statement Required
- No Background Memo

- Yes Attached
- Yes Attached
- Yes Attached

APPROVED:


 Bureau Director, John H. Melby, Jr


 Administrator, Al Shea


 Secretary, Matthew J. Frank

12/01/2009
 Date

12/01/09
 Date

12/21/09
 Date

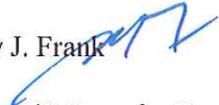
cc: Laurie Ross - AD/8
Thomas Steidl- LS/8

Department Rules Coordinator - LS/8
R. Eckdale - AM/7

Joseph Hoch- AM/7

DATE: December 16, 2009

TO: Christine L. Thomas, Chair
Jonathan P. Ela, vice-Chair, Air, Waste & Water Management/Enforcement
Committee Chair

FROM: Matthew J. Frank 

SUBJECT: Background Memo for Board Order AM-27-09, Proposed Rules Affecting NR 400
Pertaining to the Definition of Volatile Organic Compound

Why is this rule being proposed?

The United States Environmental Protection Agency (EPA) recently determined that dimethyl carbonate and propylene carbonate make a negligible contribution to tropospheric ozone formation. As such, EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437). The final rule became effective on February 20, 2009.

Currently, s. NR 400.02(162)(a), Wis. Adm. Code, lists 50 compounds that are excluded from the state regulatory definition of VOC. The Department is proposing to add dimethyl carbonate and propylene carbonate to this list to ensure consistency between state and federal definitions of VOC. This rule is being proposed to amend Section NR 400, Wis. Adm. Code, to incorporate federal rule changes per s. 285.11(16), Stats.

Summary of the rules

The Department is proposing to add dimethyl carbonate and propylene carbonate to the list of those compounds excluded from the VOC definition in s. NR 400.02(162)(a), Wis. Adm. Code.

The proposed rule amendment may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds thereby potentially reducing ground-level ozone concentrations.

How does this proposal affect existing policy?

Adding dimethyl carbonate and propylene carbonate to the list of compounds excluded from the definition of VOC is consistent with past actions taken by the Department to ensure consistency between state and federal regulatory definitions.

Has the Board dealt with these issues before? If so, when and why?

The Board last approved a change to the VOC definition on October 24, 2007 when it approved the addition of the compound HFE-7300 to the list of excluded compounds. This compound was excluded for the same reasons that this action is being taken (i.e., to be consistent with action taken by EPA to amend its definition of VOC).

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

The Department expects that the primary entities affected by this rule revision would be the paint and coating manufacturers. Dimethyl carbonate and to a lesser degree propylene carbonate may be useful in the formulation of paints and coatings. There are several other organizations that may not be directly affected by the rule, but are likely to have an interest in this rule revision including Wisconsin Manufacturers and Commerce, environmental organizations such as Clean Wisconsin and Sierra Club, and public health organizations.

This proposed rule revision may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds.

Information on environmental analysis

Under s. NR 150.03(3), Wis. Adm. Code, an environmental analysis is not needed because this proposal is considered a Type III Action. A Type III Action is one that normally does not have the potential to cause significant environmental effects, normally does not significantly affect energy usage and normally does not involve unresolved conflicts in the use of available resources.

Small business analysis

The proposed rule is not expected to have a significant economic impact on small business because it does not impose any new regulations on them, but rather removes two compounds from the state regulatory definition of VOC. This may provide lower cost alternatives to compounds currently being used.

Fiscal Estimate — 2009 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 400

Subject

Board Order AM-27-09, proposed rules affecting NR 400 pertaining to the definition of volatile organic compound.

Fiscal Effect

State: No State Fiscal Effect

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

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 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

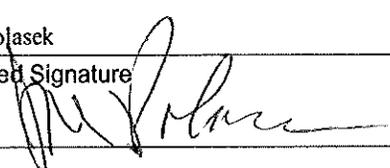
Rule Summary:

The Bureau of Air Management proposes to amend s. NR 400.02(162)(a), Wis. Adm. Code, to add two organic compounds, dimethyl carbonate and propylene carbonate, to the list of those excluded from the regulatory definition of VOC. Currently, 50 compounds are excluded from the regulatory definition of VOC because they have been shown to have negligible photochemical reactivity. The U.S. Environmental Protection Agency (EPA) has recently determined that these two compounds make a negligible contribution to tropospheric ozone formation. As such, EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437). The proposed revision of s. NR 400.02(162)(a), Wis. Adm. Code, would be consistent with this federal action.

Fiscal Summary:

The proposed changes are being done so that the Department's regulations are updated to reflect current federal regulations. These are definition changes with no fiscal impact to state and local governments, and no anticipated significant fiscal impact to the private sector, so the second page of the fiscal estimate was removed.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joseph Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12-01-09

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 400

Subject

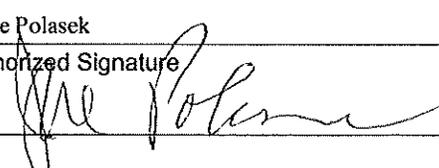
Board Order AM-27-09, proposed rules affecting NR 400 pertaining to the definition of volatile organic compound.

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	\$	\$ -	
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$	\$ -	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
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		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

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

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12-01-09

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 400.02(162)(a)51. and 52.

AM-27-09

Analysis Prepared by the Department of Natural Resources

1. Statute interpreted: Section 285.11(6), Stats. The State Implementation Plan developed under s. 285.11(6), Stats., is revised.

2. Statutory authority: Sections 227.11(2)(a) and 285.11(1) and (6), Stats.

3. Explanation of agency authority:

Section 227.11(2)(a), Stats., gives state agencies general rule-making authority. Section 285.11(1), Stats., gives the Department the authority to promulgate rules implementing and consistent with ch. 285, Stats. Section 285.11(6), Stats., requires the Department to develop a plan for the prevention, abatement and control of air pollution. The plan must conform with the Clean Air Act and federal regulations for ozone control. Since volatile organic compounds (VOC) are a precursor to ozone, having the state definition of VOC conform to the federal definition is consistent with s. 285.11(6), Stats.

4. Related statute or rule:

Chapters NR 401 – 499 reference the definitions presented in s. NR 400.02, Wis. Adm. Code.

5. Plain language analysis:

The proposed rule amendment contained in this order reflects a recent conclusion by the United States Environmental Protection Agency (EPA) that dimethyl carbonate and propylene carbonate make a negligible contribution to tropospheric ozone formation. EPA excluded these two compounds from its regulatory definition of VOC through a January 21, 2009 Federal Register notice (74 FR 3437).

Currently, s. NR 400.02(162)(a), Wis. Adm. Code, lists 50 compounds that are excluded from the state regulatory definition of VOC. The Department is proposing to add dimethyl carbonate and propylene carbonate to this list to ensure consistency between state and federal definitions of VOC.

The proposed rule amendment may create an incentive for certain entities, such as paint and coating manufacturers, to use these compounds in place of other more highly reactive organic compounds thereby potentially reducing ground-level ozone concentrations.

6. Summary of, and comparison with, existing or proposed federal regulation:

The proposed rule amendment will ensure consistency between state and federal VOC definitions.

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

Each of the adjacent states have exempted or are in the process of exempting these two compounds from the regulatory definition of VOC through state rulemaking processes. The following lists the expected

state exemption dates for dimethyl carbonate and propylene carbonate:

- Illinois – Expected exemption January, 2010.
- Iowa – Compounds are exempt from emissions reporting starting in 2009.
- Michigan – Expected exemption late 2010.
- Minnesota – Compounds are currently exempt because EPA’s VOC definition is referenced.

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

Since the proposed rule amendment is based on federal rule changes, the Department is relying on the factual data and analytical methodologies used by EPA to support its rule change. Information on the federal rule changes may be found in the Federal Register notice published on January 21, 2009 (74 FR 3437).

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

An analysis of the effect of the proposed rule amendment on small business was not performed since this change would only provide additional flexibility in allowing them to choose from additional chemical compounds.

Preparation of an economic impact report was not requested.

10. Effect on small business:

The proposed rule amendment is not expected to have a significant economic impact on small business because it does not impose any new regulations on them, but rather removes two compounds from the state regulatory definition of VOC. This may provide lower cost alternatives to compounds currently being used.

11. Agency contact person: Joseph Hoch; P.O. Box 7921, Madison, WI 53707-7921; Telephone number: (608) 264-8861; e-mail address: joseph.hoch@wisconsin.gov

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:

Joseph Hoch
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 400.02(162)(a)51. and 52. are created to read:

NR 400.02(162)(a)51. Dimethyl carbonate (C₃H₆O₃).

52. Propylene carbonate (C₄H₆O₃).

SECTION 2. 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 3. 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 _____
Matthew J. Frank, Secretary

(SEAL)