

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

SUBJECT:

Request that the Board approve the Statement of Scope for Emergency Board Order AM-29-13(E) and Permanent Board Order AM-28-13 and conditionally approve the public hearing notice and the notice of submittal to the Legislative Council Rules Clearinghouse for the permanent rule, for proposed rules affecting ch. NR 171 related to the development of a grant program for removal of stage 2 vapor recovery equipment

FOR: October 2013 Board meeting

PRESENTER'S NAME AND TITLE: Bart Sponseller, Air Management Bureau Director

SUMMARY:

The Department is seeking approval for both permanent and emergency rulemaking in order to establish a grant program, as stipulated in s. 285.31 (6), Wis. Stats., to support the removal of stage 2 vapor recovery equipment at gasoline stations. Stage 2 vapor recovery equipment captures vapors resulting from vehicle fueling operations at gasoline stations. This type of equipment was required by the U.S. Environmental Protection Agency (EPA) in Wisconsin's former ozone nonattainment counties which included Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha counties. In 1998, the U.S. EPA began to require the phase-in of onboard refueling vapor recovery (ORVR) technology on vehicles. This technology essentially serves the same purpose as the stage 2 vapor equipment at gasoline stations. When both stage 2 vapor recovery equipment and ORVR technology are present, there may be a slight increase in emissions due to compatibility issues between the two emission control systems. On May 16, 2012, the U.S. EPA published in the Federal Register that ORVR technology is in "widespread use". This finding allows states to remove the stage 2 vapor recovery requirements from their ozone State Implementation Plans. On November 12, 2012, Wisconsin requested that the U.S. EPA remove the stage 2 vapor recovery requirements from its ozone State Implementation Plan. The U.S. EPA proposed approval of this request on June 11, 2013.

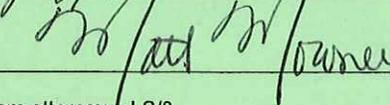
The proposed rulemaking will expeditiously begin a grant program to financially assist owners or operators of gasoline stations in the removal of stage 2 vapor recovery equipment. Removal of this equipment will reduce the amount of potential emissions increases due to redundant emission controls at 846 gasoline stations in the nine county area.

This rule change is classified as having a moderate economic impact on small business. One million dollars was allocated by the Legislature for this grant program under 2013 Wisconsin Act 20. Gasoline stations, including those owned by small businesses, will be able to receive 50 percent of eligible costs of removing stage 2 equipment up to a maximum of \$8000. The economic impact of this rule is classified as moderate because the amount of money distributed (presumably some to small businesses) by the grant program will exceed \$50,000, but less than \$20,000,000.

RECOMMENDATION: That the Board approve the Statement of Scope for both the permanent and emergency rule and conditionally approve the notices of public hearing and submittal to the Legislative Council Rules Clearinghouse for the permanent rule.

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

- | | |
|--|---|
| <input 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 |  | 9/13/13 |
| Pat Stevens, Administrator |  | 9/13/13 |
| Cathy Stepp, Secretary |  | 10/7/13 |

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: AM-28-13 and AM-29-13(E)
Relating to: NR 171, Wis. Adm. Code, Stage 2 Vapor Recovery System Removal Grants
Rule Type: Permanent and Emergency

1. Nature of Emergency:

The Department is requesting authority to begin both a permanent and an emergency rulemaking process to establish a grant program for the removal of stage 2 vapor recovery equipment at gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha.

Stage 2 vapor recovery equipment captures fuel vapors (*volatile organic compounds or VOC*) that have the potential to escape during refueling and returns them to an underground gasoline storage tank where they condense. Beginning with 1998 model year cars, the U.S. Environmental Protection Agency (EPA) phased in requirements for onboard (*on the vehicle*) refueling vapor recovery (ORVR) systems. These systems essentially serve the same purpose as stage 2 vapor recovery equipment at a gasoline station. On May 16, 2012, the U.S. EPA published a finding in the Federal Register that ORVR technology is in "widespread use" (77 FR 28772). They stated that "more than 75 percent of gasoline refueling nationwide occurs with ORVR-equipped vehicles, so stage 2 programs have become largely redundant control systems." The U.S. EPA also stated that the limited compatibility between ORVR and stage 2 vapor recovery equipment may ultimately result in an emissions increase. As such, the U.S. EPA authorized states to remove the requirements for stage 2 vapor recovery equipment from their ozone State Implementation Plans (SIPs).

This grant program will provide incentive to gasoline station owners and operators to remove their stage 2 vapor recovery equipment in a timely manner. Removal of this equipment will allow station owners and operators to avoid those costs associated with maintenance of the equipment that would otherwise be incurred. Timely removal will also hasten the avoidance of potential VOC emission increases cited by the U.S. EPA above.

2. Description of the objective of the proposed rule:

The proposed rule will establish a grant program for the removal of stage 2 vapor recovery equipment, as required by s. 285.31 (6) (b), Wis. Stats. For the purposes of the proposed rule, the term "remove" will be defined as proper decommissioning of stage 2 vapor recovery equipment, thereby removing it from service. A description of what constitutes proper decommissioning will be included as part of the proposed rule. In addition, the proposed rule will focus on the administration of the grant program, including which costs are eligible grant costs.

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

The U.S. EPA's ORVR widespread use finding authorized states to remove the requirement for stage 2 vapor recovery systems from their ozone SIPs. Wisconsin had stage 2 requirements codified in s. NR 420.045, Wis. Adm. Code, that applied to gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha. However, s. 285.31 (5), Wis. Stats., now states that this rule no longer applies. In response, the Department submitted a SIP revision to the U.S. EPA on November 12, 2012 to remove the state's stage 2 requirements from the ozone SIP. The U.S. EPA proposed approval of the requested SIP revision on June 11, 2013. The U.S. EPA has not yet issued the final approval, but that is expected soon.

The new policy associated with the proposed rulemaking is to establish a grant program for the removal of stage 2 vapor recovery equipment. There are no policy alternatives because s. 285.31 (6), Wis. Stats., requires the Department to promulgate rules for a stage 2 vapor recovery equipment removal grant program.

4. Statutory authority for the rule (including the statutory citation and language):

Section 285.31 (6) of the Wisconsin Statutes requires the Department to implement rulemaking for the establishment of a stage 2 vapor recovery removal grant program. The statute reads as follows:

285.31 (6) VAPOR RECOVERY SYSTEM REMOVAL GRANTS. (a) The department shall administer a program to provide grants to owners and operators of retail stations for eligible costs incurred after April 15, 2012, to remove vapor control systems described in sub. (3) (a). The maximum grant under this subsection is 50 percent of eligible costs of removing a vapor control system from a retail station or \$8,000, whichever is less. The department shall award grants under this subsection in the order in which applications are received.

(b) The department shall promulgate rules for the administration of the program under this subsection, including rules specifying which costs are eligible costs.

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

The Department estimates 700 hours of state employee time are needed for the development of the proposed permanent rule and an additional 300 hours of state employee time for the development of the proposed emergency rule.

6. Description of all entities that may be impacted by the rule:

There are 846 gasoline stations located in the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington or Waukesha that would be potentially eligible for grant funding as a result of this proposed rule.

7. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There is no comparable federal grant program for the removal of stage 2 vapor recovery equipment.

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

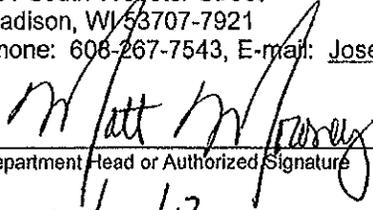
The Department anticipates the proposed rule will have a positive moderate economic impact. The purpose of this proposed rule is to establish a grant program to provide economic assistance to gasoline stations to offset the costs of removing stage 2 vapor recovery equipment. One million dollars was allocated for the stage 2 vapor recovery system removal grant program as part of Wisconsin Act 20 (2013). Gasoline stations will be able to receive 50 percent of eligible costs of removing a vapor control system up to a maximum amount of \$8,000. By removing the equipment affected gasoline station owners and operators will also avoid equipment maintenance costs. Station owners and operators could qualify as small businesses under s. 227.114 (1), Wis. Stats.

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

In accordance with s. 227.24(4), Wis. Stats., the Department is required to hold a public hearing within 45 days after it promulgates the proposed emergency rule. The Department anticipates conducting one public hearing in Milwaukee in March of 2014 related to the emergency rule. In addition, the Department anticipates conducting another public hearing in Milwaukee in August of 2014 related to the proposed permanent rule.

Contact Person:

Joseph Hoch - Bureau of Air Management
Wisconsin Department of Natural Resources
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Madison, WI 53707-7921
Phone: 608-267-7543, E-mail: Joseph.Hoch@wisconsin.gov



Department Head or Authorized Signature

8/7/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

August 14, 2013

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-29-13 Emergency Rule modifying NR 171 relating to
Stage 2 Vapor Recovery System Removal Grants**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on August 8, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter NR 171 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

August 14, 2013

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-28-13 modifying Chapter NR 171 relating to Stage 2
Vapor Recovery System Removal Grants**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on August 8, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapter NR 171 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