

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

SUBJECT:

Request that the Board approve the statement of scope for Board Order FR-07-14, and conditionally approve the public hearing notice for Board Order FR-07-14 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse for proposed rules affecting chapter NR 47.91 related to the cost shared state gypsy moth suppression program

FOR: August 2014 Board meeting

PRESENTER'S NAME AND TITLE: Darrell Zastrow, Forestry Division Deputy Administrator

SUMMARY:

The Wisconsin gypsy moth suppression program was developed to serve communities, individuals, state and other public lands to prevent losses from gypsy moth defoliation at a time when the private sector was not able to meet that need and federal cost sharing was available for state suppression programs. In the 14 years since the start of the state suppression program, private aerial spraying has become more available in Wisconsin, the threat from gypsy moth outbreaks has been reduced, and the federal cost share program has become less dependable. Given this situation, it is appropriate for the state to step back and allow the private sector to serve the need for preventing defoliation from this manageable pest.

Currently, there are 19 aerial pesticide applicator companies in Wisconsin that are capable and interested in treating forest pests such as gypsy moth, including over wooded residential areas. Treatment can cost ~\$40/acre though cost will vary between contracts.

The peak year for the suppression program was 2004 when 51,450 acres were treated. Since then, acres communities requested be treated have decreased rapidly. In 2012-13 no communities applied and this year only 29 acres were cost shared. This decline in demand for the program is in part due to the success of a biological control. Also, the first outbreak in an area is the worst and all WI major population centers except Eau Claire have now gone through this.

Federal cost sharing has become less dependable. The cost share has gone as low as 17% of the total costs. Given the strain on the federal budget it seems likely that the amount of funds available for cost sharing of suppression projects will decrease in the future.

We propose to deactivate the state suppression program to all applicants except state lands. Suppressing gypsy moth on state lands and applying for federal cost sharing and federally supplied Gypchek does not require rule authority to implement. However, by deactivating instead of repealing the rule we retain the option of reactivating the program for the public should that become necessary. Additional changes to the rule may be pursued which are reasonably related to those discussed here.

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve the public hearing notice for Board Order FR-07-14 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

LIST OF ATTACHED MATERIALS:

- Statement of scope
- Governor approval of statement of scope

Approved by	Signature	Date
Bob Mather, Forest Management, Bureau Director	<i>Bob Mather</i>	7/1/14
Paul Delong, Forestry Division Administrator	<i>Paul Delong</i>	7/6/14
Cathy Stepp, Secretary	<i>Matt Mory</i>	7/21/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

STATEMENT OF SCOPE

Department of Natural Resources, Division of Forestry

Rule No.: FR-07-14

Relating to: Gypsy moth suppression program

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

The rules will be proposed as permanent rules.

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

The Wisconsin gypsy moth suppression program was developed to serve communities, individuals, state lands and other public lands to prevent losses from gypsy moth defoliation at a time when the private sector was not able to meet that need and federal cost sharing was available for state suppression programs. In the 14 years since the start of the state suppression program, private aerial spraying has become more available in Wisconsin, the threat from gypsy moth outbreaks has been reduced, and the federal cost share program has become less dependable. Given this situation, it seems an appropriate time for the state to step back and allow the private sector full opportunity to serve the need for preventing defoliation from this manageable pest. We propose to close the state suppression program to all applicants except state lands, which does not require rule authority to implement. By keeping the rule in place of fully repealing it, we achieve two benefits: access to federal cost sharing for state lands, if available, and access to the federally supplied gypsy moth specific pesticide, Gypcheck. Additional changes to the rule may be pursued which are reasonably related to those discussed here.

3. 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 department currently offers participation to communities, individuals and public lands in a state organized and contracted aerial spray program to suppress defoliation from gypsy moth through the public cost share portion of the state suppression program. Landowners and communities must apply through their county which serves as the local coordinator, defining the spray blocks, ensuring they are eligible, collecting the funds for treatment and redistributing the reimbursement. Participants pay the entire cost of the treatment up front and the state applies to the USDA Forest Service for cost sharing. Cost share that is received is entirely passed onto participants in the program as reimbursement. The Department of Agriculture, Trade and Consumer protection holds the contract for treatment of all gypsy moth eradication, Slow The Spread, and suppression blocks.

The proposed rule change would limit participation in the state suppression program to state lands, which does not require rule authority to implement. Local governments and individuals will be provided guidance in contracting for appropriate treatment from arborists or aerial spray contractors. The public cost share portion of the state suppression program for treatments would no longer be available as that is provided by the federal government only to through public cost share portions of state suppression programs, which we would be de-activating under this rule proposal.

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

Section 26.30(6m), Stats., states that if the department establishes a cost-shared suppression program for gypsy moth, and that program includes the awarding of federal cost sharing funds to counties, the department shall promulgate rules to implement the program. This statute contemplates that the cost-share suppression program include, but not be limited to, the awarding of federal cost sharing funds to counties. This broad grant of rulemaking authority is sufficient to provide the basis for the proposed de-activation rule language....” The federal cost-share fund grant language allows states to utilize the federal gypsy moth funds without establishing a cost-share program for private individuals or counties, and so the de-activation of public access to the state organized spray program under the new proposed authority in rule will not prevent the department from using these funds, since the Department, under s. 26.30(2), Stats., is “vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction”

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

200 hours

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

- Counties, local governments and individuals that would have participated in the state gypsy moth suppression program.
- Arborists and private aerial applicators that will provide suppression treatments in the absence of a state program.
- Department Forest Health team staff will be able to redirect time from gypsy moth to other invasive pests and diseases of increasing concern such as emerald ash borer.

7. 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:

The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. The federal government makes cost sharing available to state run suppression programs but does not require one to be offered. The federal cost sharing program also does not specify what lands may participate in a state program. Neither Illinois nor Michigan offer a state suppression program for gypsy moth. New Jersey has a state gypsy moth suppression program that only services state lands.

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

The proposed rule change will result in individuals and communities hiring arborists and private aerial spray applicators to prevent defoliation of their trees by gypsy moth instead of paying the state program to do the treatment. These business will benefit from the closure of the state suppression program in the years gypsy moth threaten to cause local defoliation. Communities and individuals that make their own contracts for treatment may be able to get a lower price for treatment than the state contract depending on their location relative to the contractor, the number of acres and any tailoring they require. However, if they are distant from the contractor, have few acres and/or have unusual requirements the price per acre could be more than the state contract. Communities and individuals will take on the workload associated with the contract which had previously been handled by the state.

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

The Department anticipates holding five public hearings in the month of December, 2014. Hearing cities will be: Madison, Milwaukee, Green Bay, Wausau and Eau Claire.

The Department will hold these hearings in these locations to ensure potentially affected communities and individuals will have an opportunity to have their questions answered and provide input.

Contact Person:

Andrea Diss-Torrance
PO Box 7921, Madison, WI 53707
608-264-9247
Andrea.DissTorrance@wi.gov

Department Head or Authorized Signature

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 23, 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 FR-07-14 modifying Chapter NR 47 relating to gypsy moth suppression program

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on April 3, 2014, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 47 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