

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

SUBJECT:

Request that the Board approve the revised statement of scope for Board Order AM-21-12, proposed rules affecting chs. NR 405 and 408 and chs. NR 400 and 410 related to revision of major emission source permitting requirements and the repeal of provisions that previously supported the indirect source program.

FOR: October 2012 Board meeting

PRESENTER'S NAME AND TITLE: Andrew Stewart, Deputy Director, Bureau of Air Management

SUMMARY:

The proposed changes to chs. NR 405 and 408 address deficiencies identified by the U.S. Environmental Protection Agency and are necessary to maintain continuing approval of the state implementation plan which is, in part, implemented through these chapters.

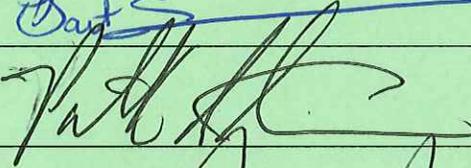
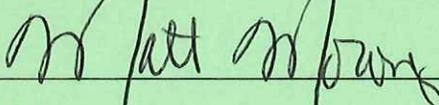
The proposed rule changes to chs. NR 400 and 410 are related to the indirect source permit program which was formerly implemented through ch. NR 411. These proposed changes are of a clean-up nature and are necessary as a result of ch. NR 411 being repealed through 2011 Wisconsin Act 121. The number of sources affected by the proposed rule changes is small, if any at all. One of the proposed changes affecting chs. NR 405 and 408 is already incorporated into state Title V operation permits. The other proposed change to ch. NR 405 is a clarification of a definition already applied in the permit program. The proposed changes affecting chs. NR 400 and 410 will not affect any entities because legislative actions already repealed the associated rules in ch. NR 411.

The original scope statement was revised before presentation to the Board because of a U.S. EPA notice of deficiency received shortly after the original scope statement received governor approval. Because of similarities between rule changes needed to address the notice of deficiency and rule changes already proposed, the Department revised the original statement of scope appropriately and subsequently sought and received governor approval. The only difference between the original statement of scope and the revised scope is the addition of information to address the U.S. EPA notice of deficiency.

RECOMMENDATION: That the Board approve the revised statement of scope for Board Order Board Order AM-21-12.

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> Memo to the Board (for scope statement approval) | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Statement of scope | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Bart Sponseller, Bureau Director		9/12/12
Pat Stevens, Administrator		9/13/12
Cathy Stepp, Secretary		10/2/12

cc: Board Liaison - AD/8
Gail Good - AM/7

Kendra Fisher - LS/8
Robert Eckdale - AM/7

Department rule coordinator - LS/8

DATE: August 8, 2012
TO: All Members of the Natural Resources Board
FROM: Cathy Stepp, Secretary

SUBJECT: Revised Scope Statement Relating to Revisions to chs. NR 405 and 408 to maintain consistency with federal permit guidelines and to chs. NR 400 and 410 consistent with the repeal of ch. NR 411 for indirect source permits..

Detailed description of the objective of the proposed rule:

The objective of this rule package is to revise language in chs. NR 405 and 408 to maintain consistency with federal requirements and definitions. Additionally, sections of chs. NR 400 and 410 need to be repealed due to the repeal of ch. NR 411.

In May 2006, the Wisconsin Department of Natural Resources (WDNR) requested approval by the U.S. Environmental Protection Agency (USEPA) of rules promulgated by Wisconsin to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The USEPA approved the SIP revisions, but subsequently requested changes to language in chs. NR 405 and 408. The changes pertain to the fuel use prohibition that is part of the definition of "major modification".

Chapter NR 405.02 (25i) defines "Regulated NSR air contaminant" and specifically identifies volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO_x) in the definition for clarification purposes. Similarly USEPA requires, through its 2008 New Source Review Rule, explicit identification of NO_x and sulfur dioxide (SO₂) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM_{2.5}) within the definition of "Regulated NSR air contaminant". The WDNR proposes to make the necessary rule changes to address these issues.

On April 27, 2011, the Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under s. 227.26 (2) (d), Wis. Stats., suspending ch. NR 411. Subsequent passage of legislation introduced by JCRAR in support of the suspension (see [2011 Wisconsin Act 121](#)), resulted in the repeal of ch. NR 411. The primary purpose of ch. NR 411 had been to control carbon monoxide emissions from indirect sources through conditions established in construction and operation permits. Therefore the WDNR proposes to repeal rules whose only purpose is in support of ch. NR 411. Rules proposed for repeal include ss. NR 400.02 (101) and (106), and 410.03 (3). Sections NR 400.02 (101) and (106) define 'modified indirect source' and 'new indirect source' respectively. Section NR 410.03 (3) establishes fees for the application and issuance of permits to construct or modify an indirect source under ch. NR 411.

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

In a letter dated June 17, 2009, the USEPA notified the WDNR that the definition of the term "major modification" in s. NR 405.02 was inadequate because it failed to identify permits issued under federal authority. Wisconsin's Prevention of Significant Deterioration (PSD) program was approved into its SIP on June 28, 1999. Before that, PSD construction permits were issued under federal authority. When ch. NR 405.02 (21) (b) (5) was written, the references to federal authority were inadvertently left out. Because the federal citations were left out of the rule, USEPA identified that in a very limited situation, the current state definition would allow a source to make a change to use a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a federal permit. The WDNR will amend this definition to ensure that it is consistent with USEPA rule and policy and recognizes all federally issued permits.

The alternative to this rule action is to keep the rules as they are which USEPA has already identified as an inconsistency with federal PSD program. However, in a Federal Register filed June 15, 2012, USEPA disapproved narrow portions of the SIP pertaining to permit requirements in NR 405 and 408 that would be addressed with this rulemaking. In the Federal Register, USEPA stated that they are under obligation to promulgate a Federal Implementation Plan (FIP) addressing the disapproved portions of the SIP within 2 years. The Federal Register states that the FIP will not be promulgated if WDNR rectifies the deficiencies within the 2 year timeframe.

The proposed clarifications of NO_x as a precursor to ozone and NO_x and SO₂ as precursors to PM_{2.5} are not policy changes, but statements of fact. On June 15, 2012, USEPA disapproved a narrow portion of Wisconsin's SIP for the 1997 ozone National Ambient Air Quality Standard pertaining to air construction permitting. This was done because NO_x was not identified as a precursor to ozone as part of PSD permit program requirements. The final disapproval triggered a requirement that USEPA promulgate a FIP addressing the deficiency no later than 2 years from the date of disapproval. In a federal register notice dated August 2, 2012, USEPA proposed to disapprove additional portions of Wisconsin's SIP submission for the 2006 PM_{2.5} NAAQS because PM_{2.5} precursors are not specifically identified. Section 110(a)(2)(c) of the Clean Air Act requires that precursors to PM_{2.5} are identified in the PSD program requirements. Final disapproval to portions of the SIP relating to identifying precursors of PM_{2.5} will also result in the promulgation of a FIP unless the deficiencies are addressed.

Not repealing sections of chs. NR 400 and 410 in response to the repeal of NR 411 by the legislature would potentially create confusion and perpetuate an inconsistency with WDNR rules.

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

Section 285.11 (17), Wis. Stat., requires WDNR to "Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term 'modification' as it relates to specified categories of stationary sources...". The proposed rule to make the WDNR definition of "major modification" consistent with the federal definition is necessary to be consistent with the statutes and the federal clean air act.

Section 285.11 (1), Wis. Stats., establishes that the WDNR shall "Promulgate rules implementing and consistent with this chapter and s. 299.15.". Section 285.60 (11) (b), Stats., effective March 21, 2012, establishes that the WDNR may not require a permit under this chapter for an indirect source. The proposed repeal of rules whose sole purpose is to support the issuance of permits for indirect sources is therefore necessary to be consistent with the statutes and to establish consistency within the administrative code.

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

Approximately 300 hours will be spent by WDNR staff.

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

The WDNR believes that the number of major sources affected by the proposed rule changes to chs. NR 405 and 408 will be small, if any. Under Wisconsin's Title V operation permit program all requirements that apply to a source are included in its operation permit. WDNR clearly recognizes that requirements contained in a federally issued major source construction permit apply to the source and are therefore included in the source's Title V operation permit issued by the WDNR, making the requirement fully enforceable under state and federal law. The WDNR is not aware of a single situation where this type of

requirement existed in a federal construction permit and was not included the state Title V operation permit.

The addition of language to clarify that NO_x is a precursor to ozone and NO_x and SO₂ are precursors to PM_{2.5} will have no impact on any entities.

No entities will be affected by the proposed repeal of rules related to indirect sources. Since ch. NR 411 has already been repealed through legislative action, rules whose only purpose was to support the implementation of ch. NR 411 are already moot. Therefore the proposed repeal of these rules will not have any effect.

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 rule changes proposed to chs. NR 405 and 408 are requested by USEPA to maintain consistency with federal major modification definitions.

The rule changes proposed to ch. NR 405 with regard to precursor identification are required by USEPA to maintain consistency with federal definitions and avoid FIP promulgation with regard to portions of Wisconsin's infrastructure SIP.

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 due to the changes proposed to chs. NR 405 and 408 is expected to be minimal, in part because there are few permits that would be affected by this change. PSD sources are large emitters by definition and do not typically include small business, so the impact to small businesses should be minimal at most.

Chapter NR 411 has been repealed, and the Department is now proposing to repeal rules whose only purpose was to support the implementation of ch. NR 411. Therefore, the proposed repeal of these rules will have no economic impact.

Contact Person:

Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, 608 267-0803, 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

(REVISED)

Department of Natural Resources

Rule No.: AM-21-12

Relating to: Revisions to chs. NR 405 and 408 to maintain consistency with federal permit guidelines and to chs. NR 400 and 410 consistent with the repeal of ch. NR 411 for indirect source permits.

Rule Type: Permanent

Detailed description of the objective of the proposed rule:

The objective of this rule package is to revise language in chs. NR 405 and 408 to maintain consistency with federal requirements and definitions. Additionally, sections of chs. NR 400 and 410 need to be repealed due to the repeal of ch. NR 411.

In May 2006, the Wisconsin Department of Natural Resources (WDNR) requested approval by the U.S. Environmental Protection Agency (USEPA) of rules promulgated by Wisconsin to incorporate federal New Source Review Reform requirements as a revision to the State Implementation Plan (SIP). The USEPA approved the SIP revisions, but subsequently requested changes to language in chs. NR 405 and 408. The changes pertain to the fuel use prohibition that is part of the definition of "major modification".

Chapter NR 405.02 (25i) defines "Regulated NSR air contaminant" and specifically identifies volatile organic compounds as a precursor for ozone. USEPA has requested inclusion of nitrogen oxides (NO_x) in the definition for clarification purposes. Similarly USEPA requires, through its 2008 New Source Review Rule, explicit identification of NO_x and sulfur dioxide (SO₂) as precursors to particulate matter with a diameter of 2.5 micrometers or less (PM_{2.5}) within the definition of "Regulated NSR air contaminant". The WDNR proposes to make the necessary rule changes to address these issues.

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federal permit. The WDNR will amend this definition to ensure that it is consistent with USEPA rule and policy and recognizes all federally issued permits.

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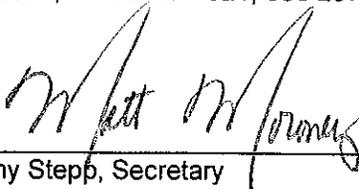
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Contact Person:

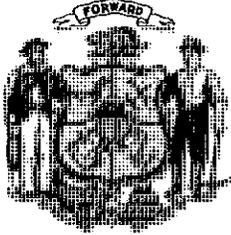
Gail Good, Wisconsin Department of Natural Resources, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, 608 267-0803, gail.good@wisconsin.gov



Cathy Stepp, Secretary

8/15/10

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. BOX 7863
MADISON, WI 53707

August 30, 2012

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

RE: Revised Scope Statement for AM-21-12 revising Chapters NR 405 and 408 to maintain consistency with federal permit guidelines and Chapters NR 400 and 410 consistent with the repeal of Chapter NR 411 for indirect source permits.

Dear Secretary Stepp,

I hereby approve the revised statement of scope submitted on August 15, 2012, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to Chapters NR 400, 405, 408 and 410. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker".

Scott Walker
Governor