

Wisconsin Department of Natural Resources
 Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the statement of scope and conditionally approve a public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse for permanent rule Order AM-32-13 potentially affecting chs. NR 400 to 439, 445, and 484 to 499 relating to reporting, monitoring, and recordkeeping requirements for owners or operators of stationary sources of air pollution and additional changes of a clarifying or clean-up nature.

FOR: February 2014 Board meeting.

PRESENTER'S NAME AND TITLE: Kristin Hart, Chief, Air Permits and Stationary Source Modeling Section

SUMMARY:

The Department proposes to initiate an evaluation of reporting, monitoring, and recordkeeping requirements that apply to owners and operators of stationary sources of air pollution, with the objective of identifying opportunities, and then promulgating rules, to simplify, reduce, and increase the efficiency of those requirements. In doing so the Department will remain consistent with all applicable requirements under the federal Clean Air Act. The Department is in part required to initiate this evaluation and rulemaking effort under s. 285.17 (4) Wis. Stats.

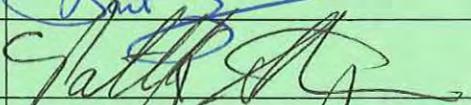
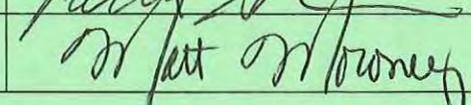
The Department is also proposing rulemaking of a clarifying or clean-up nature in the identified rule chapters. The Department may propose changes where existing rule language has been found to be unclear or susceptible to unintended interpretation. Changes of a clean-up nature are periodically necessary, for example, to correct errors in internal rule or statutory references, or to update references as a result of changes to federal regulations or reference test methods.

The proposed rules may result in a minimal to moderate cost savings to potentially affected small businesses. This is a new proposed rulemaking effort and has not been previously acted on by Board.

RECOMMENDATION: That the Board approve the statement of scope and conditionally approve a public hearing notice and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for permanent rule Order AM-32-13.

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

- | | |
|--|---|
| <input type="checkbox"/> Background memo | <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		01/09/2014
Patrick Stevens, Administrator		1/10/14
Cathy Stepp, Secretary		1/28/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Administrative Rule Officer - LS/8

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: Revising Chapters NR 400 to 439, 445, and 484 to 499 AM-32-13

Relating to: Reporting, monitoring, and record-keeping requirements for stationary source owners or operators, and additional changes of a clarifying or clean-up nature

Rule Type: Permanent

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

N/A

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

The Department proposes to initiate an evaluation of reporting, monitoring, and record-keeping requirements that apply to owners and operators of stationary sources, as that term is defined in s. 285.01 (41), Stats., with the objective of identifying opportunities, and then promulgating rules, to simplify, reduce, and increase the efficiency of those requirements, while remaining consistent with all applicable requirements under the Clean Air Act. The Department, in part, is required to initiate this rulemaking effort under s. 285.17 (4), Stats.

The Department is also proposing rulemaking of a clarifying or clean-up nature in the identified chapters. The Department may propose changes where existing rule language has been found to be unclear or susceptible to unintended interpretation. Changes of a clean-up nature are periodically necessary, for example, to correct errors in internal administrative code or statutory references, or to update references as a result of changes to federal regulations or reference test methods.

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 proposed rulemaking will not affect existing policy or include any new policies. The Department did not prepare an analysis of policy alternatives since the proposed rulemaking is only intended to simplify, reduce, and increase the efficiency of certain requirements, or is of a clarifying or clean-up nature.

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

The following statutory provision provide authority for the proposed rulemaking; ss. 227.11 (2) (a), 285.11 (1) and (6), and 285.17 (1) (a), (2) (a), and (4), Stats.

Sections 227.11 (2) (a) and 285.11 (1), Stats., provide general rulemaking authority to promulgate rules interpreting and implementing the provisions of ch. 285, Stat., which is enforced and administered by the Department. Section 285.11 (6), Stats., requires that the Department develop, and thereafter be responsible for the revision and implementation of, plans for the prevention, abatement, and control of air pollution in the state. Numerous chapters potentially affected by the proposed rulemaking have been submitted to the U.S. Environmental Protection Agency under the Clean Air Act and are part of these plans. These rules must conform to the Clean Air Act except as provided for in s. 285.11 (6). The Department does not believe these exceptions apply to the proposed rulemaking. Authority for

rulemaking specific to reporting, monitoring, and recordkeeping is contained in s. 285.17, Stats. Section 285.17 (1) (a), Stats., establishes that the Department may by rule, after classifying air contaminant sources, require reporting for any of the classes. Similarly, s. 285.17 (2) (a), Stats., establishes that the Department may by rule require the owner or operator of an air contaminant source to monitor emissions or to monitor the ambient air in the vicinity of the source and to report the results of the monitoring to the Department. Section 285.17 (4), Stats., which became effective on July 2, 2013 and was created under 2013 Wisconsin Act 20 specifically directs the Department to evaluate reporting, monitoring, and record-keeping requirements imposed on owners or operators of stationary sources of air pollution that are required to have an operation permit under s. 285.60, Stats., but are not required to have an operation permit under the federal Clean Air Act. This statutory provision further directs the Department to promulgate rules to simplify, reduce, and increase the efficiency of these requirements.

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

The Department anticipates that approximately 1000 hours of state employee time will be needed to complete the promulgation process for this proposed rulemaking.

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

Rule requirements for reporting, monitoring, and record-keeping are established based on a variety of factors including the pollutant involved and the amount being emitted, the units of the applicable emission limitation, whether emission control equipment is being used and the type of equipment, and the compliance demonstration method being used, to mention a few. Existing rules establish these requirements for a broad array of industrial source categories from small businesses involved in painting operations to major sources like paper mills and electric utilities. Any of these sources or source categories may potentially be affected by this proposed rulemaking.

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:

Many of the Department's air pollution control rules, including those for reporting, monitoring, and record-keeping, are based on existing U.S. Environmental Protection Agency regulations or guidance or are required as part of Wisconsin's state implementation plan under the Clean Air Act. After an evaluation of reporting, monitoring, and record-keeping requirements has been completed, the Department will be able to identify those specific changes to be pursued to simplify, reduce, and increase the efficiency of these requirements. At that time, as part of the preparation of any proposed rules, the Department is required under s. 227.14 (2) (a) 3., Stats., to, and will be in a better position to, conduct this same comparison to relevant federal regulations. Any changes made under this proposed rulemaking will be consistent with all applicable requirements under the Clean Air Act.

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

The Department assumes that the overall economic impact of implementing the proposed rules will be minimal to moderate and that the proposed rules will not have a significant impact on small businesses. Given the objectives of the proposed rulemaking as detailed in Section 2, the economic impact is expected to be positive. That is, the simplification, reduction, and increased efficiency of reporting, monitoring, and record-keeping rules, and the general clarification and correction of other rules should lead to cost savings for all sources affected by these requirements.

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

Considerable time and effort will be required to complete, as proposed in this rulemaking, an evaluation of reporting, monitoring, and record-keeping requirements and to develop and consider opportunities to simplify, reduce, and increase the efficiency of these requirements. The Department will work with interested stakeholders in the evaluation and any subsequent rulemaking effort.

During the evaluation and rulemaking process, the Department will develop a more complete picture of those potentially affected by this effort. This will allow the Department to plan for an appropriate number of hearings as well as locations and timing for hearings.

10. Contact Person:

Kristin Hart
(608) 266-6876
Kristin.Hart@Wisconsin.gov



Department Head or Authorized Signature

9/13/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 24, 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-32-13 modifying Chapters NR 400-439, 445, and 484-499 relating to reporting, monitoring, and record-keeping requirements for stationary source owners or operators, and additional changes of a clarifying or clean-up nature

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on September 16, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapters NR 400-439, 445, and 484-499 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