Form 1100-001P (Rev. 8/12)

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

Item No. 3.C.1

**SUBJECT:**
Request that the Board approve the statement of scope for Board Order AM-24-12, proposed rules affecting the construction and operation permit program requirements in chs. NR 406 and 407 respectively and related definitions in ch. NR 400, and hazardous air pollutant control requirements in ch. NR 445.

**FOR: March 2013 Board meeting**

**PRESENTER'S NAME AND TITLE:** Gail Good, Air Monitoring Section Chief

**SUMMARY:**


The proposed rule changes do not alter existing policy or establish new policy. The primary goal of the proposed rules is to improve operational efficiency for, and to simplify the construction and operation permitting processes administered under, chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act and retaining approvability by the U.S. Environmental Protection Agency. Numerous opportunities to simplify the permitting process, while increasing consistency and efficiency will be evaluated through a process involving stakeholders. Definitions in ch. NR 400 will be evaluated or created to provide clarity or to satisfy statutory obligations. Changes to s. NR 445.09 will be proposed to ensure that a facility's ability to comply with state rules does not result in a conflict and inability to comply with federal requirements.

The proposed rule may affect many industrial sources in the state. Potential changes to chs. NR 406 and 407 could affect if, and how, construction or operation permit requirements apply to a diverse group of industrial sources, while potential changes to ch. NR 400 may impact all types of facilities. The only known group affected by a proposed change to s. NR 445.09 is a small number of engine manufacturers.

The Department expects a significant level of interest in this potential rulemaking across a diverse group of stakeholders. An extensive effort to involve stakeholders will accompany this rule development.

It is anticipated that the proposed rule changes will have no more than a moderate overall economic impact, and so 30 days will be reserved for public input on economic issues. In most cases, the proposed changes are expected to result in cost savings for business, especially small business.


**RECOMMENDATION:** That the Board approve the statement of scope for Board Order AM-24-12.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- ☒ Memo to the Board (for scope statement approval)
- ☒ Statement of scope
- ☐ Fiscal estimate and economic impact analysis (EIA) form
- ☐ Response summary
- ☐ Attachments to background memo
- ☒ Governor approval of statement of scope
- ☐ Environmental assessment or impact statement
- ☐ Board order/rule

| Approved by | Signature | Date |
|---|---|---|
| Bart Sponseller, Bureau Director | Bart S | 2/15/2013 |
| Pat Stevens, Administrator | Pat St | 2/18/2013 |
| Cathy Stepp, Secretary | Matt M Moreng | 3/6/13 |

cc: Board Liaison - AD/8
Gail Good - AM/7
Kendra Fisher – LS/8
Robert Eckdale - AM/7
Department rule coordinator – LS/8

# CORRESPONDENCE/MEMORANDUM

**State of Wisconsin**

DATE: November 6, 2012

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: The construction and operation permit programs in chs. NR 406 and 407 respectively and related definitions in ch. NR 400 and hazardous air pollutant control requirements in ch. NR 445.

**Detailed description of the objective of the proposed rule:**

The primary objective of the proposed rules is to improve operational efficiency for, and to simplify the permitting processes administered under chs. NR 406 and 407, while remaining consistent with the federal Clean Air Act (CAA) and retaining approvability by the U.S. Environmental Protection Agency (USEPA). Specific proposed rules along with issues to be examined in order to accomplish this objective are described below. The Wisconsin Department of Natural Resources (WDNR) may encounter potential opportunities related to this objective which are unforeseen and therefore not described. The WDNR will evaluate and act on such opportunities consistent with the stated objective. Chapters not previously identified, but explicitly associated with proposed changes under chs. NR 406 and 407, could be affected by such an effort.

The WDNR will propose changes to s. NR 445.09 to remove any inconsistencies between methods to demonstrate compliance with both state and federal requirements.

***Specific proposed rules and issues to be examined.***

WDNR will propose to satisfy the statutory obligation under s. 285.21 (3), Wis. Stats., to "[p]romulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment." This phrase is used extensively throughout chs. NR 406 and 407, as well as other chapters, but has not been defined.

WDNR is also obligated by statute to establish by rule the actions or events which constitute the reconstruction of a major source and the shutdown of a facility. The terms "reconstruction" and "shutdown" are already defined in s. NR 400.02 (130) and (144), respectively but may not be adequate. The existing definitions will be examined and changes made, as necessary, to meet the statutory requirements.

WDNR will also propose language changes to ch. NR 406 regarding administrative permit revisions for construction permits. There is language in s. NR 407.11 related to administrative permit revisions for operation permits. Only if requested by the permittee, this language allows WDNR to revise an operation permit administratively for correction of a typographical error; a change in name, address, or telephone number that is unrelated to emissions; more frequent monitoring, recordkeeping, or reporting; a change in ownership or operation control; and revision of an operation permit to include construction permit requirements. There is a need to allow a permit applicant to request similar changes to construction permits, and the WDNR believes making these changes through an administrative process similar to that outlined in s. NR 407.11 is appropriate.

WDNR will propose to remove Table 2, regarding the "Levels of Air Contaminants For Determining Need For Inclusion In Permit Applications for Calendar Years 2003 and Earlier" from s. NR 407.05, as it is out of date and was replaced by Table 3, "Levels of Air Contaminants For Determining Need For Inclusion in Permit Applications for Calendar Years 2004 and Later".

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The evaluation of s. NR 445.09 is necessary to ensure that a facility's ability to comply with state rules does not result in an inability to comply with federal requirements. An example of federal requirements where this type of conflict exists is 40 CFR 1065 Subpart H. Section NR 445.09 describes fuel requirements for compression ignition internal combustion engines combusting fuel oil. There are types of engines that may be out of compliance with federal requirements if they comply with state requirements. WDNR will propose rule changes to s. NR 445.09 only to the extent necessary to ensure that compliance with s. NR 445.09 does not result in an inability to comply with federal requirements.

In addition to the specific changes WDNR is proposing to make, there are potential changes to chs. NR 406 and 407 that WDNR will explore and evaluate. Through workgroups comprised of internal and external stakeholders, WDNR will evaluate rules to address opportunities that may make more facilities eligible for simplified permitting. WDNR will investigate the possibility and appropriateness of expanding existing exemptions and creating new exemptions that may allow additional minor sources to be exempt from construction permitting. Exemptions that may be examined for expansion include the exemptions in ss. NR 406.04 (1q) and 407.03 (1m) for minor source permitting and the 10 Million British Thermal Unit (MMBTU) thresholds for distillate oil in the exemptions for external combustion furnaces, in ss. NR 406.04 (1) (a) and 407.03 (1) (a). The WDNR may also examine the development of an exemption for incineration of small quantities of pharmaceutical drugs.

In order to simplify permitting in certain situations, WDNR may explore the possibility of re-defining emergency generators in s. NR 400.02 (56) so that the emergency generator exemption in s. NR 406.04 (1) (w) is applied consistently and appropriately in permits. WDNR will examine the criteria in s NR 406.03 (2) (b), related to undue hardship for a construction permit waiver to ensure consistency with the flexibility believed to be provided by s. 285.61 (5m), Wis. Stats. WDNR is also proposing to examine existing eligibility criteria for registration permits.

Through a retrospective rule review process where each state agency reviewed and took public comment on existing rules, one stakeholder identified a possible permit processing change. In situations where facilities have an operation permit and want to add an emissions unit that is exempt from construction permitting, the facility is currently obligated to submit operation permit revision forms prior to construction. WDNR may evaluate the possibility of changing the revision submittal date to prior to beginning operation.

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

Regarding construction permits, the purpose of ch. NR 406, in part, is described under s. NR 406.01 (2) as necessary "[t]o exempt types of stationary sources from the requirement to obtain a construction permit and to establish permit and permit review requirements and permit duration for construction permits." The proposals for rulemaking or evaluation related to ch. NR 406 are in accordance with the purpose of the construction permit program.

Regarding operation permits, the purpose of ch. NR 407, in part, is described under s. NR 407.01 (2) as necessary "[t]o establish a schedule of dates for the submission of operation permit applications and a schedule of dates for requiring operation permits for various categories of direct stationary sources and to specify the content of operation permit applications and operation permits. This chapter also sets forth procedures for revising, suspending and revoking operation permits." The rulemaking and evaluation proposals related to ch. NR 407 are in accordance with the purpose of the operation permit program.

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

Section 285.11 (1), Wis. Stats., requires WDNR to, "Promulgate rules implementing and consistent with this chapter and s. 299.15."

Section 285.11 (14), Wis. Stats., requires WDNR to "Promulgate by rule the actions or events which constitute the reconstruction of a major source."

Section 285.11 (15), Wis. Stats., requires WDNR to "Promulgate by rule the actions or events which constitute the shutdown of a facility."

Section 285.21 (3), Wis. Stats., directs that, "The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment."

Section 285.60 (2g) (a), Wis. Stats., requires that the department establish by rule a simplified process under which the department may issue a registration permit authorizing construction or operation or both for a stationary source with low actual or potential emissions. The department shall also "[i]nclude criteria for identifying categories of sources the owners or operators of which may elect to obtain registration permits..."

Section 285.60 (5m), Wis. Stats., both requires and allows the department to promulgate rules allowing for a waiver of construction permit requirements. In the first case, "[t]he department shall promulgate rules under which a person is allowed to commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit upon a showing that commencing construction, reconstruction, replacement, or modification prior to the issuance of the permit is necessary to avoid undue hardship." In the second case, the statute provides that "[t]he department may allow a person to commence construction, reconstruction, replacement, or modification of a stationary source prior to the issuance of a construction permit on a case-by-case basis or on bases specified in a rule." In both cases, the department may not promulgate rules that conflict with the federal clean air act.

Section 285.60 (6), Wis. Stats., addresses exemption by rule and states in s. 285.60 (6) (a), Wis. Stats., "Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health safety or welfare or to the environment." Further, s. 285.60 (6) (b), Wis. Stats., states, "Subject to sub. (8), the department shall, by rule, exempt minor sources from the requirement to obtain a construction permit and an operation permit if the emissions from the sources do no present a significant hazard to public health, safety or welfare to the environment. And s. 285.60 (10), Wis. Stats., requires that "The department shall continually assess permit obligations imposed under this section and ss. 285.61 to 285.65, Wis. Stats., and implement measures that are consistent with this chapter and the federal clean air act to allow for timely installation and operation of equipment and processes and the pursuit of related economic activity by lessening those obligations, including consolidating the permits for sources at a facility into one permit, expanding exemptions under sub. (6), and expanding the availability of registration permits under sub. (2g), general permits under sub. (3), and construction permit waivers under sub. (5m)."

Section 285.67, Wis. Stats., "The department shall promulgate rules establishing criteria and procedures for revising ...air pollution control permits."

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

Approximately 1200 to 1500 hours will be spent by WDNR staff.

**List with description of all entities that may be affected by the proposed rule:**

The proposed rule package may affect many different entities. It is difficult to identify specific source categories because this applies to anyone that may need to get a permit or make a determination regarding permit applicability. Many of the rulemaking proposals as part of this package will target minor sources statewide. The proposed changes to chs. NR 406 and 407, could affect any source subject to construction or operation permit requirements and this rule is not specifically targeting types of industry or pollutants. Regarding the proposed changes to s. NR 445.09, the only known sources that will be affected include a small number of engine manufacturers.

**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:**

WDNR has federally granted authority to implement both the construction and operation permit programs through the State Implementation Plan (SIP). Many of the proposed rules will be more likely to affect minor sources and small businesses. All proposed rules will be consistent with current federal CAA requirements.

**Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The economic impact of the proposed and anticipated rules is expected to be moderate. In most cases, the changes proposed will result in cost savings for business, especially small business.

**Contact Person:**

Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, 608 266-1058, gail.good@wisconsin.gov

cc: Bart Sponseller - AM/7
Robert Eckdale - AM/7
Gail Good – AM/7
Laurel Steffes – AD/8
Dr. Henry Anderson - DHS

# STATEMENT OF SCOPE

## Department of Natural Resources

**Rule No.:** AM-24-12

**Relating to:** The construction and operation permit programs in chs. NR 406 and 407 respectively and related definitions in ch. NR 400 and hazardous air pollutant control requirements in ch. NR 445.

**Rule Type:** Permanent

**Detailed description of the objective of the proposed rule:**

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**Contact Person:**

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Cathy Stepp, Secretary

11/14/12

Date Submitted

# SCOTT WALKER
## OFFICE OF THE GOVERNOR
## STATE OF WISCONSIN

P.O. BOX 7863
MADISON, WI 53707


December 28, 2012

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

**RE: Scope Statement for AM-24-12 revising the construction and operation permit programs in Chapter NR 406 and 407 respectively and related definitions in Chapter NR 400 and hazardous air pollutant control requirements in Chapter NR 445**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on November 15, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to Chapters NR 400, 406, 407 and 445. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor